STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

Ameren Illinois Company d/b/a Ameren Illinois	:	11-0279
Proposed general increase in electric delivery service rates. (Tariffs filed February 18, 2011).	:	
Ameren Illinois Company d/b/a Ameren Illinois	:	11-0282
	:	(Consolidated)
Proposed general increase in natural gas rates. (Tariffs filed February 18, 2011).	:	

REPLY BRIEF OF THE STAFF OF THE
ILLINOIS COMMERCE COMMISSION

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Staff of the Illinois Commerce Commission ("Staff"), by and through its undersigned counsel, pursuant to Section 200.800 of the Illinois Commerce Commission's ("Commission" or "ICC") Rules of Practice (83 Ill. Adm. Code 200.800), respectfully submits its Reply Brief in the instant proceeding.

I. INTRODUCTION

A. Overview

In this proceeding, the Commission is investigating the February 18, 2011 requests for general increases in gas and electric delivery services rates pursuant to Article IX of the Illinois Public Utilities Act (the "Act" or "PUA"), 220 ILCS 5/9, filed by the Ameren Illinois Company d/b/a Ameren Illinois (collectively, "Ameren," "AIC," or "Company").

B. Procedural History

Initial Briefs ("IB") were filed on October 11, 2011, by the Kroger Co. ("Kroger"); the Commercial Group; the Grain & Feed Association of Illinois ("GFA"); System Council U-05 of the International Brotherhood of Electrical Workers, AFL-CIO ("IBEW"); the Illinois Competitive Energy Association ("ICEA"); the Retail Gas Suppliers ("RGS"); the Illinois Industrial Energy Consumers ("IIEC"); the People of the State of Illinois, the Citizens Utility Board, and AARP ("AG/CUB/AARP"); Staff; and Ameren. CUB also filed a separate initial brief addressing the issue of Implementation of a Gas Retail Choice Program. Staff filed a Revised Initial Brief on October 14, 2011. Staff's Revised Initial Brief identified and responded to many if not most of the arguments raised in the Ameren's Initial Brief. In this Reply Brief, Staff has incorporated many of those responses by reference or citation to Staff's Revised Initial Brief. However, in the interest of brevity, Staff has not raised and repeated every argument and response previously addressed in Staff's Revised Initial Brief. Thus, the omission of a response to an argument that Staff previously addressed simply means that Staff stands on the position taken in Staff's Revised Initial Brief because further or additional comment is neither needed nor warranted. As explained in detail below and in Staff's Revised Initial Brief, the arguments raised by Ameren lack merit and must be rejected.

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C. Contested Issues

1. Capital Additions Adjustment

The Commission should adopt Staff's recommendation to disallow $7,246,868[1] from inclusion in Ameren's proposed rate base. The disallowance represents the cost of projects that Ameren included in its proposed rate base, and then later decided it would not complete by the end of test year.

Ameren objects to Mr. Rashid's recommendation and indicates that it intends to use that money to recover the cost of *other projects* that Ameren later decided to complete by the end of test year;[2] however, it failed to adjust its forecasted rate base filing. Ameren argues against the disallowance, stating, "…in a future test year, the plant in service component of rate base is determined by examining the overall level of forecasted plant additions."[3] Ameren indicated that examination "is done not by looking at individual projects, but by examining the accuracy and reliability of the utility's rate

[1] This amount will total $3,623,434 ($7,246,868 x 50% for average rate base method) as explained in ICC Staff Ex. 20.0, Schedules 20.02, 20.03, and 20.04.
[2] See Ameren Ex. 44.0, pp. 4 - 7.
[3] See AIC IB, p. 13.

case forecast…"[4] Ameren however, did not explain how a determination on the cost of the overall forecasted plant additions can be reached without considering the cost of each individual project. This argument ignores the fact that Ameren has based its plant additions forecast upon the capital projects that it intends to complete before the end of test year. To the extent Ameren's capital additions forecast was based upon the cost of the capital additions that it now concedes will not be completed by the end of the test year, Ameren's forecast is not accurate. As such, these projects will not be used and useful during the test year. Ameren has the burden of providing an accurate forecast of the cost of its test year capital expenditures. Since Ameren has deferred or cancelled certain projects that it initially included in its forecast, they should be removed from the forecast of capital additions and the Commission should reduce rate base accordingly.

Section 9-211 of the PUA states:

> The Commission, in any determination of rates or charges, shall include in a utility's rate base only the value of such investment which is both prudently incurred and used and useful in providing service to public utility customers.

Mr. Rashid investigated capital projects that Ameren included in its proposed rate base consistent with the Section 9-211 requirements. Contrary to Ameren's argument (AIC IB, pp. 14-15), the used and useful inquiry does not raise an implication that utilities must provide a list of every capital addition planned for a future test year. Part 285 does not require a utility to list every single capital project it plans to implement between the rate case filing and the end of test year.[5] However, that does not preclude an investigation of the projects, included in the forecast, beyond those required to be

[4] *Id.*
[5] See 83 Ill. Admin. Code §285.6100 *et seq*.

disclosed under Part 285 if, during discovery, Staff determines that it is necessary. In this proceeding, Staff did review projects not included in Ameren's Schedule F-4.[6]

Ameren argues that the focus for capital additions in a future test year is on the overall level of forecasted plant additions, rather than on individual projects.[7] Thus, Ameren argues that the deferment or cancellation of certain projects should not affect rate base because Ameren has identified additional projects of equal or greater cost that it states it will complete within the test year.[8]

Ameren cites Schedules G-1 and G-8 as the basis for the Commission to consider the new projects as part of its forecast.[9] Although the purpose of these schedules is to provide some historical context for the forecast, they do not provide support for allowing new projects to be substituted for the projects relied upon in the forecast. The purpose of Schedule G-8 is to "[provide] a comparison by plant function of the original budget of capital additions and retirements to actual capital additions and retirements for each of the most recent three years."[10] The presentation of that comparison is required "to demonstrate the reliability and accuracy of the utility's forecast for each of the prior three years."[11] Schedules G-1 and G-8 compare Ameren's past capital spending budgets to its actual past capital spending and they do not relate to Staff's recommended disallowance. Schedules G-1 and G-8 do not compare the difference between capital projects that Ameren wholly eliminated and a set of new projects that it intends to replace them with, but rather it presents a comparison between what the utility has *budgeted in the past* and the extent to which it has followed

[6] See Staff Rev. IB, p. 10.
[7] See AIC IB, p. 16.
[8] See Staff Rev. IB, p. 11.
[9] See AIC IB, p. 17.
[10] See Section 285.7045 of 83 Illinois Administrative Code.
[11] See Subsection 285.7005(a) of 83 Illinois Administrative Code.

that budget. Historical Schedules G-1 and G-8 are not relevant to and do not support using new projects to support the capital additions forecast.

Ameren's argument in favor of focusing on the overall budget and evaluating the reasonableness of it by comparing it to the G-1 and G-8 schedules would remove any used and useful analysis from the capital additions component of rate base. Under this framework, in rate cases with future test years, a utility could provide its forecast for capital additions with an *overall capital spending level.* To the extent that Staff's proposed adjustment is based upon Ameren's inability to demonstrate that the projects it relied upon for the forecast would not be completed by the end of the test year, the utility could respond to Staff's adjustment by identifying new projects to replace those that Staff found to be not used and useful. The utility could include new projects without updating its schedules to maintain that *overall capital spending level*. The Commission then would be examining whether that *overall capital spending level* is appropriate rather than investigating the used and usefulness of that capital spending as required by Section 9-211 of the PUA.

Therefore, Staff's position is that if the Commission uses Schedules G-1 and G-8 to draw inferences regarding the reliability of Ameren's forecasted rate base, the Commission should only consider the existing capital additions that Ameren initially included in its forecasted rate base.

Ameren states, "…Staff does not seem to appreciate that under Section 287.30, a utility's ability to update schedules and workpapers for a future test year is limited."[12] Contrary to Ameren's above statement, Staff acknowledges that there are legitimate reasons that the Commission should limit an update of such schedules. Staff assumes

[12] See AIC IB, p. 19.

that Ameren knew of those limitations when it opted to base its rate case filing on a future test year. Having made its decision to base its rate case filing on a future test year, Ameren should now be willing to accept those limitations and recognize that Staff's recommended adjustment for capital projects that are not used and useful during the test year is valid.

The key difference between Staff and Ameren concerning capital addition is that Ameren believes that what matters is an *overall level of forecasted plant additions* without considering individual projects,[13] and that the Commission should base its decision regarding those additions on that overall level.[14] In contrast, Staff believes that what matters is an accurate forecast of capital additions that the utility wants to include in rate base. The Commission should base its decision regarding those additions on whether the forecast is accurate and reliable, and whether the components of the capital additions forecast are prudent and used and useful as required by Section 9-211 of the PUA.

It is important that the Commission adopt Staff's recommendation, not just for this Ameren rate case, but also for all future rate cases where utilities decide to use a future test year. If the Commission accepts Ameren's last minute substitution of new, previously unidentified capital projects in place of the projects identified in the forecast, then any used and useful analysis will become irrelevant. Adoption of the 'overall level of forecasted plant additions' would enable utilities with future test years to make whatever substitutions necessary to justify the level of their forecasted rate base

[13] See AIC IB, p. 13.
[14] *Id.*, p. 16.

additions in response to Staff's proposed adjustments. The Commission would then lose its ability to hold the utilities to any meaningful rate base forecasting standards.

2. ADIT – FIN 48

AG/CUB/AARP argues that ADIT that the Company reclassified to FIN 48 liabilities related to uncertain tax positions is no different than other non-investor supplied funds such as customer advances and customer deposits that are available to the Company. (AG/CUB/AARP IB, p. 9) This position ignores the record of the circumstances giving rise to the FIN 48 liabilities. (Ameren Rev. IB, pp. 20-21) The Company is correct that adoption of AG/CUB/AARP's adjustment would discourage utilities from taking prudently aggressive tax positions, to the detriment of both AIC and its ratepayers. *(Id.,* p. 22-23*)* The Company further describes other state commission decisions that concur with its position. *(Id.,* pp. 23-24*)* The Company and Staff's agreement (Ameren IB, p. 24; Staff Rev. IB, p. 13) on the issue is balanced and should be adopted by the Commission.

3. Cash Working Capital

The sole point of contention between Staff and the Company with regards to Cash Working Capital (CWC) is the treatment of the Energy Assistance Charge (EAC). The facts are not contested. Staff and the Company agree that the EAC funds are collected and available for the Company's use on average by the 16th day of each month. The enabling legislation requires that the EAC funds be remitted to the taxing authority by the 20th of the month following the month of collection. (AIC IB, p. 25)

Thus, Staff calculates that the Company has access to these funds for 35 days prior to remittance pursuant to the statute. The Company asserts that it has access to these funds for only 4 days because it chooses to remit the EAC funds by the 20th day of the month of collection. (*Id.*, p. 25) The question before the Commission is whether it is reasonable to force ratepayers to bear the burden of Ameren's decision to remit funds to the taxing authority a month in advance of the statutory requirement. Staff believes it is not. The CWC calculation with regards to the EAC should be based on the length of time the Company has access to the funds under the statue and not on the Company's discretionary decision to remit the funds early.

4. Accrued OPEB Liability

Staff disagrees that AIC has rebutted the presumption that accrued OPEB liability represents ratepayer-supplied funds, and that AIC has identified with reasonable certainty the portion of the existing OPEB liability that has been recovered from ratepayers. Staff also finds fault with the Company's analysis provided in support of these assertions which purports to identify the amount of OPEB liability that has been recovered from ratepayers, as well as the contribution to the OPEB trust to fund the ratepayer identified amount of OPEB liability. (AIC IB, p. 26)

The Commission should adopt Staff's proposed adjustment to reduce rate base for the projected average OPEB liability for the test year. AIC has been recovering OPEB expense from ratepayers since as far back as 1991. Through the analysis Ameren proffered, Ameren claims that the charges billed to ratepayers for the actuarially-determined OPEB expense from 1991 through 2011 were insufficient to fund the OPEB liability on the cash basis. However, the fact is that for ratemaking purposes, OPEB expense has been based on the accrual method to match what had been reported for financial purposes. Funding the liability through contributions is the cash basis and a change in the manner in which the amount for OPEB has been based in past revenue requirements. Ameren's position has no merit because these two methods will always produce timing differences. The fact is AIC has recovered the costs from ratepayers using the accrual method; therefore, ratepayers have sufficiently funded the OPEB liability. AIC's analysis, does not disprove that ratepayers have funded that difference. Thus, Staff maintains that ratepayers have funded the OPEB liability and that there should be a rate base deduction for the projected OPEB liability for the test year.

AIC's analysis is nothing more than an exercise in single-issue ratemaking; it assumes a single component of the revenue requirement remains the same and is not offset by changes in other components of the revenue requirement in between each rate case. The analysis is flawed because each revenue requirement that formed the basis of prior rates must be regarded as a whole and it is neither possible nor proper to go back in time and disaggregate prior base rates by line item to determine how much has been recovered for each element of the revenue requirement. That is, after rates are established, they are presumed adequate to allow a utility an opportunity to recover its costs, including a return on rate base. When rates are no longer adequate to do this, a utility may request a general increase in rates. However during the time those rates were effective, some expenses likely increased, while others may have declined. Therefore, it is not possible to state with certainty exactly how much of any particular expense was recovered through base rates. Rather, if the expense was reflected in the revenue requirement in previous rate cases, it is presumed that recovery was adequate to cover costs until new rates were approved. (Staff Ex. 3.0, p. 5)

The Company contends that the Commission in AIC's last rate case, Docket Nos. 09-0306 – 09-0311 (Cons.), recognized that accrued pension and OPEB costs are subject to frequent variation. (AIC IB, p. 27, citing Order on Rehearing, Nov. 4, 2010, pp. 68 – 69) AIC further argues that it does not have a mechanism that automatically adjusts OPEB expense in rates to match annual Statement of Financial Accounting Standard ("SFAS") 106 accruals, the basis for recognition of OPEB expense in annual financial statements during the period identified by AIC in its analysis. (*Id.*) Thus, AIC asserts it records an amount of OPEB expense for any given period that will likely, if not always, vary from the amount recovered in rates. As such, it contends its ratepayer-supplied OPEB funds will under or over-collect its SFAS 106 expense in almost any given year. (AIC IB, p. 27)

Staff does not disagree that the SFAS 106 OPEB expense for any given time period that is reflected in the revenue requirement (which forms the basis for utility rates), may vary from the amount actually recovered in rates. To be specific, it is impossible to determine exactly how much of that line item was recovered in utility rates. This concept is a fundamental tenet of ratemaking theory. It is not new, nor does it require any special treatment for OPEB expense and the related liability in this case, or any other. As Staff indicated in its Revised Initial Brief, the treatment sought by AIC in the instant proceeding could be viewed as retroactive ratemaking as well as single-issue ratemaking. Approval of such treatment could open the door for any utility to present an "analysis" of a given cost, claiming that it had not been fully recovered over some period of time, including multiple decades, and seeking to recover such amounts now and in the future. At the end of a rate case, the record is marked "Heard and Taken" and no further evidence may be presented. Staff reiterates that the evidentiary record has been long closed for the cases cited and the period of time preceding the instant proceeding. The treatment of the OPEB liability sought by the Company runs counter not only to well-established principles of ratemaking, but also to well-established principles of law.

AIC argues that the rate freeze that was in effect prevented AIC from filing rate increases. (*Id.*, p. 32) As discussed in Staff's Revised Initial Brief, while it is true that there was a statutorily mandated rate freeze in effect from 1997 through 2006, each of the three AIC did seek and obtain rate increases during that time period. (Staff Rev. IB, p. 17) In addition, the law creating the rate freeze also provided the utilities certain other benefits that included the transfer of all electric generating assets with limited Commission oversight. (See, for example 220 ILCS 5/16-111) Moreover, the rate freeze does not affect the prohibition on single issue ratemaking.

5. Accumulated Provision for Injuries and Damages

The remaining point of contention between Staff and the Company as to whether there should be a rate base deduction for the Accumulated Provision for Injuries and Damages (APID) is whether or not the Injuries and Damages (I&D) expense accruals which fund the APID are recovered from ratepayers. Staff's position is that the I&D expense, regardless of how the amount is determined, is recovered from ratepayers. A portion of that expense funds the APID and the ratepayers are entitled to the benefit of a rate base deduction for these accumulated funds. The Company argues that the expense accruals are not included in the revenue requirement and therefore the ratepayers are not funding the APID.

> The rates established in AIC legacy companies' last three rate cases have not included any accrued expense for injuries and damage. Pro forma adjustments have eliminated Account 925 expense accruals and added in its place a normalized level of cash claims. (*Id.*, p. 34)

The pro forma adjustment the Company refers to is an attempt to normalize a volatile expense. The Company would have the Commission believe that by normalizing this expense, the ratepayers are no longer paying the I&D expense. What the Company fails to acknowledge is that the normalization adjustment is made to set the appropriate amount to collect from ratepayers for I&D expense. The normalization adjustment more accurately calculates how much will be collected from ratepayers for I&D expense on a recurring basis, but does not eliminate recovery of the expense itself. According to Company witness Mr. Stafford's calculations, the 5 year average of cash claims paid adjusted for inflation is $8.86 million and the 2012 reserve accruals is $8.82 million.[15] The Company's argument means that if we remove from the revenue requirement the expense accruals that fund the APID ($8.82 million) and add in its place the cash claims paid ($8.86 million), then somehow the ratepayers are no longer funding the APID. The Company's argument is without merit and should be rejected. A portion of the amount collected for I&D expense, regardless of how the amount of that expense is determined, funds the APID. The ratepayers are entitled to a rate base reduction for the amount of these accumulated funds.

[15] Ameren Ex. 22.11, Schedule 1 Electric, p.1, Lines 1 and 2

6. PSUP Awards

AIC argues the Commission should support its 50/50 cost sharing proposal for the PSUP on the grounds that it is distinguishable from short-term incentive compensation plans by virtue of its longer vesting requirements, and the fact that recipients are awarded in shares of Ameren stock instead of cash. AIC further asserts the PSUP benefits Illinois ratepayers in several ways, specifically through longevity and ability to recruit capable employees. (AIC IB, p. 56)

The Company argues that the PSUP provides ratepayer benefits, but then attempts to distinguish the PSUP from other incentive compensation plans in order to disregard the Commission's well-established standard of direct ratepayer benefit, noting:

> First and significantly, the PSUP is not a short-term incentive compensation plan. As such, the "direct ratepayer benefit" standard (applicable to short-term incentive compensation plans) that Staff witness Ms. Pearce refers to is not the appropriate standard under which to consider the PSUP. (AIC IB, p. 58)

Obviously, whether the incentive plan is for the short-term or long-term, it should provide direct ratepayer benefits in order to even be considered for recovery from ratepayers. As AIC stated:

> Unlike short-term incentive compensation plans, the primary objective of the PSUP is to attract, motivate and retain AIC leaders by providing a competitive total compensation package that serves as a counterbalance to short-term incentive compensation offered by the Company. (AIC IB, p. 58)

Clearly, this goal does not meet the Commission's standard of providing direct ratepayer benefits in order to justify recovery from Illinois ratepayers. Furthermore, the fact that AIC is willing to split the cost of the PSUP 50/50 with ratepayers does not justify the tangential benefits of the PSUP. Either the incentive plan provides ratepayer benefits that make it worthwhile or it does not. Staff avers that the potential ratepayer benefits of the PSUP are so remote they fail to support an equal sharing of these costs. Therefore, the Commission should accept Staff's proposed adjustment to remove all costs of this incentive stock award program because the program aligns the interests of employees and shareholders and there is no demonstrated benefit for ratepayers. (Staff Rev. IB, p. 21; Staff Ex. 3.0, p. 18)

The PSUP awards the right to receive a share of Ameren stock assuming certain performance criteria are achieved. The PSUP aligns with shareholder interests and rewards the employee for the Company's financial performance. Ameren shareholders benefit from AIC rate increases. Additionally, the Company has not demonstrated that this incentive program provides any direct benefit to AIC ratepayers, beyond the incentive for employees to stay with Ameren that is created by the relatively longer vesting period. (Staff Ex. 3.0, pp. 18-21)

The types of tangential customer benefits described in ComEd Docket No. 05-0597 are similar to those described by Ms. Bauer in her arguments for the PSUP. The Appellate Court in that docket concluded that such a benefit is too remote. (Docket No. 05-0597, Appellate Order, pp. 12 – 13, September 17, 2009) Accordingly, Staff maintains the position that all costs related to the PSUP should be removed from the revenue requirement in the instant proceeding. (Staff Ex. 21.0, p. 15)

D. Recommended Rate Base

1. Electric

Based on the rate bases for the electric and gas utilities originally proposed by AIC for each of its rate zones and Staff's proposed adjustments to those rate bases as summarized in Staff's Revised Initial Brief and further supported herein, the electric utility rate base proposed by Staff for rate zone 1 is $412,092,000, for rate zone 2 is $244,843,000, and for rate zone 3 is $1,336,267,000. (Staff Rev. IB, pp. 25-26)

2. Gas

Based on the rate bases for the electric and gas utilities originally proposed by AIC for each of its rate zones and Staff's proposed adjustments to those rate bases as summarized in Staff's Revised Initial Brief and further supported herein, the gas utility rate base proposed by Staff for rate zone 1 is $222,900,000, for rate zone 2 is $179,543,000, and for rate zone 3 is $542,245,000. (*Id.*, p. 26)

III. OPERATING REVENUES AND EXPENSES

A. Overview

B. Resolved Issues

1. Storm Expenses

2. Wages and Salaries and Employee Benefits

3. Investment Tax Credits

4. Rate Case Expense

5. Social and Service Club Dues

6. Lobbying Costs

7. Athletic Events Expense

8. Liberty Substation Painting Expense

9. NESC Expense

10. Company Use of Fuels

11. Power Smart Pricing

12. Hazardous Materials Adjustment Clause (HMAC) Base Rate

13. Supply Procurement Adjustment

C. Contested Issues

1. Uncollectibles Expense

There are two issues remaining in regards to the determination of uncollectibles in this proceeding:

1) whether the Commission should order a switch to the net write-off method for the calculation of uncollectibles expense (AIC IB, p. 43); and,

2) whether a single uncollectible rate should be utilized (*Id.*, p. 46).

a. Net Write-Off Method

Staff disagrees with AIC's claim that Staff witness Pearce's recommendation that the Commission should order the Company to prospectively switch from using the actual uncollectible expense in Account 904 to using net write-offs as a percentage of revenues is a solution in search of a problem. (AIC IB, p. 44)

Ameren would like to continue with the status quo and set uncollectibles expense based on the balance of Account 904, uncollectibles expense that fluctuates with changes to the allowance for doubtful accounts. The allowance for doubtful accounts is based on estimates of uncollectible accounts. Staff maintains that actual information is preferable to estimates since it is more accurate and should be used whenever available. (Staff Ex. 3.0, pp. 6 - 9) Thus, a switch to the net write-off method would ensure that the calculation of incremental uncollectible expense recoverable through Rider EUA and Rider GUA is based on actual accounts written-off and recovered instead of estimated amounts.

AIC would like the Commission to believe that it is more important to establish a representative amount of uncollectible expense for the test period by using the account 904 balance to provide a better picture of AIC's uncollectible expense in the time rates are in effect. (See AIC IB, p. 45) However, the actual cost of uncollectibles is recovered through the uncollectible rider as the difference between the actual cost and the amount collected in base rates. The amount in base rates is simply an amount that is considered in the calculation of the difference in the actual costs of uncollectibles to be recovered through the uncollectible rider. So, regardless of the amount that is used in the revenue requirement calculation in this proceeding as uncollectible expense, the Company will collect or refund the difference between the amount in the revenue requirement and the actual costs in the uncollectible rider. Ratepayers will be paying for the actual cost of uncollectibles, not the amount set in this proceeding.

Sections 16-111.8(a) and 19-145 of the Act support Staff's proposal. (Staff Ex. 3.0, pp. 9 - 10) The Company acknowledges that the Commission may implement a switch to net write-offs. (AIC IB, p. 44)

b. One or Separate Uncollectible Rates

Staff disagrees with AIC's assertion that the Order in Docket No. 10-0517 does not require the calculation of a separate uncollectible rate for each rate zone. (*Id.*, p. 46) In that proceeding, AIC proposed to maintain the uncollectible riders separately by rate zone allocating the costs using historic data for adjustments developed after the merger (See Commission Order, p. 3, March 15, 2011). The Commission adopted this proposal with Staff's condition which specified that the expense amounts should be allocated to each Rate Zone based on the relative weighting of Account 904 expense by corresponding legacy utility for the period January through September 2010. (*Id.*) This supports the position that rates should be determined by individual electric and gas rate zone.

2. Charitable Contributions

Staff proposes that the charitable contributions level be set at the Company's 2011 budget plus a 2% increase rather than the Company's proposed 64% increase. (Staff Rev. IB, p. 34) The Company's argument for why the 2011 budget is not adequate is that:

> AIC was simply unable to budget a higher amount in 2011 due to economic and budgetary conditions. (AIC IB, p. 47)

Those economic and budgetary conditions the Company references would presumably disappear should the Commission authorize an increase in rates to accommodate the Company's request for a 64% increase in charitable contributions. The Company has taken the position that the increase is reasonable because of the relatively small impact on customers.

> Further, the effect is not significant. As Staff acknowledged, the effect of the Company's proposed contributions on a residential customer's bill is less than 5 cents per month. This is not unreasonable or unduly burdensome. (*Id.*, p. 47)

The Company's argument fails to consider that rates are based on a multitude of factors and many different expenses. Any one individual expense when allocated across millions of customers may not result in much more than pennies a month. However, that fact alone does not render a 64% increase in that item reasonable.

Today, ratepayers face difficult economic hardships. Ratepayers have no choice whether to contribute to charities or which organizations will receive that benefit. With historically high unemployment, stagnant wages, high and rising energy, healthcare and education costs, it is unreasonable to further burden the ratepayer with an increase to the costs of a public utility's charitable contributions, no matter how small. This is especially true when including the greater amount in rates is the very thing that would alleviate the utility's own "economic and budgetary conditions" that have precluded it from donating at the higher levels in 2011.

The IIEC has proposed to remove all charitable contributions from the Company's revenue requirement. IIEC argues that it is unreasonable to impose discretionary expenses on ratepayers during these difficult economic times.

> …the current economic environment for Ameren's ratepayers is so challenging that any amount of compulsory "charity" on behalf of a utility is unreasonable. Reasonableness is not an assessment that can be made in a vacuum. Charitable contribution amounts found reasonable in other circumstances need not be accepted as such under all conditions. (IIEC IB, p. 9)

Staff agrees with IIEC's assessment and logic, although Staff recognizes that IIEC's position is a departure from past Commission practice. Staff's position that the charitable contributions level be set at the Company's 2011 budget plus a 2% increase is a more traditional approach and a far more reasonable amount than what the Company has proposed.

3. Injuries and Damages Expense

The Commission should accept Staff's proposal to normalize the entire I&D expense rather than just a portion of the expense. The Company proposes to normalize only the expense accruals but not the remainder of the expense. In its Initial Brief, the Company states, in part, that:

> Staff, AG/CUB and Ameren Illinois agree that test year injuries and damages expense should be adjusted to remove the test year accrual for claims to be paid. (AIC IB, p. 48)

The adjustment referred to is made to normalize the I&D expense for the test year. The Company has stated that the portion of I&D expense other than the expense accruals are not volatile and do not need normalization.

> But Staff has not pointed to any evidence other than the percentage change for projected non-accrual expense for Account 925 in support of its normalization proposal. (*Id.*, p. 49)

The Company's argument is inconsistent with the evidence. If the non-accrual portion of the I&D expense were as non-volatile as the Company suggests, then there should be relatively little difference between the projected test year amount and the 5-year historical average. However, the projected test year non-accrual portion of the I&D expense is significantly higher than the 5 year historical average. (Staff Ex. 22.0R2, Schedule 22.01R) The Company has not adequately explained why the projected test year non-accrual portion of the I&D expense is so much greater than the 5 year average. In rebuttal of Staff's position, the Company states:

> Staff has not demonstrated that the non-accrual portion is an expense that should be normalized. (AIC IB, p. 48)

The Company, not Staff, bears the burden of proof in this proceeding. Normalizing the entire expense ensures that a representative amount of I&D expense will be included in the test year revenue requirement. The Company's proposal to normalize only a portion of the I&D expense should be rejected.

4. Merger Costs[16]

5. State Income Tax Expense - Regulatory Asset

The Company continues to argue that it should recover deferred state income tax ("SIT") expense from 2011 as a simple fairness and symmetry issue. (Ameren IB, pp. 54-55) The Company remains silent, as it has the entire case, on defending its request

[16] Staff does not oppose the updated AIC merger costs reflected in Company SRTTY Ex. 40.9.

for rate recovery of deferred SIT expenses that the Commission is not authorized to approve. (Staff Rev. IB, pp. 37-38) Instead, Ameren presents revisionist history of the Commission's treatment of the Tax Reform Act of 1986 ("TRA"). Ameren states that one of its predecessor companies, Central Illinois Public Service Company ("CIPS"), provided refunds to ratepayers (Ameren IB, p. 55); however, the record is clear that no such refunds occurred for CIPS gas operations. (Staff Rev. IB, p. 41) More importantly, the TRA orders required a revenue requirement analysis for each utility prior to any ratemaking change taking place; no simple refund practice occurred as the Company implies. *(Id.)*

The Company also continues to paint itself as the victim, having had no opportunity to recover its incremental 2011 SIT. However, the increased 2011 SIT expense is no different than any other expense incurred by Ameren. Expenses fluctuate; some expenses increase during the year and other expenses decrease during the year. In rate proceedings, the Commission establishes a revenue requirement based upon a "normal level" of expenses in the test year. The Commission has no authority to allow more than a "normal level" of expenses. Further, had the Illinois legislature intended public utilities to be afforded special treatment with respect to the increased income tax rate, the legislature would have codified such intentions into law. It did not. (Staff Rev. IB, p. 39) The AG/CUB/AARP are correct that to adopt Ameren's proposed treatment of deferred SIT would be to selectively and unfairly recognize a change that increases the Company's revenue requirement without concomitant recognition of changes that decrease the Company's revenue requirement, and must be rejected. (AG/CUB/AARP IB, p. 12) The IIEC concurs and further accepts Staff's adjustments of the deferred SIT, which differed slightly from its own. (IIEC IB, p. 12)

The IIEC is correct that the Company's requested inclusion of out of test year expenses in Ameren's test year revenue requirement is unlawful and cannot be allowed. ***(Id.,*** p. 14*)*

6. PSUP Awards

7. Electric Distribution O&M Expense

The Commission should adopt Staff's recommendation to include in its final order language ordering Ameren to maintain consistent O&M spending levels. The purpose of this requirement is to ensure that Ameren will maintain programs undertaken to maintain or improve its electric system's reliability. Staff is not requesting that Ameren be required to maintain a consistent level of spending. Rather the requirement would be that programs, such as circuit inspection programs, would be maintained consistently so that performance will be maintained.[17]

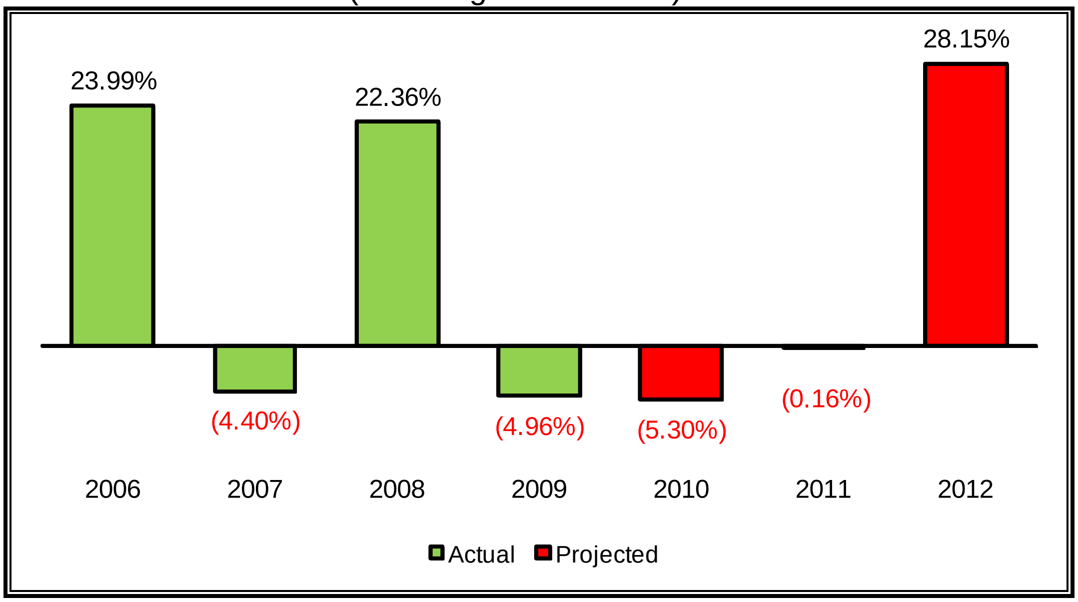
Section 8-401 of the Act states,

> Every public utility subject to this Act shall provide service and facilities which are in all respects adequate, efficient, reliable and environmentally safe and which, consistent with these obligations, constitute the least cost means of meeting the utility's service obligations.

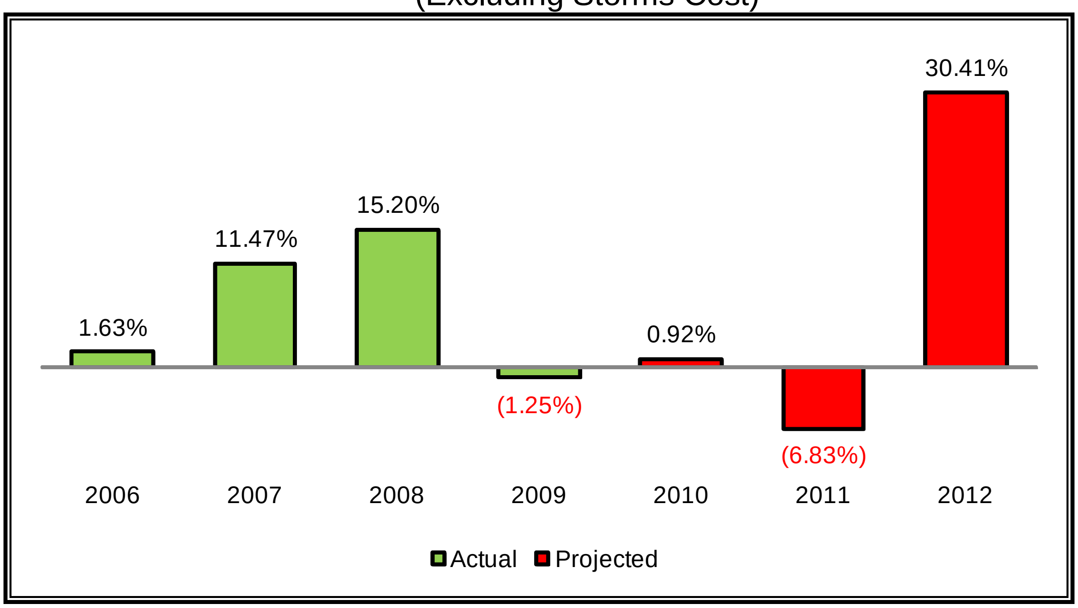
In its witness testimony and Revised Initial Brief, Staff described the trends in Ameren's O&M expenditure from 2005 to 2012. In his direct testimony[18] and rebuttal testimony,[19] Mr. Rashid produced the following graphical representations of Ameren's O&M spending pattern.

[17] See Tr., September 12, 2011, p. 154.
[18] See ICC Staff Ex. 12.0, p. 13.
[19] See ICC Staff Ex. 28.0, p. 7.

Ameren's O&M expenditures Deviation From Prior Year
(Including Storms Cost)



Ameren's O&M expenditures Deviation From Prior Year
(Excluding Storms Cost)



Based on Ameren witness testimony and Staff discovery and analysis, Mr. Rashid concluded that Ameren spent less dollars maintaining and operating its distribution system for three consecutive years starting in 2009. Mr. Rashid clearly indicated that he has no opinion on the appropriate level of Ameren's O&M spending.[20] Nevertheless, in an attempt to mischaracterize Mr. Rashid's position on Ameren's O&M expenditures, Ameren falsely stated in its initial brief that Staff "suggests that the Company is spending too little."[21]

In fact, it is Ameren, who through its witness Mr. Nelson stated, "…AIC *significantly* reduced its 2010 operating and capital budgets…"[22] It is Ameren, who through it witness Mr. Pate stated, "…the current levels of [O&M] spending are *not adequate* to maintain [Ameren's] systems…"[23] As indicated in Staff's Revised Initial Brief, Mr. Rashid stated, "Ameren should base changes in annual O&M budgets on its operational needs and should be able to explain those needs and the changes in its budget to the Commission."[24] Accordingly, Staff would not object to reduced Ameren O&M spending if Ameren based that reduction on evidence that the reduced level of spending would provide adequate maintenance and operating funds to keep Ameren's electric distribution system in good order and allow Ameren to provide service that is in all respects adequate, efficient, reliable, and environmentally safe. However, Staff is concerned with the reasoning that Ameren provided in support of its decision to reduce its O&M expenditure for three consecutive years. That decision was a reaction to the Commission's final order in the last rate case because Ameren "determined that the revenues granted by the Order were inadequate."[25]

During cross-examination, Mr. Rashid indicated that, in general terms, he finds no correlation between a utility's O&M spending in a given year and its reliability

[20] See Tr., September 12, 2011, pages 162, 163, and 164.
[21] See AIC IB, p. 60.
[22] See Ameren Ex. 1.0E, p. 15 (emphasis added).
[23] See Ameren Ex. 6.0E, p. 54 (emphasis added).
[24] See ICC Staff Ex. 28.0, p. 11.
[25] See Ameren Ex. 1.0E, page 15.

performance in that year.[26] During cross-examination of Mr. Rashid, Ameren introduced Ameren Cross Exhibit 4, which is Staff's Assessment Report of AmerenIP's 2009 Reliability Report that AmerenIP filed with the Commission on June 2010 pursuant to Part 411 of 83 Illinois Administrative Code. Ameren indicated that Staff's report found that AmerenIP had the best SAIFI[27] among Illinois public utilities in 2009.[28] Mr. Rashid indicated that SAIFI is a measure for reliability in a given year and that for a utility to have a favorable reliability index in one year does not mean that "seven years from now, six years from now, the system is going to be still reliable if the utility does not maintain consistent programs to maintain reliability."[29] Reducing or abstaining from O&M programs will have a negative impact on Ameren's electric system reliability as evidenced by the Liberty Audit Final Report. Section J of Chapter VI of the Liberty Audit Final Report is titled "The Effects of Maintenance and Inspections on the 2006 Storms." Paragraphs 3 through 6 of the Conclusion section determined that inadequacy of Ameren's distribution system maintenance and inspection practices contributed to the massive outages in the aftermath of the 2006 storms.[30]

Although Ameren witnesses Messrs Nelson, Pate, and Getz agree with Mr. Rashid that reduced O&M spending levels will have negative effects on the reliability of Ameren's electric system[31], Ameren is not willing to commit to basing its future O&M spending decisions on its operational needs rather than on Ameren's perception of the outcome of the instant rates case. In a display of Ameren's unwillingness to untie its decision making regarding O&M spending form how Ameren perceives the outcome of

[26] See Tr., September 12, 2011, pp. 153 and 154.
[27] See Tr., September 12, 2011, p. 156, lines 1 and 2, and p. 157, lines 1, SAIFI is referred to as "safety."
[28] See Tr., September 12, 2011, pp. 155 and 156.
[29] *Id.*, p. 157.
[30] See Ameren Ex. 6.1, pp. 583 and 584.
[31] See ICC Staff Ex. 28.0, pp. 8 and 9.

the instant rate case, Mr. Nelson stated, "… the Company cannot continue to fund activities that are not reflected in rates."[32] Mr. Nelson also stated, "[if] revenues are not restored to normal levels, more tough choices will have to be made."[33] These statements come in spite of warnings from Ameren witnesses referenced above, including Mr. Nelson, against the negative long-term consequences of O&M spending reductions on Ameren's system reliability.[34] Mr. Nelson's statements defy Ameren's mandated duty under Section 8-401 of the PUA, and the Commission should not allow Ameren to threaten reductions in programs that maintain reliability of service as a means to seek greater rate recovery. The Commission should make its expectations of compliance with Section 8-401 of the PUA clear to Ameren.

Accordingly, the Commission should adopt Staff's recommendation and include language in its final order ordering Ameren to maintain adequate and consistent O&M spending levels that include programs necessary to maintain and to improve the safety and reliability of its electric system at all times regardless of how Ameren perceives the outcome of the instant rate case.

D. Recommended Operating Income/Revenue Requirement

1. Electric

Based on the operating expense statements for the electric utilities originally proposed by AIC for each of its rate zones and Staff's proposed adjustments to operating revenues and expenses as summarized in Staff's Revised Initial Brief and further supported herein, the total electric utility delivery services net operating income

[32] See ICC Staff Ex. 21.0, p. 25.
[33] See Ameren Ex. 39.0, p. 9.
[34] See ICC Staff Ex. 28.0, pp. 8 and 9.

proposed by Staff for rate zone 1 is $35,644,000, for rate zone 2 is $21,178,000, and for rate zone 3 is $115,580,000. (Staff Rev. IB, pp. 45-46)

2. Gas

Based on the operating expense statements for the gas utilities originally proposed by AIC for each of its rate zones and Staff's proposed adjustments to operating revenues and expenses as summarized in Staff's Revised Initial Brief and further supported herein, the total gas utility net operating income proposed by Staff for rate zone 1 is $18,333,000, for rate zone 2 is $14,767,000, and for rate zone 3 is $44,659,000. (*Id.*, p. 46-47)

IV. COST OF CAPITAL/RATE OF RETURN

A. Overview

B. Resolved Issues and Immaterial Differences – Cost of Capital/ Capital Structure

1. Remaining CWIP accruing AFUDC Adjustment

2. Preferred Stock Balance

The Staff and Company recommendations regarding preferred stock balance are reversed in the AIC IB. (AIC IB, p. 73) In fact, AIC recommends a capital structure comprising 1.683% preferred stock whereas Staff recommends 1.72%. (Ameren Ex. 24.4; Staff Ex. 24.0, Schedule 24.01)

3. Short-Term Debt Balance

The Staff and Company recommendations regarding short-term debt balance are reversed in the AIC IB. (AIC IB, p. 73) In fact, AIC recommends a capital structure comprising 0.184% short-term debt whereas Staff recommends 0.188%. (Ameren Ex. 24.4; Staff Ex. 24.0, Schedule 24.01)

4. Long-Term Debt Balance

5. Common Equity Balance (other than Purchase Accounting/Goodwill)

6. Cost of Preferred Stock

C. Contested Issues

1. Common Equity Balance

a. Purchase Accounting/Goodwill

For all the reasons set forth in the Staff Revised IB, Staff recommends removing $411 million goodwill from AIC's common equity balance in lieu of the Company's proposed adjustment to remove the effect of purchase accounting. (Staff Rev. IB, pp. 50-53) Absent reversal of all purchase accounting adjustments, the Company would earn a return on any portion of purchase accounting adjustments improperly included in the Company's common equity balance. (Tr., 9/16/2011, pp. 906-907) Therefore, the goodwill balance should be subtracted to avoid including in rates any purchase accounting adjustments that are not appropriate for ratemaking purposes. (Tr., 9/16/2011, p. 945)

The AIC IB mischaracterizes Staff's position when it argues that Staff's proposal contradicts the Commission's directive in Docket No. 04-0294. (AIC IB, p. 77) Although Staff does not oppose the accounting treatment authorized in Docket No. 04-0294, Staff recommends against adopting the Company's proposed purchase accounting adjustments for setting rates in this proceeding because the Company's proposed purchase accounting adjustments are not verifiable. Specifically, Staff witness Phipps argued that to the extent purchase accounting adjustments affect Account 219, the balance should decrease ratably until the end of the applicable amortization period. (Staff Rev. IB, pp. 50-51; Ameren Cross Ex. 14) Moreover, Staff identified a $63 million retained earnings adjustment that appeared in the Company's 2007 rate case, but which does not appear in the instant case. (Staff Rev. IB, pp. 51-52)

AIC argues further:

> Reversing all the push down adjustments means the push down accounting under GAAP ha a neutral effect on the cost of service. Since Docket No. 04-0294, the Commission has followed through and consistently followed the principle of neutrality reflected in its approval of conditions for Docket No. 04-0294. Thereafter, the Commission approved capital structures in the last three Ameren Illinois rate cases that reflected reversal of all push down accounting adjustments. Essentially what Staff wants to do now is reverse just one of the push down adjustments and leave the others in place, meaning that push down accounting would not have a neutral effect on cost of service, as was intended, but in fact would serve to lower the cost of service." (AIC IB, p. 76)

Contrary to AIC's assertion, the Company's proposed adjustments in the instant case are not consistent with the Company's proposed adjustments in the last three rate cases because the instant case does not include a $63 million adjustment to retained earnings that the Company made in the 2007 rate case. (AIC IB, p. 78; Staff Rev. IB, pp. 51-52) Absent the adjustment to retained earnings, the Company could be inflating its common equity balance by approximately $63 million, which would contradict the Commission's

Order in Docket No. 04-0294, which the Company argues required reversing purchase accounting adjustments in order to ensure Ameren's acquisition of IP would have a neutral effect on the cost of service. (AIC IB, p. 76)

For all the foregoing reasons, the Commission should adopt Staff's proposed common equity balance for AIC, which excludes $411 million goodwill.

2. Cost of Short-Term Debt

a. Forecast 2012 Short-Term Debt Interest Rate

The AIC IB alleges that Staff understates the Company's cost of capital by using historical interest rates instead of test year forecasts. (AIC IB, p. 72) The Staff Revised IB fully supports Staff's recommended cost of short-term debt for AIC. (Staff Rev. IB, pp. 53-54) For all the foregoing reasons, the Commission should adopt Staff's proposed short-term debt rate, which reflects current, observable interest rates for the same time horizon as the expected short-term bank loans.

b. Credit Facility Commitment Fees

AIC alleges that the record supports full recovery of the credit facility fees incurred by AIC. (AIC IB, pp. 81-82) To the contrary, Staff explained that the Arrangers Fee Letters and the invoice demonstrate that the upfront fees for the AIC facility were not separately negotiated. (Staff Rev. IB, pp. 55-56) Staff also explained why the Commission should disregard the Company's argument that AIC facility fees were reasonable based on Ameren Ex. 24.5. (Staff Rev. IB, pp. 56-57)

AIC alleges further that Staff's proposal misapplies Section 9-230 of the Act. AIC argues that Staff: (1) assumes escalating fees as a result of a hypothesized single line of credit; (2) includes in its combined analysis the fees associated with a regulated utility, Union Electric Company. Affiliations with regulated utilities by definition cannot give rise to a Section 9-230 adjustment; and (3) failed to establish any basis in fact or expert opinion that the Company could realistically obtain a reliable credit facility for the fee equivalent as low as 25 basis points. (AIC IB, p. 82)

First, the pooling of the three Ameren facilities *(i.e.,* Illinois facility, Missouri facility and Genco facility) into a "single line of credit" was an actual occurrence, not a hypothetical one, at least from the standpoint of applying upfront fees to each bank's aggregate commitment to the three facilities. In contrast, Staff calculated the upfront fee as if the Illinois facility had been negotiated separately and that the upfront fee rates had been applied to the actual bank commitments to the Illinois facility. The Company, however, insists that its customers compensate it for the higher fee rate that was assessed against the aggregate bank commitments to the three facilities. In fact, the escalating upfront fee scale for credit facilities of Ameren Corp. and its subsidiaries is nothing new. That is, Staff made the same adjustment in the last Ameren Illinois rate case, which the Commission adopted, despite similar arguments by Ameren regarding the reasonableness of the bank commitment fees. (Order, Docket Nos. 09-0306 et al., 4/29/2010, p. 155) The Commission concluded:

> The Commission will also adopt Staff's adjustment to reduce the amount of fees associated with the Illinois Facility. Staff postulates that there were no benefits to jointly negotiating that Facility with the Missouri Facility and that the allocation of overall costs to the Illinois Facility was too high. (Order, Docket Nos. 09-0306 et al, 4/29/2010, p. 158)

Second, the AIC IB asserts, "Staff improperly includes in its combined analysis the fees associated with a regulated utility, Union Electric Company" and argues, "Affiliations with regulated utilities by definition cannot give rise to a Section 9-230 adjustment." (AIC IB, p. 82) To the contrary, Section 3-105(a) of the Act limits its definition of public utility to companies that operate within Illinois. (220 ILCS 5/3-105) That is, a Missouri utility is not a "public utility" under the Act, which means, for the purpose of applying Section 9-230 of the Act, Union Electric Company is a non-utility affiliate of AIC.

Third, as Staff explained, whether the fee is reasonable in comparison to the fees other companies pay to obtain a credit facility is irrelevant. (Staff Rev. IB, pp. 56-57) Section 9-230 adjustments are not reasonableness adjustments. Nevertheless, AIC points to upfront fees for Commonwealth Edison Company ("ComEd") and Peoples Gas Light and Coke Company ("Peoples") to show the AIC fees are reasonable. (AIC IB, p. 81) However, the record reveals neither the individual bank commitments under the ComEd and Peoples facilities nor the fee rate schedule (*i.e.*, the fee rate applied at each range of commitments). Clearly, fee rates could have declined over the five to six months that elapsed between the February 2010 and March 2010 effective dates of the ComEd and Peoples facilities on the one hand and the August 2010 effective date of the AIC facility on the other. (Ameren Ex. 24.5) Furthermore, there is no evidence in the record regarding whether there are escalating upfront fees associated with the Peoples credit facility and whether the fee rates Peoples paid were assessed against bank commitments to Peoples' facility in isolation or against aggregate bank commitments to all three Integrys Energy facilities (*i.e.,* Integrys Energy, Peoples and Wisconsin Public Service). Notwithstanding all the above, the reasonableness of those fees is irrelevant because whether costs are reasonable is beyond the scope of Section 9-230 of the Act. That is, Section 9-230 prohibits incremental costs resulting from non-utility affiliates, regardless of whether a “market-based analysis” suggests those costs are reasonable.

3. Cost of Long-Term Debt

a. Forecast 2012 Long-Term Debt Interest Rate

The Staff Revised IB fully supports Staff’s recommended coupon rate for the bonds that AIC expects to issue in October 2012. (Staff Rev. IB, pp. 58-60) For all the reasons set forth in the Staff Revised IB, the Commission should adopt Staff’s proposed coupon rate for those bonds.

b. AmerenIP October 2008 Debt Issuance

The AIC IB errs when it states, “Staff proposes a new adjustment to replace $50 million worth of the 9.75% debt issuance with debt having a hypothetical coupon rate equal to the *overall weighted cost of capital*.” (AIC IB, p. 84) (emphasis added) Rather, Staff set the coupon rate for the remaining $50 million of AmerenIP’s October 2008 bonds equals to the 7.93% *embedded cost of long-term debt*. (Staff Rev. IB, pp. 60-61) (emphasis added) This adjustment is a disallowance because AIC issued more long-term debt than required for utility operations in October 2008. (*Id.*, p. 60) Despite the Company’s blatant attempt to re-litigate this issue in the instant case, the Company has presented neither a single new fact nor argument that the Commission did not consider in the Company’s previous rate case in which the Commission deemed AmerenIP’s issuance of $50 million more long-term bonds than required for utility operations imprudent. (Order, Docket Nos. 09-0306 *et al*., 4/29/2010, p. 143)

AIC alleges that Staff failed to articulate any facts or expert analysis that would support its adjustment. (AIC IB, p. 85) AIC's argument misses the point entirely. AIC ignores the fact that the Commission already decided this issue in the Company's prior rate case. The Commission Order in Docket Nos. 09-0306 *et al*, clearly set forth numerous facts surrounding IP's October 2008 debt issuance– including the bankruptcy filing by Lehman Brothers and distressed financial markets – and concluded AmerenIP issued $50 million more long-term debt than required for utility operations. (Order, Docket Nos. 09-0306 *et al*., 4/29/2010, pp. 141-143) Moreover, it is AIC's burden, not Staff's, to articulate new facts and arguments that would merit a different decision on this issue in the instant proceeding. Yet the Company has provided no new evidence or argument in support of its position. Such facts reveal the utter falsity of AIC's allegation that Staff's adjustment substitutes its judgment for that of the AIC management in hindsight fashion. (AIC IB, p. 85)

Therefore, the Commission should once again adopt Staff's recommendation to remove $50 million of costly long-term debt from AIC's cost of capital, which the Commission has already previously determined AmerenIP did not require for utility operations in Docket Nos. 09-0306 et al.

c. AmerenCILCO December 2008 Debt Issuance

The AIC IB alleges that Staff understates the Company's cost of capital by "arbitrarily reducing the coupon rates of prudent debt issuances based on imaginary rating agency actions." (AIC IB, p. 72) The AIC IB states:

> No adjustment is warranted and AIC fundamentally disagrees with the methodology used to support it. New facts have emerged since the last rate case, casting doubt on Staff's methodology. (AIC IB, p. 85)

The AIC IB also attempts to cast doubt on Ms. Phipps' evaluation of the rating that Standard & Poor's ("S&P") would have assigned a CILCO with the same "strong" business risk profile as CIPS and IP (as opposed to CILCO's actual riskier business risk profile of "satisfactory"). (AIC IB, pp. 87-88; Tr., 9/13/2011, p. 221) Nevertheless, the same analysis of CILCO's implied standalone S&P credit rating was the basis for Staff's adjustment to the December 2008 bonds in the last case, which the Commission adopted. (Order, Docket Nos. 09-0306 et al, 4/29/2010, pp. 149-151; Staff Rev. IB, pp. 61-62)

In the instant case, Ms. Phipps revised her adjustment in response to an AIC claim that Ms. Phipps' evaluation of the rating that Moody's would have assigned a standalone CILCO was flawed in that it combined Moody's 2005 and 2009 rating methodologies. As Ms. Phipps explained, Moody's 2005 methodology was appropriate for evaluating the effect of adjusting CILCO's business risk profile given that CILCO's December 2008 debt issuance preceded publication of Moody's 2009 methodology. Notably, Ms. Phipps testified that the only distinguishable differences between those methodologies are (1) the 2005 methodology provided separate financial benchmarks for "Medium" and "Low" business risk profiles; and (2) the 2009 methodology discloses the weights that Moody's assigns each of the credit metrics. That is, there is no indication that the weights Moody's assigns credit metrics in the 2009 methodology changed from the 2005 methodology. Nevertheless, Ms. Phipps re-evaluated the effect that changing CILCO's business risk profile from "Medium" to "Low" would have on CILCO's credit metrics without using those weights provided in the 2009 methodology. (Staff Ex. 24.0, pp. 6-7)

The AIC IB argues:

> Further, Ms. Phipps acknowledges that while Moody's did make recommendations in a section of its report entitled, "What Could Change the Ratings Up," the particular section makes no mention of the divestiture or transfer of AERG. It would seem that if Ms. Phipps logic were valid, and a "stand alone" AmerenCILCO unaffiliated with AERG would have been the highest rated utility in the United States by Moody's, the ratings agency would have made at least passing mention of the possible transfer, divestiture, sale or other similar action in its section entitled, "What Could Change the Ratings Up." (AIC IB, p. 89)

Foremost, all of the Company's arguments regarding the 2009 Moody's report on CILCO should be rejected given the Company's cost of capital witness admitted he is not familiar with the 2009 Moody's report that Ms. Phipps relied upon to support her adjustment. (Tr., 9/13/2011, p. 210) The Company's arguments that a 2009 rating agency report would have mentioned the possible transfer or divestiture of AERG, which was not announced until 2010, are absurd. (Tr., 9/16/2011, p. 945)

The AIC IB alleges that Ms. Phipps' "hypothetical Moody's analysis…would surmise had AmerenCILCO been a 'standalone' utility, it would have been the highest rated utility in the United States by Moody's." (AIC IB, p. 86) The Company misrepresents the evidentiary record here. This statement is false and improper on two levels. First, it assumes facts not in evidence; that is, the highest rating Moody's has conferred upon a utility. (Tr., 9/16/2011, p. 924) Second, the statement falsely alleges that Ms. Phipps concluded that AmerenCILCO would have been rated Aa2 had it been a standalone company. To the contrary, Ms. Phipps expressly stated that she did not conclude that AmerenCILCO would have been rated Aa2 on a standalone basis; rather, she increased AmerenCILCO's actual senior secured debt rating by two notches to A3, which is the difference in credit ratings implied by comparing AmerenCILCO's credit metrics to benchmarks for Medium risk versus Low risk utilities. (Tr., 9/16/2011, pp. 923-924; Staff Ex. 24.0, pp. 7-8) While it is correct that AmerenCILCO's financial ratios were commensurate with an Aa2 credit rating on a standalone basis, Ms. Phipps testified that credit ratings are also based on qualitative factors. (Staff Ex. 24.0, p. 8 footnote 19) Moreover, while acknowledging that there is no way to replicate completely what Moody's would have done had Moody's issued a rating for a standalone CILCO, Ms. Phipps explained that a credit rating would not be very useful if it was not possible to evaluate how changes in circumstances would affect a given company's credit rating. (Tr., 9/16/2011, pp. 922-923)

Furthermore, regarding AIC's objections to Ms. Phipps' hypothetical Moody's analysis, she explained that absolute certainty is not possible in any "what if" analysis, which by its very nature requires assumed conclusions for facts and events that did not exist. In this instance, the fact that did not exist in December 2008 was a CILCO that did not own AERG and was not a direct subsidiary of CILCORP. Moody's January 30, 2009 report is clear that Moody's did not rate CILCO as if it were a standalone company that did not own AERG and was not a direct subsidiary of CILCORP. Nonetheless, Ms. Phipps found substantial evidence that CILCO would have had higher credit ratings in 2008 if not for its affiliation with AERG and CILCORP. (Ameren Cross Ex. 15) Specifically, Moody's states:

> CILCO's rating is constrained by the relatively high level of debt at CILCORP, which exhibits significantly lower financial metrics on a consolidated basis than its utility subsidiary…CILCO is unique among Ameren's three Illinois utilities in that it owns AERG, with 1,200 MW of unregulated generation, consisting of CILCO's former generating assets. AERG has significant capital expenditure requirements necessary to bring it into compliance with current environmental standards…Since AERG is unregulated, theses costs cannot be recovered by CILCO through rates, but rather recovery will be dependent upon AERG's contracted rates and

> market prices on spot sales…The ratings of CILCO and CILCORP could be raised if the companies enter into adequate liquidity arrangements to replace expiring bank credit facilities; if Ameren is successful in its pending tender offer for CILCORP debt, which will change the capital structure of the CILCORP corporate family considerably…the ratings of CILCO and CILCORP could be lowered if the company does not enter into adequate liquidity arrangements well in advance of their current bank facility expiration dates in January 2010… (Ameren Cross Ex. 16)

The AIC IB erroneously argues that Ms. Phipps failed to consider the significant cash flows generated by AERG and characterizes her analysis as "asymmetrical." (AIC IB, pp. 87, 90) To the contrary, Ms. Phipps evaluated both AERG cash flows and the interest requirements of CILCO's intermediate parent company CILCORP and concluded that both of those affiliates negatively affected CILCO's credit rating. (Staff Rev. IB, pp. 63-65) Moreover, Section 9-230 does not prohibit incremental risk of non-utility affiliates to the extent there are no benefits to offset those incremental costs. Rather, Section 9-230 prohibits including even one iota of incremental cost that results from non-utility affiliates. Thus, even if this claim by the AIC IB was correct, which it is not, it would have to be rejected because it would be based on a flawed interpretation of Section 9-230 of the Act.

Finally, contrary to the AIC IB, no new facts have emerged that would cast doubt on Staff's methodology. If those alleged "new facts" had emerged three years after CILCO issued those bonds, and following a rate case in which the Commission already adopted an adjustment based on the facts that existed at the time of the debt issuance, the Commission's reliance on any new facts would constitute hindsight, which is inappropriate for ratemaking purposes. The Staff Revised IB thoroughly explained that the May 20, 2010 downgrade by Fitch Ratings does not warrant revisiting the adjustment to CILCO's December 2008 bonds, particularly because several factors contributed to that downgrade, and there is no indication that the divestiture of AERG was a "primary driver".

(*Id.*; AIC IB, p. 88) In fact, CILCO's assets (excluding AERG) comprise a mere 16% of AIC assets. (See authorized rate bases for CILCO, CIPS and IP in Order on Rehearing, Docket Nos. 09-0306 et al., 11/4/2010, p. 86; specifically, $465,294,000, is 16% of $2,978,052,000.) As such, it is not surprising that Fitch Ratings assigned CILCO the same rating as CIPS and IP in light of the announced merger of the three Ameren Illinois Utilities. (Ameren Ex. 24.6)

For all the foregoing reasons, the Commission should apply Staff's recommended 6.76% coupon rate to CILCO's December 2008 bond issuance in order to remove any incremental risk reflected in CILCO's business risk profile due to CILCORP and AERG, as required by Section 9-230 of the Act.

4. Cost of Common Equity

a. Overview of Recommended Returns

Staff's recommended investor-required rates of return on common equity for AIC are 8.90% for the natural gas distribution operations and 9.72% for the electric delivery service operations. (Staff Rev. IB, pp. 65-66) The Company's proposed return on equity is overstated due to its reliance on inappropriate inputs and should not be used to determine the investor-required rates of return on common equity. The Company states that the three most significant issues with regard to the cost of equity are: (1) the appropriate long-term growth rate for the third stage of the non-constant DCF analysis; (2) the use of spot prices and interest rates in the cost of equity analysis; and (3) the adjustment for the uncollectible riders. (AIC IB, p. 92)

b. DCF Model Estimates

i. Proxy Groups

ii. Spot Prices versus Average Prices

The Company argues against the use of spot prices, claiming that this fails to account for aberrant behavior in stock prices. (*Id.*, pp. 96-97) By measuring the cost of common equity at several points in time, Staff demonstrated that stock prices were not aberrant. The DCF-derived estimates of the cost of common equity for the gas sample can be explained by trends in the broader market. (Staff Rev. IB, pp. 75-76) Staff maintains that current market price data must be used to determine the investor-required rate of return on common equity because market data continuously adjusts to reflect investor return requirements as they are continuously re-evaluated. Average prices from as long as six months ago do not capture current investor expectations and could reflect information that investors no longer consider relevant. (*Id.*, p. 76)

The Commission has repeatedly ruled against the use of historical data in estimating the forward-looking cost of common equity estimate. (*Id.*, pp. 75-77) The cases that the Company cites where the Commission rejected Staff's use of spot prices, Docket No. 10-0467 ("ComEd Rate case") and Docket No. 07-0241/07-0242 (Cons.) ("North Shore case"), are exceptions to the rule. (AIC IB, p. 97) While the Company emphasizes that the Commission rejected spot data in the 2007 North Shore case, the Company neglects to mention crucial language from the order in that case which explains that decision:

> **We note that the Commission has traditionally relied upon a single day's data in applying the DCF analysis, and we are very reluctant to deviate from Commission ratemaking practice.** However, the whole point of conducting such analyses is to develop a proxy for the appropriate ROE. When it can be shown

> that the proxy itself strays from a zone of reasonableness to the degree where it offers an unreliable estimate of the appropriate ROE, as the Utilities have demonstrated with Staff's DCF analysis in this case, deviation from accepted practice may be warranted. We encourage parties to continue to provide reliable DCF analyses for the Commission's ROE deliberations. (Order, Docket Nos. 07-0241/07-0242 (Cons.), February 8, 2008, p. 92, emphasis added)

Based on the Commission's language, the Commission is not opposed to using spot data at all; to the contrary, it deviates from the practice of using spot data only with reluctance. Moreover, the standard established in that order for deviating from that Commission ratemaking practice – "when it can be shown that the proxy itself strays from a zone of reasonableness to the degree where it offers an unreliable estimate of the appropriate ROE" - has not been met in this proceeding.

In the last rate case proceedings for Ameren, the Company witness used historical data to estimate the dividend yield in her DCF model.[35] The Commission found her over-reliance on historical data to be problematic and rejected her DCF analyses.[36] Here, the Commission should once again reject the Company's non-constant DCF analysis due to its over-reliance on historical data, particularly given that Staff has demonstrated that spot stock prices have not produced "aberrant" estimates.

iii. Growth Rates

In its Initial Brief, AIC argues that the Commission should develop ROEs in a coherent and consistent manner. (AIC IB, p. 93) Ameren cites to the recent ComEd Rate case, Docket No. 10-0467, as the proper decision to follow in setting the investor required rate of return on common equity. The Company faults Staff witness Freetly for not altering her analysis to reflect the Commission's decision in the ComEd rate case.

[35] Order, Docket No. 09-0306 et al. (Cons.), April 29, 2010, p. 178.
[36] Order, Docket No. 09-0306 et al. (Cons.), April 29, 2010, p. 216.

However, the Company fails to acknowledge that the growth rate accepted by the Commission there was an abrupt departure from prior Commission findings, including the previous ComEd rate case, Docket No. 07-0566. In Docket No. 07-0566, the Commission rejected the Company's long-term growth rate, which was derived in a nearly identical manner to the one accepted in Docket No. 10-0467, in favor of Staff's long-term growth rate which was derived from current market data. That Order states "in his non-constant DCF analysis, [ComEd witness] Hadaway used a historical GDP of 6.5% as his estimate of future GDP. Published expectations of future GDP growth are much lower."[37] The Commission Order ruled that Hadaway's historical GDP growth rate was overstated and accepted Staff's 5% growth rate.[38] In Docket No. 10-0467, the Commission reversed itself and ruled that Staff's GDP growth rate was too low because it was inconsistent with actual historical growth for the U.S. economy and accepted the Company's historical GDP growth rate.[39] The Order in Docket No. 10-0467 provides no explanation or justification for the contradictory decision with regard to the proper long-term growth rate for the non-constant DCF analysis. The Company's repeated cites to the ComEd Order in Docket No. 10-0467 as the one the Commission must adhere to when setting the investor required rate of return on common equity should be disregarded. The ComEd Order in this regard represents an exception to Commission precedent in determining the long-term growth rate. The Commission should adopt Staff's long-term growth rate which was derived from current market data, consistent with the preponderance of Commission orders on the issue.

[37] Order, Docket No. 07-0566, September 10, 2008, p. 97.
[38] *Id*.
[39] Order, Docket No. 10-0467, May 24, 2011, p. 153.

As Staff discussed repeatedly, the EIA projects nominal economic growth of 4.5% for the 2021-2035 period and Global Insight forecasted nominal economic growth of 4.4% for the 2021-2041 period. (Staff Rev. IB, pp. 80-81) The Company claims that the Blue Chip Financial Forecast projection of the 30-year Treasury yield of 5.70% for the 2018-2022 period is supportive of Mr. Hevert's long-term growth rate estimate. (AIC IB, p. 101) However, the Company fails to acknowledge that the same source provides a direct forecast of nominal GDP growth of 4.90%. (Staff Rev. IB, p. 79) Hence, all of the forecasts of economic growth on the record in this proceeding support Ms. Freetly's 4.80% long-term growth rate and reveal that Mr. Hevert's 5.64% long-term growth rate and the 6.00% growth rate adopted in Docket No. 10-0467 are overstated.

In addition, Staff independently tested the sustainability of Mr. Hevert's long-term growth rate for the sample companies using current and forecasted data from Value Line Investment Survey. As explained in Staff's Initial Brief, Mr. Hevert's long-term growth rate and the 6.00% growth rate adopted in the ComEd case are not sustainable and should not be used in the non-constant DCF analysis to determine the investor-required rate of return on common equity. (*Id.*, pp. 78-79)

c. CAPM Model Estimates

The Company claims that use of a "spot" risk-free rate is inappropriate because it fails to smooth out the effects of daily trading behavior and market anomalies, which is essentially the same argument it presents against the use of "spot" stock prices. (AIC IB, p. 102) As Staff explained, current U.S. Treasury yields reflect all relevant, available information, including investor expectations regarding future interest rates. (Staff Rev. IB, pp. 81-83)

In the ComEd Rate case, ComEd argued that Staff's "spot" risk-free rate on September 22, 2010 was unfair because it was lower than the "spot" rate on December 29, 2010.[40] Here, Ms. Freetly used a 4.26% "spot" risk-free rate as of June 3, 2011. By mid-September, 2011, the 30-year Treasury bond "spot" risk-free rates were in the mid- to upper- 3% range, depending on the day. (Tr., September 14, 2011, p. 406) The Company did not ask for the Commission to follow the ComEd Order in this respect since more recent interest rates are lower than those reflected in Staff's analysis. Thus, the Company is not consistent in its advocacy of findings consistent with that Order.

In Docket Nos. 07-0241/07-0242 (Cons.), the Commission accepted Staff's CAPM methodology which was based on a risk-free rate estimate from a single day, despite the Commission's rejection of spot prices for the DCF analysis in that case.[41] In addition, the Commission accepted Staff's CAPM analysis in Ameren's last rate case and noted that the current yield on long-term U.S. Treasury bonds is an appropriate proxy for the risk-free rate.[42] Therefore, the Commission should accept Staff's risk-free rate since it reflects the current market forces that impact the investor-required rate of return on common equity.

Ameren argues that beta should not be calculated over five years because a near-term calculation better reflects the current relationship between the sample companies and the S&P 500. (AIC IB, p. 102) Mr. Hevert's near-term beta estimates are higher than Staff's beta estimates that were derived consistent with Commission past practice. As Staff explained, measuring beta over shorter time periods can bias

[40] The Commission incorrectly applied the December 29, 2010 risk-free rate to Staff's September 22, 2010 CAPM analysis and adopted the average of the two risk-free rates for the CAPM estimate. (Order, Docket No. 10-0467, May 24, 2011, pp. 152-153)
[41] Order, Docket Nos. 07-0241/07-0242 (Cons.), February 8, 2008, pp. 79-80 and 100.
[42] Order, Docket No. 09-0306 et al., April 30, 2010, p. 214.

the beta estimate because beta estimates can move in the opposite direction of risk. (Staff Rev. IB, p. 84) The Company complains against Staff's beta: "In short, Ms. Freetly's approach yields the lowest Beta coefficients." (AIC IB, p. 103) In contrast, the near-term beta estimates that Mr. Hevert calculated result in an inflated cost of common equity estimate.

The Company's estimates of the market risk premium are inappropriate. As Staff explained, Mr. Hevert's market-based approach overstates the market risk premium by including non-dividend paying companies in his calculation of the return on the market. (Staff Rev. IB, pp. 85-86) Despite criticizing Staff's use of spot stock prices in the DCF analysis and spot U.S. Treasury bond yields in the CAPM, Mr. Hevert relied on spot prices to calculate the required rate of return on the market.[43] This is inconsistent with the Company's professed criticism that spot prices fail to account for aberrant behavior in stock prices.

Mr. Hevert's second approach relied on historical data to estimate the historic risk premium and volatility. As Staff discussed, historical earned rates of return are susceptible to manipulation since the magnitude of the historical risk premium depends upon the measurement period used. (*Id.*, pp. 86-87) In the Company's last rate case, the Commission rejected AIC's risk premium analysis because it relied too heavily on historical data in calculating a forward-looking rate of return on common equity for the market.[44] The Commission should do the same here.

d. Other ROE Estimation Models

[43] Ameren Exhibits 3.4E and 3.4G.
[44] Order, Docket No. 09-0306 et al., April 30, 2010, p. 214.

e. Proposed Adjustments to Cost of Equity

i. Uncollectibles Rider Adjusment

In the Company's last rate case, the Commission found that a reduction to the allowed cost of common equity for the uncollectible riders was appropriate and adopted part of Staff's approach. The Final Order states:

> The Commission agrees with Staff that the adoption of the uncollectible riders ensure more timely and certain collection of bad debt expense and should provide AIU with greater assurance that they will earn their authorized rates of return. Due to this reduction in uncertainty, the Commission finds it appropriate to adopt a reduction to the approved cost of common equity. Staff's first approach, which estimates the effect the adoption of the uncollectible riders will have on AIU's Moody's credit rating and the resulting change in implied yield spreads appears to be reasonable to reflect the benefit of the adoption of the uncollectible riders. (Order, Docket No. 09-0306 et al. (Cons.), April 29, 2010, p. 219)

The Final Order later states:

> The authorized ROE will be reduced by 15 basis points for AmerenCILCO and AmerenIP, and 10 basis points for AmerenCIPS natural gas operations; and by 50 basis points got AmerenCILCO, 10 basis points for AmerenCIPS and 20 basis points for AmerenIP electric delivery service operations to reflect the reduced risk to each company as a result of the adoption of the uncollectible riders. (Order, Docket No. 09-0306 et al. (Cons.), April 29, 2010, p. 220)

In this rate case proceeding, Staff's 16 basis point proposed adjustment for the uncollectible riders reflects the same approach accepted by the Commission in the last AIC rate case. Thus, Staff's proposed reduction is consistent with the downward adjustment authorized by the Commission in the Company's last rate cases.

The Company argues that Staff's proposed adjustment is unreasonable because it is higher than the reduction authorized for other Illinois utilities with uncollectible riders. (AIC IB, pp. 106-110) Staff's proposal is not a static adjustment to apply to each utility that implements an uncollectible rider. Staff's proposed adjustment is made in the context of spreads between bonds with different credit ratings in order to reflect the company-specific reduction in risk that will occur as a result of the implementation of the uncollectible rider.

The Company claims that Mr. Hevert's "event study" demonstrates that the implementation of uncollectible riders would not meaningfully reduce investors' return requirements. (*Id.*, p. 109) Staff thoroughly explained why Mr. Hevert's "event study" should not be considered in determining whether an adjustment is necessary to reflect the decreased risk from the implementation of the uncollectible riders. Not only is Mr. Hevert's event study flawed in implementation, event studies in general have low ability in detecting any impact due to regulatory changes despite the fact that such changes may, in fact, have had an impact on investor requirements. (Staff Rev. IB, pp. 90-92)

ii. Financial Risk Adjustment

iii. Flotation Cost Adjustment

D. Recommended Overall Rate of Return

1. Electric

As summarized in Staff's Revised Initial Brief and further supported herein, Staff recommends an 8.650% rate of return on rate base for the Company's electric delivery services. (Staff Rev. IB, p. 96)

2. Gas

As summarized in Staff's Revised Initial Brief and further supported herein, Staff recommends an 8.225% rate of return on rate base for the Company's gas delivery services. (*Id.,* pp. 96-97)

V. COST OF SERVICE

A. Overview

B. Resolved Issues

1. Electric

a. Substation Costs Allocated to DS-4 100+ kV Customers

b. Supply vs. Service Voltage Allocations

2. Gas

a. Allocation of Rider TBS Costs to Customer Classes

C. Contested Issues

1. Electric/Gas

a. Use of Embedded Class Cost of Service Studies (ECOSS)

The efforts by Ameren and the Commercial Group to defend the Company's cost of service approach against Staff's criticism lack merit and should be rejected by the Commission.

Ameren suggests Staff has no basis for its continuing concerns about the Rate Zone ECOSSs, stating that "Staff's recommendation that the Commission essentially throw the baby out with the bathwater should be rejected." (AIC IB, p. 116) According to Ameren, "Staff had ample time to review the Rate Zone ECOSSs initially submitted before it filed its direct case – and did review them in detail". (*Id.*)

What the Company fails to note is that this detailed review found these ECOSSs to be clearly deficient and inferior to the studies provided in the Company's previous rate case, Docket Nos. 09-0306 et al. (Cons.). (Staff Ex. 14.0, pp. 10 -15) As Staff pointed out, the Company compounded the problem in its response to the ALJs' first deficiency letter by failing to provide any explanatory testimony to support the deficiency Rate Zone ECOSSs. (*Id.*, pp. 6-7)

Staff concluded that "[t]he previously discussed shortcomings in the Rate Zone ECOSSs call into question allocations not only for plant accounts but also depreciation, amortization and other expenses." Staff further concluded that these shortcomings seriously compromise the Rate Zone ECOSSs. (*Id.*, p. 15) The Company did not disagree with these conclusions and acknowledged that they were reasonable. (Tr., September 15, 2011, pp. 773-774)

Therefore, the primary conclusion Staff was able to draw from the standpoint of costs by the time of its direct testimony was that the Company had yet to provide a set of Rate Zone ECOSSs that could be a reasonable foundation for ratemaking in this case. (Staff Ex. 14.0, p. 15)

Nevertheless, Ameren argues that "Staff complains it had a 'truncated timeframe' to review the rebuttal Rate Zone ECOSSs." However, the Company questions "what cost or revenue allocations, if any, exactly require additional review by Staff remain unknown." (AIC IB, p. 117) The obvious answer is that Staff requires a reasonable cost of service standard to be presented with the Company's initial filing. However, Ameren did not make a reasonable effort to provide such a standard until rebuttal, well after Staff's opportunity to present its direct case had come and gone. (Staff Ex. 30.0, pp. 4-5)

Ameren goes on to argue that "[a] utility's rate case does not end after Staff's direct." (AIC IB, p. 117) That is certainly true. However, when evidence that Ameren should have provided in its initial filing only comes after Staff files its direct testimony, then a problem arises.

Despite the clear evidence to the contrary, Ameren insists that "[t]he cost studies and allocation methodologies submitted in this proceeding by Ameren Illinois have been thoroughly vetted by Staff." (*Id.*, p. 117) That is not true. Staff was limited to a grand total of four weeks in rebuttal for discovery, analysis and testimony on those studies. That kind of timeframe is incompatible with a meaningful vetting process. (Staff Ex. 30.0, p. 5)

Ameren complains that "[t]o disregard this evidence is to signify that AIC could have done nothing on rebuttal to timely satisfy Staff's concerns." (AIC IB, p. 118) That is not the case. When the problem is that rebuttal testimony contains evidence that clearly should have been provided in the Company's initial filing many months earlier, it is difficult to say how the Company could undo the cost of service problems it created.

The Commercial Group also takes issue with Staff on the role of embedded cost studies in the design of Ameren's rates, contending that the Company's rate zone ECOSSs should be used in the process. (Commercial Group IB, p. 3) The Commercial Group notes that Staff had five and a half months to review the Rate Zone ECOSSs presented in response to the ALJs' deficiency letter, and argues that "Staff then had an additional seven weeks before the hearing to review the three corrected ECOSSs…" (*Id.*, p. 4) The argument is problematic because Staff only had four weeks to review and respond in its testimony to the ECOSSs Ameren presented in its rebuttal. It is not clear how Staff could have used the additional three weeks until the evidentiary hearings to refine its position on the ratemaking issues pertaining to the Company's rebuttal ECOSSs because pre-filed testimony, rather than hearings, provides the forum for presenting a coherent response to Ameren's ECOSSs.

The Commercial Group's reference to the deficiency Rate Zone ECOSSs is problematic as well. (*Id.)* Staff found those studies to be clearly deficient and it was not until rebuttal that Ameren presented new studies for Staff's consideration. Thus, the five and a half months for review claimed by the Commercial Group turned out to be only four weeks, an entirely insufficient time to conduct a meaningful review of three lengthy and complex Rate Zone ECOSSs.

The Commercial Group complains that it is punished by Staff's proposals, a result which it claims is inconsistent with Staff's statement that customers should not be punished for the Company's failures. (*Id.*, pp. 4-5) This argument is flawed because it hinges upon the results of Rate Zone ECOSSs that Staff was unable to verify as reasonable for the reasons previously stated. The lack of a verifiable cost of service standard in this proceeding means there is no basis for concluding that the Staff proposal somehow punishes certain groups of Ameren customers.

Nevertheless, it should be reemphasized that Ameren's shortcomings in this case have clearly undermined the regulatory process. Instead of providing Rate Zone ECOSSs in the initial filing, the Company provided only a single ECOSS. In response to the ALJs' deficiency letter, the Company only presented clearly problematic studies with no supporting evidence or analysis. Ameren did not present reasonable Rate Zone ECOSSs or rate designs based upon those ECOSSs (as directed by the Commission in Docket No. 10-0517) until the rebuttal phase of testimony. Therefore, the limited choices from a cost standpoint are directly due to the Company's shortcomings in this proceeding.

2. Electric

a. Allocation of Public Utilities Revenue Act (PURA)/Electric Distribution Tax Expense

IIEC again proposes that the Commission approve an alternative allocator for distribution taxes based largely on plant. That approach has been thoroughly examined and rejected in previous cases and it should be rejected in this case as well.

IIEC claims that "[t]he amount of tax Ameren pays is primarily a function of the former Ameren utilities' 1997 levels of plant assets, and the tax thereon, when the PURA tax was determined as a percentage of utility invested capital." (IIEC IB, p. 40) The IIEC then contends that "[t]he current PURA tax structure was designed to replicate the tax amounts from the tax on invested capital that existed at the time of the 1997 deregulation law, while maintaining a limited number of points of collection." (*Id.*, p. 40)

IIEC then cites an empirical analysis by IIEC witness Stephens purporting to demonstrate that 73% of distribution tax expense is "directly attributable to Ameren's 1997 invested capital level. (*Id.*, p. 41) According to the IIEC, the level of distribution tax for Ameren "can rise or fall 'in ways that are not a direct result of its delivery volumes, and is largely dependent on the deliveries of the other utilities in the state.'" (*Id.*, pp. 42-43) To disparage the per-kWh approach, IIEC also notes that the merger of the Ameren utilities raised the utility's level of distribution taxes by $2.6 million "without the addition of a single kWh delivered" and thereby seeks to undermine the relationship between usage and distribution taxes. (*Id.*, p. 43) Based on these arguments, IIEC proposes an alternative allocator for distribution taxes based mostly plant and the remainder on usage. (*Id.*, p. 44)

IIEC's arguments on this issue were refuted by Staff and other parties and rejected by the Commission in previous cases for both Ameren and ComEd. (Staff Ex. 30.0, p. 21) IIEC provides no compelling evidence in this case to demonstrate that those arguments and decisions were in error. It is true that: (1) the distribution tax was previously determined by the levels of investment plant, and (2) the initial levels of the taxes paid by individual utilities were based on previously calculated amounts determined by their respective plant investment levels. However, the Illinois General Assembly changed the way the distribution tax is determined in its Amendatory Act of 1997 from a tax on "invested capital" to a "tax based on the quantity of electricity that is delivered." (35 ILCS 620/1a, P.A. 90-561, eff. 1-1-98)

While the starting point for the tax levels after the Amendment of the Public Utilities Revenue Act ("PURA") 1997 (35 ILCS 620/1a, P.A. 90-561, eff. 1-1-98)corresponds to previous tax levels based on invested capital, usage has since become the determining factor for these taxes. Furthermore, the total amount of distribution taxes collected by utilities increases each year by the lesser of 5% over the existing level or the yearly consumer price increase. Neither of these factors bears any relationship to plant investments. (Staff Ex. 30.0, p. 19)

Mr. Stephens' contention that Ameren's PURA tax burden can increase or decrease even if its kWh deliveries do not change is contradictory. It acknowledges the role played by deliveries in the calculation, but seeks to make a distinction because the driver is the utility's share of deliveries, rather than their absolute levels. Either way, the focus is on deliveries, rather than invested capital, which IIEC proposes for allocating these costs. (*Id.*)

In addition, the fact that the merger increased Ameren's PURA tax by $2.6 million despite no change in sales fails to support IIEC's position. The fact remains that sales are the sole driver of these costs and the merger's only effect was to change the rate at which those sales are taxed. Furthermore, IIEC's argument provides no justification for Mr. Stephens' alternative plant-based allocator because the increased PURA tax due to the merger was not driven in any way by the level of plant on the system. (*Id.*, pp. 20-21)

b. Minimum Distribution System (MDS)

IIEC's proposal to implement a minimum system approach for distribution plant based on NESC safety standards is flawed and should be rejected by the Commission.

This proposal, which was rejected by the Commission in Ameren's 2007 rate case (Docket Nos. 07-0585 et al. (Cons.)), begins with the notion that Ameren "must extend its primary and secondary distribution system each time it adds a new customer." IIEC contends that critical to this process of adding customers are "the costs of complying with the NESC reflect real and tangible costs that utilities must incur in connecting customers to their system." Therefore, IIEC concludes that "these costs of NESC compliance are directly related to the number of customers served and independent of the electrical demands of those customers." (IIEC IB, p. 51)

IIEC's argument is illogical. While Ameren must maintain the safety and reliability of the system, the requisite investments are made not only when Ameren extends the distribution system to serve additional customers but also to maintain reliable service for existing customers, as Mr. Stowe has acknowledged. (Tr., September 15, 2011, p. 725) Nevertheless, his minimum system approach does not distinguish between those two sets of costs, and instead would be applied to both new and existing customers. (Tr., September 15, 2011, p. 726-727)

Another flaw in IIEC's argument is that new customers can be added without the need to extend either the primary or secondary system. Distribution lines can run alongside undeveloped land where, if development were to take place, there would be no need to extend the distribution system to serve the new customer or customers and incur the associated NESC costs cited by IIEC. (Staff Ex. 30.0, p. 24)

Furthermore, the impetus for reliability and safety investments comes from the electricity that flows through the distribution system. As such, these safety and reliability concerns arguably support the allocation of a share of distribution plant on a per-kWh, rather than a customer basis. (*Id.*, p. 23)

c. Single/Dual-Phase v. Three-Phase

IIEC raises a further cost of service proposal the Commission has previously rejected pertaining to the allocation of single-phase primary lines. IIEC provides no new basis for the Commission to reach an alternative conclusion in this proceeding.

IIEC justifies its proposal by arguing that "with only a few exceptions, every single- and dual-phase circuit on Ameren's distribution system is used exclusively to serve secondary customers." (IIEC IB, p. 61) IIEC recognizes that the Commission has rejected IIEC's argument in the past, but claims it will demonstrate in this case why that conclusion was flawed. (*Id.*, p. 62-63)

IIEC focuses on the recent ComEd case (Docket No. 10-0467) where the Commission rejected the IIEC proposal based "on the supposition that serving a primary voltage customer on a circuit might require the utility to incur additional costs for a three-phase line, when a single-phase line might be sufficient to serve secondary load on the same circuit. (*Id*. at 176). (IIEC IB, p. 62)

IIEC seeks to demonstrate this assumption is fallacious. First, IIEC references Ameren's line extension policy which "requires that both residential and non residential customers receive a free extension up to the cost of 250 feet of a single-phase, overhead circuit" and requires individual customers to pay for any additional costs they cause to be incurred. (*Id.*, p. 63) According to IIEC, this shows that "Ameren will incur the same cost when it extends a three-phase circuit to a three phase, primary or secondary voltage customer as it will incur when it extends a single-phase circuit to a single-phase, secondary voltage customer. (*Id.*, p. 62)

IIEC draws the wrong conclusion from this evidence. What the line extension policy shows is that primary and secondary customers are treated the same regarding the costs Ameren is willing to incur to connect them to the distribution system. This similar treatment would argue for equal, rather than unequal, cost allocations as IIEC proposes. (Staff Ex. 30.0, p. 28)

Second, IIEC presents data designed to “cast doubt on the assumption that there are ‘additional costs’ for a three phase line above the cost of a single phase line.” The implication is that in some cases three phase lines can cost less than single phase lines. (IIEC IB, p. 63)

IIEC’s contention that certain single-phase installations are more costly is irrelevant. No one is arguing that primary customers should be allocated more distribution costs than secondary customers. The issue is whether they should be allocated fewer costs as IIEC proposes and the fact that some three-phase costs are lower than single-phase costs does not justify a smaller cost allocation for primary customers. (Staff Ex. 30.0, p. 29)

Finally, IIEC contends that “three-phase circuits form the essential backbone of every major electric utility distribution system in North America” which, it believes, “generally refutes the assumption in the Order in Docket 10-0467 that a utility could avoid the cost of a three-phase circuit simply because customers take service at secondary voltages.” (IIEC IB, pp. 63-64) This argument is also irrelevant because the issue here concerns single-phase, rather than three-phase lines, and the fact remains that when the Company does have the flexibility to install single-phase lines; the characteristics of three-phase customers limit that flexibility. (Staff Ex. 30.0, p. 30)

According to IIEC witness Stowe, “it is well known in the electric utility industry that certain phase/voltage combinations can lead to localized load imbalances (asymmetry), which can cause voltage instabilities.” (*Id.*, p. 37) This issue reduces the utility’s options when it comes to serving primary customers and, rather than reducing their contribution to system costs, in all likelihood, has the opposite effect. (Staff Ex. 30.0, p. 30)

VI. REVENUE ALLOCATION

A. Overview

B. Resolved Issues

1. Gas

a. Allocation of Revenue Requirement Across Rate Zones and Customer Classes

b. Rate Moderation

C. Contested Issues

1. Electric

a. Allocation of Revenue Requirement Across Rate Zones

Kroger takes issue with Staff's proposed allocation of the revenue requirement across rate zones, arguing that the proposed mitigation of cost-based increases for Rate Zones I and II "creates new, unwarranted subsidies." (Kroger IB, p. 3) Kroger notes that Rate Zone III customers currently pay the highest rates of the three zones and the mitigation proposed by Staff would require those customers to subsidize customers in the other rate zones whose rates are lower. (*Id.*, pp. 3-4)

Kroger fails to consider that the problem of rate shock manifests in two ways. One is in the overall level of bills and the second is the rate of change in an individual case. Under Staff's proposed class revenue allocation, the largest percentage increases fall on Rate Zone I and II DS-4 customers by a considerable margin and without Staff's proposed mitigation of the Rate Zone increases, these customers would have received considerably larger increases. Addressing bill impacts is, by nature, a matter of judgment, and Staff submits that the level of increases for individual classes and not just the overall level of rates should be considered in the mitigation process.

b. Allocation of Revenue Requirement Across Customer Classes

Ameren takes issue with Staff's proposed class revenue allocation, noting that all other parties believe that the rebuttal Rate Zone ECOSSs provide the most reasonable basis for allocating revenue among customer classes. (AIC IB, p. 131) The Company seeks to counter the timing issue by contending that "Staff had ample time to review the initial models and class allocators before filing direct." (*Id.*, p. 132) Ameren's argument fails to consider that the initial models were based on a single ECOSS for the entire Illinois territory, whereas the Commission made clear in its Final Order in Docket No. 10-0517 that ratemaking is to be based on three Rate Zone ECOSSs. Since the Commission directed that the rates be based on three Rate Zone ECOSSs, the value of that single ECOSS presented in the Company's initial filing for ratemaking in this case is questionable. Thus, a meaningful review could not begin until three Rate Zone ECOSSs were filed.

The Company argues that Staff "had ample time to review the corrections to the inputs to the models before filing rebuttal." (*Id.*, p. 132) That is not true. The first Rate Zone ECOSSs filed in response to the ALJs' deficiency letter contained significant flaws which Staff identified in direct testimony (Staff Ex. 14.0, pp. 10-15). Compounding the problem was the fact that these ECOSSs were not accompanied by testimony or supporting information. (*Id.*, pp. 6-7) Staff had to expend considerable resources reviewing those deficiency Rate Zone ECOSSs, determining how they were developed and identifying their flaws. Furthermore, as Mr. Schonhoff admitted during cross examination, the Company identified no deficiencies in Staff's criticisms. (Tr., September 15, 2011, pp. 773-774)

AIC's contention that "[t]he only differences between the Rate Zone ECOSSs filed with the deficiency response and those filed on rebuttal were (i) changing an allocation factor to split functional cost data into FERC account detail in response to Staff; and (ii) a modification regarding FERC account 362 to reassign the cost of certain distribution assets in response to IIEC" (Ameren IB, p. 132) is inaccurate. In fact, there were a litany of changes detailed in the testimonies of both Mr. Schonhoff and Mr. Stafford. (Ameren Ex. 22.0, pp. 31-33 and Ex. 32.0, pp. 2-11) The rebuttal Rate Zone ECOSSs represented a major overhaul, rather than a minor set of revisions as the Company suggests.

Kroger also criticizes Staff for proposing an across-the-board, equal percentage increase approach to class revenue allocations. Kroger takes issue with Staff's argument that it had insufficient time to review and assess the Company's rebuttal ECOSSs and contends that Staff's approach "would be unfair to customers in classes that are experiencing relative rates-of-return above unity." (Kroger IB, p. 8)

The problem with Kroger's argument lies with the Rate Zone ECOSSs Ameren belatedly provided in rebuttal testimony. The four weeks accorded to respond to those ECOSSs in rebuttal was an insufficient amount of time to conduct a meaningful review and present a reasonable response. The fact that Ameren did not present ratemaking proposals based on Rate Zone ECOSSs until rebuttal only exacerbates the problem of crafting an effective response. In this case, the Company's systematic efforts to undermine the ratemaking process severely limit the options for Staff to pursue in class revenue allocations and rate design and the proposal that Staff put forward represents the best choice.

c. Rate Moderation

The Company and IIEC both criticize Staff for failing to appropriately consider rate moderation in the revenue allocation process. Their criticisms are groundless and should be rejected by the Commission.

The Company focuses on the failure of Staff (and the AG) to factor distribution taxes into a rate mitigation formula. Ameren complains that this approach fails to provide "the proper balance between meaningful movement towards cost-based rates and mitigating bill impacts." (AIC IB, pp. 133-4) The basis for the Company's criticism is unclear because Ameren adopts a similar approach. The second and third steps of Ameren's proposed three-step movement to full recovery of distribution taxes through a single, per-kWh charge fall outside of its rate moderation plan. (Staff Ex. 30.0, p. 8)

The IIEC focuses on the need for mitigation of revenue allocations and proposes that each rate class and subclass be limited to increases of "1.5 times the system average increase, or 10%, whichever is greater." (IIEC IB, p. 65) IIEC supports its proposal by arguing that rate moderation was a Commission objective in Ameren's 2009 rate case and therefore should be a focus in this case as well. (*Id.*, pp. 70-71)

IIEC goes on to criticize Staff, claiming that "Staff's only mention of rate moderation in rebuttal testimony is to criticize IIEC's (and thus the Commission's) rate moderation approach, claiming that it 'will delay the attainment of cost-based rates'." (IIEC IB, p. 74) IIEC complains that Staff is inconsistent on this issue because in the 2009 Ameren rate case "Staff stressed the need for rate moderation." (*Id.*)

In fact, the Staff proposal adheres to rate moderation principles for all customers, even those in the DS-4 class who would receive the largest percentage increases. Under Staff's proposed increases, DS-4 customers in Rate Zones I and II would pay less than a half cent per kWh of electricity delivered, while they would pay .5161 cents per kWh in Rate Zone III on average. Even the average increase of 47.44% for Rate Zone II DS-4 customers corresponds to an increase of only 1.5 tenths of a cent per kWh. (Staff Ex. 14.0, p. 21) Furthermore, these rates for DS-4 customers compare quite favorably with distribution rates paid by High Voltage ComEd customers. In ComEd's last rate case (Docket No. 10-0467), High Voltage customers paid an average of more than 2.6 cents/kWh ($13,416,813/4,992,274,765 kWh[50]) for delivery service even before the higher rates went into effect as the result of the Final Order in Docket No. 10-0467. Thus, Staff's proposed rates would leave the average price per kWh for DS-4 customers at less than 20% of the average price for customers in ComEd's High Voltage class. (*Id.*, p. 21)

Furthermore, the primary reason for the large percentage increases Staff proposes for DS-4 customers pertains to the recovery of distribution taxes through an equal per-kWh charge for all customers. It should be remembered that the change to an assessment based on usage resulted from passage of the 1997 Amendment to PURA. Because they still do not pay their fair share today, DS-4 customers have received a distribution tax subsidy from other ratepayers for more than thirteen years. Given this accumulation of benefits at other ratepayers' expense, it is only reasonable that DS-4 customers finally be required to pay their full share of these costs. (Staff Ex. 14, p. 22)

i. Application of Rate Moderation at Rate Class and Subclass Levels

ii. Inclusion of PURA/Distribution Tax in Rate Moderation

IIEC claims that Staff is inconsistent in factoring the PURA distribution tax changes into the rate moderation issue. IIEC notes that Staff included distribution taxes in its rate moderation plan for the 2009 Ameren rate case, but fails to present a similar proposal in this case. (IIEC IB, pp. 80-81)

IIEC fails to consider that in the 2009 rate case and in ComEd's last rate case (Docket 10-0467), the Commission signaled a clear intent to recover distribution taxes through an equal per-kWh charge on all usage. Staff has sought to adhere to that policy preference by making such a proposal in this docket. (Staff Ex. 14.0, pp. 21-22) Furthermore, despite IIEC's claims to the contrary, the resulting rates proposed by Staff will not unduly burden larger DS-4 customers for the reasons previously discussed.

VII. RATE DESIGN

A. Overview

B. Resolved Issues

1. Electric/Gas

a. Billing Units

2. Electric

a. BGS-1/BGS-2 Pricing

b. Rebalancing DS-3 +100 kV/High Voltage Delivery Charges

c. DS-3/DS-4 Rate Limiter

3. Gas

a. Increase for Charges (Except GDS-1 and GDS-5)

b. Single PGA/Rider PGA

c. Conformity of GDS-2 Customer Charge – 600 Therms

d. Conformity of GDS-4 Customer Charge – MDCQ

C. Contested Issues

1. Electric

a. Increase for Charges in General

The Company's arguments on behalf of its proposed rate design rest upon the Rate Zone ECOSSs presented in its rebuttal testimony. However, as Staff has already pointed out, the problems with those studies call into question the cost foundation for Ameren's proposed rates in this case.

The Company seeks to contrast its rate design with the Staff approach. Ameren contends that its rate design furthers the Commission's goal of cost-based rates (AIC IB, pp. 145-146) in contrast to Staff which "favors an across-the-board increase for all charges that, by Staff's own admission, steers away from uniformity and cost-based rates." (*Id.*, p. 145) In supporting its position, Ameren takes on Staff's arguments that its rate design is a necessary consequence for the Company's failure to follow the directives of Docket No. 10-0517 in this case, i.e., failed to provide a viable and timely cost foundation for the three rate zones. Ameren asserts that "the Commission's Order in Docket 10-0517 ensures that AIC will continue to provide that cost foundation in future rate filings". (*Id.*, p. 145) It may well be that in future rate cases AIC will provide a viable in timely cost foundation at the time it files for a rate change.

However, Ameren's words ring hollow as to this proceeding, where it failed to provide rate zone ECOSSs until after it was notified of the deficiency and failed to provide testimonial support for the three Rate Zone ECOSSs until it filed rebuttal testimony. It should be remembered that the Commission issued its 10-0517 Order on March 15, 2011 and the Company presented a clearly problematic response on March 24, 2011 which consisted of flawed Rate Zone ECOSSs. Conspicuously absent from that response was any written testimony or explanation of those studies. In addition, the three Rate Zone ECOSSs did not incorporate any changes to Ameren's proposed class revenue allocations or rate designs. The revenue allocations and rate designs continued to be based on a single Illinois-wide ECOSS and were thereby in conflict with the conclusions of the Order. Furthermore, it was only after Staff filed its direct testimony pointing out the myriad problems in Ameren's filings that Ameren decided to present, in its rebuttal testimony, a serious set of proposals that actually sought to comply with the 10-0517 Order. (Staff Ex. 30.0, pp. 4-5)

Ameren was aware of the Commission directive that "[a]s long as separate rates are charged for each of the three legacy utilities, the costs and revenues of each legacy utility should be considered when rates are set," (Final Order, March 15, 2011, p. 21), at the time it filed its three deficiency Rate Zone ECOSSs. However, AIC failed to provide revenue allocations and rate designs based on the three Rate Zone ECOSSs at that time. In a rate case, time is of the essence. In order for the parties to absorb and react to its proposals, Ameren should have provided all information necessary to comply with the Commission's 10-0517 Order at the time of filing its response to the first deficiency notice. However, Ameren's response to the ALJs' deficiency letter contained only the substandard Rate Zone ECOSSs and no changes to the ratemaking proposals in its initial filing. It was only after Staff testimony exposed the flaws in Ameren's position that the Company made the necessary changes to its ratemaking proposals to comply with the 10-0517 directive.

Now, Ameren contends that there is no reason for concern about its compliance with the Commission Order in the future. In fact, the Company's behavior provides good reason for concern about its adherence to Commission Orders and demonstrates the need for stronger incentives to ensure so in the future.

The Company goes on to criticize Staff for arguing that its rebuttal ECOSSs were "untimely." To support its criticism, Ameren misquotes Staff testimony, stating "Staff agrees the Rate Zone ECOSS "provide a reasonable foundation for ratemaking," but says there isn't enough time to figure out whether they "provide a reasonable cost foundation." (Staff Ex. 30.0, p. 11) In fact, Staff witness Lazare did not state that the Rate Zone ECOSS "provide a reasonable foundation for ratemaking." What he actually stated was that "they provide a <u>more</u> reasonable foundation for ratemaking in this case" but could not be verified because they were provided in rebuttal. (*Id.*) Ameren goes on to assure that it requires no incentive to follow Commission directives in future proceedings, stating "[t]he Commission's Final Order in Docket 10-0517 provided not only the guidance AIC was seeking for future rate filings, but also the incentive to provide Rate Zone ECOSSs in future delivery service rate cases." (Ameren IB, p. 148) In fact, the Commission Order in Docket No. 10-0517 provided guidance not just for future rate cases but for the current proceeding as well, as Company witness Jones acknowledges. (Ameren Ex. 31.0, p. 2) The fact that the Company did not present compliant ratemaking proposals until prompted by Staff's direct testimony suggests that Ameren was prepared to ignore that guidance in the current case. This degree of disregard for the regulatory process is unfortunate and demonstrates the need for additional incentives to control the Company's behavior in future proceedings.

b. Treatment of PURA/Distribution Tax Expense

i. Phase-in of PURA/Distribution Tax Expense

IIEC states that if its position on the recovery of distribution taxes is rejected, it would prefer Ameren's phase-in plan to full recovery through an equal per-kWh charge of these costs rather than Staff's proposal for immediate movement to such a charge at the conclusion of this case. (IIEC IB, pp. 84-85) IIEC criticizes the proposal by Staff witness Lazare because it "is contrary to his expressed conclusion that rate levels, rather than rate uniformity, are the concern for ratepayers." (*Id.*, p. 85)

Clearly IIEC would prefer the phase-in approach to the Staff proposal because the former would reduce the overall amount of distribution taxes they would have to pay. The problem is that the phase-in approach fails to address in a timely manner the Commission's concern that these costs be recovered through a single per-kWh charge. (Staff Ex. 14.0, pp. 21-22) As previously noted, the Commission has expressed a clear preference that such an approach to distribution taxes be applied to both ComEd and Ameren and that approach has, in fact, been implemented for ComEd. (*Id.*) If Ameren's proposal is adopted, it would create a discrepancy between the two utilities where large ComEd customers are paying their full share but large Ameren customers are not during the phase-in period.

ii. Exclusion of PURA/Distribution Tax Expense from Base Rates

iii. Collection of PURA/Distribution Tax Expense as Separate Per kWh Charge on Bill

c. DS-1 Customer Charge

d. DS-3/DS-4 Seasonal Rates

2. Gas

a. GDS-1 Customer Charge

b. GDS-5 – Expansion of Rate Class Availability

In its Initial Brief, the GFA continues to advocate expansion of rate class availability for the Rate GDS-5 Seasonal Gas Delivery Service rate class. (GFA IB, pp. 3-7) However, the GFA has failed to demonstrate that this is a reasonable, cost-based proposal.

The GFA claims that its proposal is clear-cut and easily implemented and should therefore be adopted. However, Staff has pointed out that this is an overstatement and that significant questions about the cost-justification for the proposal need to be answered before moving forward. (Staff Rev. IB, p. 147) Staff believes that the GFA is attempting to short-circuit a discussion of costs by stating that the Commission is only being asked to approve the GFA's proposal, which it claims would be straightforward. (GFA IB, p. 9)

GFA has suggested that its proposal would recognize the positive impact of seasonal usage on system reliability and lower overall system costs through greater off-peak utilization. (*Id.*, p. 1) Although there is potential merit to GFA's proposal, however, the extent of any potential benefits has yet to be established and GFA has not provided a study in this case that would allow the Commission to establish that its proposal has merit. Without a meaningful cost of service study to examine the impacts of GFA's proposal, there is no basis for GFA's assertion that "there will be no cost shifting in this case and therefore no cost impact to other customers". (*Id.*, p. 9)

In fact, there is no consensus between the GFA and Ameren on how GFA's GDS-5 proposal will impact customers on an overall basis. The GFA has provided a revenue erosion analysis which states that the potential revenue erosion would be approximately $20,052 annually (GFA Ex. 1.0G, p. 5), based on the assumption that all twelve eligible GDS-3 grain dryer accounts, for whom the GFA energy consortium purchases natural gas, switch to an expanded GDS-5 seasonal rate and that the Commission approves 100% of the increase in rates requested by AIC. (*Id.*, p. 5) Although Company witness Althoff agreed with the estimated $20,052 annual revenue erosion number for those twelve customers, she noted that "AIC would very well exceed this potential revenue erosion number given that AIC's has over 80 more grain drying customers currently served under GDS-3 that could switch to GDS-5. At that point, revenue erosion and cost subsidization would be even greater given 12 versus over 80 customers." (Ameren Ex. 33.0 (Rev.), pp. 28-29)

Moreover, both Ameren and the GFA disagree on the costs for meter and related equipment that would be incurred if GDS-3 customers switch to the GDS-5 rate. Ameren witness Althoff contends the GDS-3 customer charge will not fully recover the cost of a more expensive interval demand meter, service line and other costs for customers that switch to GDS-5. (*Id.*, p. 28) In contrast, GFA witness Adkisson claims that Ms. Althoff fails to provide specific evidence on the cost of meter suited for GDS-3 size customers (GFA IB, p. 4) switching to the GDS-5 rate. Staff believes that the only way to successfully resolve this issue is by having the Company and the GFA provide a comprehensive cost/benefit analysis in the next rate case to ensure that ratepayers' interests are protected.

In sum, Staff agrees that there is potential merit to the GFA's proposal. However, there is an insufficient basis for moving forward on that proposal at this time because the GFA has not provided a comprehensive analysis of the impact of its proposal on the Company's operations. Therefore, the GFA's request for the GDS-5 tariff expansion as proposed in GFA Ex. 1.01G should be denied.

If the Commission decides to adopt in part the GFA's proposal in this proceeding relating to the expansion of the GDS-5 rate class availability, then Staff recommends that the Commission initially limit the number of customers that can utilize the new tier to twelve in order to address the concerns outlined by Staff and the Company. Those are the twelve customers upon whom the GFA based its initial revenue erosion analysis that Company witness Althoff did not challenge. This experimental expansion of the new tier would 1) minimize revenue erosion for the Company; 2) assess the true costs associated with metering and other equipment suited for GDS-3 customers taking service under the GDS-5 rate; and 3) allow both parties to present their finding and analysis in the Company's next rate case.

VIII. PROPOSED RIDERS/TARIFF CHANGES

A. Overview

B. Resolved Issues

1. Electric/Gas

a. Combined Billing of Multiple Meters

b. Rider PER

c. Pensions Benefits Rider

d. Uncollectibles Rider (If Switched to Net Write-offs)

C. Contested Issues

1. Gas

a. Rider TBS – Transportation Banking Service

Ameren has three objections to Staff's proposed modifications to Rider TBS. First, Ameren claims that Staff's proposal does not take into account AIC's operational circumstances. However, this argument ignores the fact that the Commission implicitly found that the utilities are comparable when it ordered AIC to provide tariffs implementing either the Nicor or Peoples method. Second, Ameren claims that Staff's proposal will result in increased cost to sales customers. However, Ameren has not demonstrated that costs will increase and, in fact, Staff's proposal may reduce peak day needs for the system. Third, it claims that Ameren will be exposed to operational difficulties as a result of Staff's recommendations. (AIC IB, p. 171) However, Ameren has not demonstrated that to be the case either.

Ameren's objections result from an improper view of transportation service. Transportation service carries with it at least three features that are inevitable. One is that the Utility acts as the agent for sales customers in commodity purchase and capacity reservation (AIC IB, p. 179); a second is that the utility reacts to the actions of transportation customers (AIC IB, p. 175); and third, sales customers may have the use of any unused capacity bought and paid for by transportation customers because transportation customers usage of their purchased capacity is limited by the tariff. (Ameren Ex. 34.0, p. 16)

Because Ameren does not appreciate its combined roles as the balancer of the system and the purchaser of gas for sales customers it objects to staff's proposals. These objections fall into one of three general categories. The first set of objections are to those features that are inevitable facets of having a transportation program, which exist in full with Ameren's current Rider T. The second set of objections from Ameren relate to features which are also true of Ameren's proposal. Thus these concerns will continue to exist regardless of which version of Rider TBS the Commission adopts.

Third, Ameren's objections do not acknowledge diversity. Diversity is that property whereby the effect of the actions of one group of actors is offset by the actions of another group of actors. (Staff Rev. IB, p. 172) However, Ameren does not address the word or concept of diversity in this section of its brief or in its testimony on these matters; thus, diversity is an unrefuted fact. To propose to make changes to the transportation programs without considering diversity is a fatal flaw. Transportation customers' diversity is very important to understanding the impact of transportation customers actions on sales customers and thus, ensuring appropriate restrictions on transportation customers.

Staff encourages the Commission to bears these three categories in mind as Staff addresses the specific objections in the order in which Ameren presented them in its brief.

1. Operational Comparability.

Ameren maintains that it is not operationally comparable to Nicor Gas and that Staff did not show that the two are operationally comparable. (AIC IB, pp. 176-177, citation omitted) Ameren relies on *Antioch Milling Co. v. Public Service Co. of N. Ill*., 4 Ill.2d 200 (1954) to support its contention that Staff has the burden of proof in showing operational comparability. (AIC IB, p. 176) Ameren's reliance on this decision ignores the fact that in its Final Order in the most recent AIC rate cases (Docket Nos. 09-0306-0311) the Commission required AIC and Staff to participate in a workshop process which was to "at a minimum result in tariffs implementing for AIU the banking provisions currently employed by Nicor, Peoples, or North Shore. (Staff Ex. 13.0, p. 6) Thus, the Commission has already determined that the operations are comparable. While the Commission made it clear AIU could raise its concerns about adopting the banking provisions and could propose alternatives, AIC bears the burden of demonstrating what changes to those methods are operationally necessary. To the extent AIC raised concerns about specific operational differences between AIC and Nicor (AIC IB, p. 176), Staff has demonstrated that they do not affect AIC's ability to implement Staff's proposed changes.

Further, Ameren itself proposed uniform transportation tariff provisions in all three LDCs territories in both 2007 and here in 2011. This is despite the Ameren statements that "no two storage fields are the same" and "no two distribution systems are the same." (AIC IB, p. 176) Ameren apparently finds these differences insignificant when it wants to work with them (uniform tariffs) and significant when it does not (proportional storage rights).

Although Ameren also asserts that Staff is proposing "numerous" Nicor transportation tariff provisions for Ameren (AIC IB, p. 175), the only two changes that are proposed, the linked maximum storage capacity and CD withdrawal method, are each adjusted to reflect the physical attributes of Ameren's system.

2. Peak Day Deliverability

Ameren notes that Ameren has half as much on-system capacity per customer as Nicor Gas. (AIC IB, p. 177) However, Staff's application of the Nicor method to Ameren results in less than half as many days of bank as Nicor Gas (15 as opposed to 31 days). Thus, Staff's application of the Nicor Method is sensitive to the operational comparability of the two utilities, a fact which Ameren appears to ignore

Ameren argues that its proposed Rider TBS banking provisions "take into account" its own operational circumstances. (AIC IB, p. 178) However, Ameren cannot take credit for Rider TBS's proposed maximum storage capacity and peak day deliverability because it is levels for both that the Commission ordered it to provide under Rider T in 2007. Ameren customers responded to those provisions and elected to take transportation service. Ameren responded to this migration as needed and experienced no operational difficulties. Just because the system works with the current levels does not mean that it cannot be expanded and the process repeated. Only Ameren's proposed cost recovery method is original and Ameren refuses to apply that method to its own tariff parameters.

3. Annual Storage Capacity.

Ameren objects to Staff's proposal to increase the BSL under the Nicor method from the less than proportional 5.48 Bcf to the proportional 8.2 Bcf, asserting that the "core reason" of the BSL is "to allow Ameren Illinois to fill and cycle its on-system storage resources on a consistent schedule that protects the operational integrity of its fields." (AIC IB, p. 180) If this is indeed the core reason, then there is no need for the lower BSL because Ameren will be able to fill and cycle its fields as it does now without regard to the actions of transportation customers. (Staff Rev. IB, p. 162) However, operational integrity is not impacted by which party holds capacity because, according to Ameren, those fields are cycled by Ameren using gas that is being drawn off the system by customers. (*Id*.)

The question here is not one of *ability*, but of *proportionality*. Ameren has the ability to provide annual storage capacity. It already provides this service to both sales and transportation customers. The question thus is whether Ameren is willing to provide transportation customers with proportional annual storage capacity rights.

4. Costs For Sales Customers.

Ameren objects to having to buy more off-system assets to allow transportation customers proportional storage rights, claiming that this results in significant cost to sales customers.

> Further, to provide transportation customers these rights on a CD, the Company would be forced to purchase additional leased storage and pipeline capacity assets at a significant cost to sales customers. (Id.) Whatever additional resources Mr. Sackett's designates to be used to serve transportation customers must be replaced by Ameren Illinois to continue to serve its sales customers, who were the previous beneficiaries of the transferred resources.
> (AIC IB, p. 179)

In Staff's view, the proportional storage rights are appropriate and transportation and sales customers should share the cost. What is being transferred is on-system deliverability and maximum storage capacity. The Commission should require Ameren to provide transportation customers a proportional amount of the on-system capacity. Sales customers would still pay for and receive a proportional amount (68%) of the on-system deliverability and 100% of the off-system deliverability.

Ameren argues that Staff's proposal *will* increase costs to sales customers. However, such a result is not certain. If transportation customers take less capacity than they have currently, Ameren may actually be able to reduce their off-system assets under Staff's proposal because, unlike Ameren's proposal, a decision to reduce banks will result in lower peak day rights.

Further, Ameren has made the case that its expectation is that transportation customers as a group will decrease their bank usage relative to current 10 day banks. (Ameren Ex. 14.0G, pp. 15-16) Ameren provided two reasons for this expectation. First, transportation customers' current maximum inventory is significantly less than the full 10 days. Second, Ameren witness Eggers estimated a negative price hedge value for storage. (Ameren Ex. 51.0, pp. 10-11) Staff has provided two additional reasons to expect a reduction in transportation customers subscribed bank size. First, since costs under both Staff and Ameren's proposals would be tied directly to the amount of storage, transportation customers are unlikely to keep capacity that they do not use. Second, Staff's fall injection target would require customers to fill their subscribed storage. Taken together, it is unlikely that transportation customers would subscribe to as much bank as they currently have.

Finally, capacity needed for monthly balanced customers would also be lower under Staff's proposal than Ameren's, since peak day withdrawal rights for monthly-balanced customers would be lower. Thus, it is likely that Staff's proposal will reduce peak day needs for the system.

5. Uncertainty Of Cost Impacts.

Ameren has also claimed that the "uncertainty of the cost impacts" is a reason to reject Staff's proposal. (Ameren IB, p. 180) Ameren is currently over-planning for the peak day because it has secured sufficient deliverability to cover transportation customers' bank withdrawals at a level in excess of the level allowed by the tariff. As Staff has pointed out in its brief, over-planning for the peak day raises costs for sales customers. (Staff Rev. IB, p. 169, footnote) AIC has not demonstrated that Staff's recommended change to CD withdrawal rights will affect Ameren's operational integrity. In Abbott, there was evidence of excess withdrawals of unauthorized gas and that transportation customers had affected the utility's operational integrity because they had either reduced or eliminated standby service. (*Abbott Laboratories, Inc.*, 289 Ill. App. 3d 705 at 712 (1st Dist. 1997) There is no evidence here that cost impacts will be of a level to affect operational integrity.

6. Operational Difficulties.

The purpose of declaring a CD is to provide the Companies with certainty which is accomplished by the CD penalties, not a magic number that can be supported. Ameren's CD requirements with transportation service are less than they would be if all these customers were sales customers and Ameren were required to provide for 100% of their usage. Contrary to Ameren's argument (AIC IB, pp. 178-179), expanding transport services on a CD does not eliminate the very protections a CD declaration is supposed to provide.

Finally, Ameren asserts that giving transportation customers a large percentage of on-system assets would be destabilizing to the system. (AIC IB, p. 179) This statement is wrong for two reasons. First, Ameren misquotes Mr. Sackett's statement from the transcript. On the page of the transcript cited by Ameren in its brief, there is no mention of withdrawal rights or a mention of a CD. The discussion was referring to annual storage capacity. (Tr., September 14, 2011, p. 526) Second, the amount calculated by Ameren here incorrectly states that under Mr. Sackett's proposal a transportation customer could take 32% of its *bank*. However, this is not at all the case. Under Mr. Sackett's proposal, a transportation customer can take 2.2% of its bank, which is 32% of its *MDCQ*. (Staff Ex. 9.0, pp. 18-19) Thus the amount calculated by Ameren is greatly overstated.

7. Single Fall Injection Target

Ameren incorrectly claims that other utilities require fall and spring cycling targets. (AIC IB, p. 174) However, Nicor and Peoples Gas and North Shore all have a single fall injection target. The Commission specifically rejected a spring target.

> In Nicor Gas' 2004 rate case, the Commission approved a single fall target injection target but rejected a spring withdrawal target. (Order, September 20, 2005, Docket No. 04-0779 at 146) When faced with some of the same proposals in Peoples Gas' and North Shore's 2007 rate cases, the Commission referred back to the Nicor Gas case as a guideline for what the balance should be between transportation customers and sales customers. (See Order, Docket Nos. 07-0241/0242 (Cons.), February 5, 2008, p. 276)

Elsewhere in that order, the Commission noted the need to strike a balance between managing the system and transportation customers desire to efficiently manage their gas supply. (*Id.*, p. 278) Staff believes that this same approach is appropriate for the Commission to adopt in this case.

8. Method Of Storage Cost Recovery

Ameren obfuscates the issues surrounding its equitable method by first claiming that the charge for deliverability was based on peak day requirements. Then, Ameren adds balancing to its reasoning. (See AIC IB, p. 182)

Furthermore, Ameren argues that any balancing before cashout should be a base rate recovery issue because it is part of the tariff bank service (base rates) (AIC IB, p. 182) Staff disagrees since the imbalances that occur before cashout are injections and withdrawals into the transportation customers' banks (Tr., September 14, 2011, pp. 499-500; Ameren Response to Staff DR DAS 5.05a - Staff Group Cross Exhibit 12-H, p. 1) and should be considered part of any banking service. Withdrawals from the bank are using transportation gas, not sales customers' gas. Injections into banks likewise do not use sales gas. There is no specific charge associated with this day to day bank activity and Staff believes that it would be inappropriate to charge transportation customers for the bank activity authorized by the tariff.

Thus, Ameren's cost recovery should be rejected and a single charge linked to CD and MSQ should be adopted.

b. Rider T – Cashout Provisions

The Commission should reject Ameren's cashout proposal because Ameren improperly relies on flawed evidence.

Staff agrees with Ameren that the purpose of the cashout mechanism is to protect sales customers. It is also a means to provide for inevitable differences between a transportation customer's usage and deliveries. However, Staff does not agree with Ameren's proposal to alter the cashout provisions in Rider T and to implement those altered provisions in its new Rider TBS. Ameren's proposed cashout mechanism, in effect, punishes its transportation customers and subsidizes sales customers by unjustly lowering PGA costs at the expense of transportation customers. (Staff Rev. IB, pp. 170-173)

Ameren proposes rules that hold sales customers harmless under all conditions and that, in effect, punish transportation customers without any showing that transporters hurt sales customers in the absence of such rules. "The cashout mechanism should be amended to prevent the *potential* for additional negative cost consequences should pricing reverse." (Ameren Ex. 34.0, p. 26, emphasis added)

In contrast, Staff recommends that the cashout provisions currently in place in Rider T be implemented under Rider TBS. Staff believes that the Commission should consider whether sales customers are harmed on *net;* that is, whether the net effects of individual transportation customer's behavior harms sales customers over time. Under this consideration, the resulting tariff should balance the interests of sales customers against transportation customers, realizing that at times one party may benefit more than the other. Staff believes that this is the appropriate view and the one consistent with the Commission's conclusion that gaming of the system exists, but is not widespread.

> AIU also expresses concerns about gaming by transportation customers. While gaming probably occurs to some extent, the Commission is not convinced by AIU's evidence that gaming is as widespread of a problem as AIU suggests, and therefore the potential for gaming need not be considered in setting bank size and related issues.
> (Order, Docket Nos. 07-0585 et al. (Cons.), September 24, 2008, pp. 312-313)

"Harm" to sales customers becomes an empirical question. Ameren concludes that "the evidence provided in this proceeding shows that Ameren Illinois's current cashout mechanism is failing." (AIC IB, pp. 185-186) Staff disagrees. Ameren's evidence of harm to sales customers has the same shortcomings that it had in Ameren's rate case in 2007 and should be rejected.

The 2007 Order summarizes Staff's position in that case: "Staff observes that AIU has also listed potential gaming as a major factor for many of its tariff changes. Mr. Sackett points out three reasons why AIU's argument has no merit: (1) reliance on anecdotal evidence, (2) flawed calculations of detriment to sales customers, and finally, (3) the presence of other, more focused options to address gaming if it did exist." (Order, Docket No. 07-0585 et al. (Cons.), September 24, 2008, p. 303) (See also the discussion following on pages 303-305) Ameren made virtually the same arguments in that case that it makes here. The Commission found them unconvincing then, and the evidence here is equally flawed.

Ameren offers two data sets to support its cashout proposal. First, Ameren Exhibit 34.4 is data from a two week period in the winter of 2009-2010 which Ameren alleges shows evidence of negative cost consequences to sales customers because the cashout revenue was insufficient. (Ameren Ex. 34.0, p. 26; Ameren Ex. 34.4; AIC IB, p. 188) Mr. Eggers summarizes the exhibit, "As the exhibit shows, *on certain dates* the cashout revenue was insufficient to avoid a negative cost consequence to sales customers." (Ameren Ex. 34.0, p. 26, emphasis added) However, this data "from 2009-2010" is not two *years* of data but rather two *weeks* of data. Furthermore, this data and its "negative cost consequence" is an anomaly because the Chicago Citygate Price ("CCP") price is equal to or greater than the PGA during this period. IIEC Exhibit 8.1 demonstrates that on average Ameren's PGA is 147% of the market price. Also, this exhibit shows that this two week period was from the *only* month where the PGA was less than the average CCP. Ameren chose the only period where such a price relationship occurred in any rate zone for 2010 to calculate "Cost Consequences for Selected Dates" to sales customers.

Staff disagrees with the comparison of PGA and spot prices as a means to show harm (Staff Rev. IB, p. 172) and Staff witness Sackett supports the market price as the appropriate measure for cashouts. (Staff Ex. 13.0, pp. 26-28) However, accepting the Company's approach for purposes of argument, its evidence and method does not show sales customer harmed when premiums for cash out volumes above the twenty percent limit are imposed. Rather, sales customers are seen to benefit from transportation customer cashouts as shown below.

The cost consequences to sales customers estimated in Ameren Ex. 34.4 sums to $14,298. However, the premiums that transportation customers paid for imbalances outside the deadband[45] equaled $37,460[46] above the market value of that cashed out gas. Thus, even Ameren's alleged "cost consequence" to Ameren sales customers from that period is actually a *benefit* of $23,162 when netted against the cashouts premiums transportation customers paid from Ameren's own data. Therefore, there are no net negative cost consequences from this time period and Ameren has provided no other evidence of any *alleged* cost consequences.

The record is therefore devoid of any of the negative cost consequences which Ameren states is the single motivating factor for this tariff change. For this reason, the Commission should reject the cashout provision as unjust. Penalizing transportation customers for actions that do not result in harm to sales customers is unreasonable.

The second data set that Ameren provides is Ameren Ex. 34.5, which shows under-deliveries. It calculates under-delivery for the system in the period since the current cashout provisions went into effect. Mr. Sackett calculated system net under-deliveries equal to an average of 33,289 therms daily. This is less than 0.2% of Ameren's peak design day. (Staff Ex. 29.0, pp. 32-33) The average annual amount of the under-delivery is also less than 2% of transportation throughput, less than 1.5% of sales throughput and less than 1% of Ameren's total throughput. [47] Thus, the

[45] The term deadband refers to the part of the cashout that occurs at the market price. In Ameren's' case it is the 20% above or below the nomination after injections and withdrawals have occurred. (Ameren Ex. 14.2)

[46] This is calculated as total positive 90% therms plus total negative 110% therms which gives you the total therms that were cashed out at a premium each day. If one multiplies this amount by 0.1 times the CCP, the result equals $37,640.

[47] The average annual amount of the under-delivery is 12,150,485 therms (33,289 times 365); the average annual transportation throughput for 2009 and 2010 is 685,898,223 therms; average annual sales throughput for 2009 and 2010 is 915,398,088 therms; average annual total throughput for 2009 and 2010 is the sum of these two number, 1,601,296,311 (ILLINOIS COMMERCE COMMISSION, Illinois Gas Utilities, Comparison of Gas Sales Statistics For Calendar Years 2010 and 2009: Annual http://www.icc.illinois.gov/downloads/public/ng/10-09%20Comparison%20of%20Gas%20Sales%20Statistics.pdf)

magnitude of under-delivery is insignificant and insufficient to justify Ameren's proposed change in the cashout provisions.

Ameren states that "the total cost for the services required to cover daily balanced customer imbalances is $2.3 million annually." (AIC IB, p. 186) However, this $2.3 million figure is premised on estimates of *avoided costs* for transportation customers and not the actual costs incurred by Ameren to provide these balancing services that are shared by both sales and transportation customers. (Ameren responses to Staff DR DAS 5.12a and c – Staff Group Cross 12-K, pp. 1-2) Transportation customers do not cost sales customers $2.3 million as Ameren implies. In fact, Ameren offers no evidence of ***its*** costs of providing these balancing services. (Ameren response to Staff DR DAS 5.12c – Staff Group Cross 12-K, p. 2) Since the $2.3 million dollar cost estimate is incorrect, the Company's conclusion that the $583,000 of cashout premiums is insufficient to cover that cost is wrong and should be disregarded. Ameren claims that its proposal is designed to "bring cashout premiums more in line with balancing costs" (AIC IB, p. 187), but its "costs" are not costs actually incurred by Ameren. Thus, its claim is without merit and should be rejected.

Ameren also claims that its transportation customers pay for "banking rights," but "pay nothing for on-system and off-system storage used to manage cashout imbalances." (AIC IB, p. 187) However, transportation customers pay for on-system storage assets directly through their base rates, while they pay for off-system assets indirectly through cashout premiums. (Ameren response to Staff DR DAS 5.12h – Staff Group Cross 12-K, p. 2)

Ameren supports its proposed cashout revisions by likening the deadband to a bank account with overdraft protection by using sales customers' gas. According to

Ameren, its proposal “mitigates these impacts on sales customers.” (AIC IB, p. 187) However, as Staff has explained, diversity means individual transportation customer actions have a reduced impact on sales customers due to the offsetting actions of other transportation customers. (Staff Ex. 29.0, p. 30) The deadband is not free overdraft protection so much as it simply acknowledges diversity. Ameren’s proposal effectively eliminates the deadband and thus eliminates the benefits that diversity generates.

Ameren's proposal effectively removes the deadband that the Commission supported and approved. The current deadband is not supposed to be punitive because it uses the same price for buying and selling gas within the deadband. Conversely, the ratchets, under which sales customers enjoy a 10% premium, are designed to be punitive. Ameren’s proposal improperly changes the *nature* of the cashout. If the price is wrong to achieve balance, it can be adjusted slightly; the mechanism does not need to be changed to a penal one.

The Commission should reject Ameren’s cashout proposal because Ameren improperly characterizes its actions in response to transportation customers’ actions.

Ameren wrongly projects an assumption on Staff’s part that Ameren can “simply buy market priced gas to make up cashout imbalances.” Ameren claims Staff’s assumption is incorrect. (AIC IB, p. 188) However, Ameren does purchase spot gas daily. (Ameren response to Staff DR DAS 5.13a, Staff Group Cross Ex. 12-L, p.1) And the price it pays is the Chicago Citygate Price. (Tr., September 14, 2011, p. 504)

Ameren implies that the PGA is the *cost* of incremental gas purchases. “Every AIC purchase flows through the PGA. All supplies AIC provides to its distribution system are priced at the PGA price. When buying gas from transportation customers, the sales customers should never have to buy it at a price greater than their supply, the PGA, as a result of transportation customer activity." (AIC IB, p. 188)

However, as established above, the market price is unlikely to exceed the PGA. Therefore, Ameren's conclusion that the PGA value serves as a good estimate of incremental cost is unfounded.

The Commission should reject Ameren's cashout proposal because Ameren improperly confuses system integrity with cost consequences.

Ameren has attempted to use system integrity as leverage to get the Commission to accept its positions as shown above. However, its rhetoric is misplaced here. In a single paragraph, Ameren summarizes its system integrity and ends up shifting to financial impacts on sales customers, which is its real concern in this case.

> AIC's current cashout provisions do not deter transportation customer behavior that *might impair the system.* The 20% of the DCN permitted to be cashed out at the Chicago market price can often be less than the transportation customer is paying for their gas supply, so a transportation customer would be incented to under-deliver and purchase from Ameren Illinois's sales customers at the market price. (Ameren Ex. 34.0, p. 28.) The 10% penalty imposed on imbalances greater than 20% DCN after banking offers little deterrent for transportation customers to minimize imbalances. (Id.) That the current cashouts are not minimizing imbalances is evident from the fact that transport customers consistently under-deliver: there is a net of approximately 20,000 therms of average daily under-delivery on the total system. (See Ameren Ex. 34.5; ICC Staff Ex. 29.0, p. 33.) These imbalances occur every day. (Ameren Ex. 51.0 Rev. p. 22.) They must be balanced every day. (Id.) This imposes costs on sales customers every day, as discussed above. (Id.)
> (AIC IB, pp. 189-190, emphasis added)

The Commission would be imprudent to ignore potential system implications from various proposals. However, these under-deliveries are not hurting the system, a fact Ameren witness Mr. Eggers accepts; "AIC agrees that this level of daily imbalances does not destabilize the system; AIC's concern is only to minimize use of sales customer's assets to perform the balancing and ensure that the costs imposed by transportation customers onto sales customers, is remunerated." (Ameren Ex. 51.0, p. 22) Therefore, Ameren's attempt in its Initial Brief to state what its own witness has already rejected is another attempt to mislead the Commission about these serious matters.

The Commission should reject Ameren's cashout proposal because Ameren improperly portrays historical precedent.

Ameren justifies its cashout proposal by pointing to a Commission decision in Mid-American Energy Co ("MEC")'s most recent rate case Docket No. 09-0312. Ameren maintains that its proposal "provides an incentive for transportation customers to better align nominations to load." (AIC IB, p. 189) Ameren also claims that the Commission's decision in the MEC case recognizes that "high/low cashout proposals such as AIC's "creates incentive for transportation customers to accurately balance their daily supply and demand." Order, Docket 09-0312 (Mar. 24, 2010), p. 41." (*Id*.)

Ameren focuses on one quote from the MEC Order:[48] "The Commission went on to approve a cashout pricing proposal that "charge[s] transportation customers the highest daily price among the three indices to cover their delivery shortfalls, and use the lowest daily price among the indices to buy excess delivered gas." (AIC IB, p. 185) This quote does not fully summarize the approved tariff and must be read in the context of other portions from the MEC Order and also the approved tariff itself. The MEC Order and MEC's tariff combine to show that there are three key differences between the tariff

[48] Ameren cites this quote as being on page 41 of the order; however, it actually comes from page 39.

that the Commission approved for MEC and that proposed by Ameren in this case. These differences support a Commission acceptance of Staff's position.

First, MEC does not use one price to buy and another price to sell on a given day. A single price is chosen to buy and sell imbalances based on the net imbalances of all transportation customers. (Ill C. C. NO.9, 1st Revised Sheet No. 134 and Original Sheet No. 134.1)[49] That price is either the high or the low price, but not both, as Ameren proposes here. The choice of a single index price means that this cashout is not penal. In contrast, Ameren proposes to use one (high) price to sell gas to customers that are short, and another (low) price, to buy gas from customers that are long. This effectively makes the cashout within the deadband penal.

"When the aggregate amount supplied to the system by those customers is less than the aggregate amount consumed by their end users, the transportation customers are "short" or "negative." In that case, MEC provides additional gas to meet the shortfall." (Order, Docket No. 09-0312, March 24, 2010, p. 38)[50] Furthermore, MEC's tariff indicates that the single price is determined by the aggregate net imbalance of transportation customers. (Ill C. C. NO.9, 1st Revised Sheet No. 134, emphasis added)

Second, the price for MidAmerican is always daily index price, and it is never a (monthly) PGA. "Indices Used: MidAmerican will utilize the following daily "midpoint" of

[49] "On days where the overall aggregate Transportation Customer Imbalance volume is negative, *all Imbalances will be either bought or sold* at the highest calculated delivered price for that day utilizing the indices listed above." (Ill C. C. NO.9, 1st Revised Sheet No. 134, emphasis added) "On days where the overall aggregate Transportation Customer Imbalance volume is positive, *all Imbalances will be either bought or sold* at the lowest daily calculated delivered price for that day utilizing the indices listed above." (Ill C. C. NO.9, Original Sheet No. 134.1, emphasis added)

[50] The MEC Order goes on to state, "In Staff's scenario, transportation customers over-deliver gas because they believe other customers will deliver short[232]. If enough customers do this, Staff says, gas supply will be long for the day and the transport customers will only receive the lowest price available through MEC's proposed high/low cash-out process. Conversely, if too many customers intentionally under-deliver, causing a short day, they will have to pay the highest price in the high/low index. But as the Commission sees it, that is precisely what should happen." (Order, p. 41) Thus the scenario reflected that a single price is chosen and whether it is the high or low price depends on the net position.

the Gas *Daily* gas commodity index prices, plus applicable interstate pipeline charges and fuel (retention) to settle daily imbalance:• NGPL Chicago City-Gates, • NGPL Midcontinent, • NGPL Texok." (Ill C. C. NO.9, 1st Revised Sheet No. 134)

Third, for Ameren, there is a volumetric deadband in which the transportation customer uses the market price without penalty. Both the utility and transportation customers pay the market price for all gas bought and sold within 10% of deliveries. (Ill C. C. NO.9, 1st Revised Sheet No. 135) Under Ameren's proposal, gas will almost always be sold to transportation customers at the PGA, meaning it will be above market for the first therm above the withdrawal tolerance.

Thus, the Commission's decision in the MEC case should not be used to influence its decision here. Ameren's current cashout measures are just and reasonable.

Ameren also claims that the Commission has approved" "similar cashout language to AIC's proposal in the tariff of legacy utility AmerenCILCO and in Nicor's tariff." (AIC IB, p. 29) However, in the legacy CILCO tariff (Ameren Ex. 34.6), the cashout applied to *monthly* cashouts (Ameren response to staff DAS 2.01e – Staff Group Cross 12-B, p. 2), for which the PGA might be more appropriate. With respect to Nicor, its use of the PGA in its tariff is not for cashout, but is rather a payment for "authorized use" and "unauthorized use." (Ameren response to staff DAS 2.01a-d – Staff Group Cross 12-B, p. 1)[51] Nicor Gas' tariff does not have any withdrawal

[51] Requested Authorized Use Charge For each therm of Requested Authorized Use, the charge shall be the higher of: (a) the Rider 6 Gas Cost (GC); or (b) the Market Price as defined in the Terms and Conditions applicable to this rate. (i) Authorized Use Charge For each therm of Authorized Use, the charge shall be the higher of: (a) the Rider 6 Gas Cost (GC); or (b) the Market Price as defined in the Terms and Conditions applicable to this rate. (j) Unauthorized Use Charge For each therm of Unauthorized Use, the charge shall be the sum of$6.00 plus the higher of: (a) the Rider 6 Gas Cost (GC); or (b) the Market Price as defined in the Terms and Conditions applicable to this

restrictions on non-critical days, and authorized use follows after withdrawals in the order of deliveries. (*Id*.)[52] Thus, this situation only happens when a customer's bank is completely empty. This is unlikely to be a common event, and certainly not a daily occurrence.

Therefore, in all three circumstances, MEC, CILCO and Nicor, the referenced Commission approval is overstated and irrelevant to Ameren's daily proposal.

Ameren further claims that Illinois courts also recognized that "[gas] transportation customers should be encouraged to engage in efficient operational planning." *Abbott Laboratories, Inc.*, 289 Ill. App. 3d 705 at 712 (1st Dist. 1997) In *Abbott*, the court upheld the Commission's imposition of an unauthorized use charge as being reasonably related to encouraging efficient operational planning for the utility. However, in *Abbott*, there was evidence of excess withdrawals of unauthorized gas on Critical Days ("CDs") and that transportation customers had either reduced or eliminated standby service and were using the utility as cheap back-stop services. There is no similar evidence here leading to the need for penalties. Ameren has not demonstrated that its proposal to implement daily penalty cashouts is reasonably related to the goal of encouraging efficient operational planning for the utility. Ameren already has significant CD identical to the penalties approved by the Commission in *Abbott* and OFO penalties as well; its operational planning is well protected. Ameren's system's integrity is not at risk in the absence of these proposals, thus there is no need for the Commission to impose penalties as there was in *Abbott*.

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rate. Ill.C.C. No. 16 -Gas 4th Revised Sheet No. 20

[52] Daily Authorized Use shall be usage on any day, other than a Critical Day or an OFO Shortage Day, in excess of the sum of: (a) Requested Authorized Use; (b) the volume of Customer-owned gas delivered to the Company less unaccounted for gas; (c) Customer storage withdrawals; and (d) the contracted for quantity of Firm Backup Service. Ill.C.C. No. 16 -Gas 5th Revised Sheet No. 51

Thus, Ameren's attempts to use both earlier Commission decisions and court decisions to justify its current proposal is not supported by the cited cases. Ameren's proposal is neither just nor reasonable. Therefore, the Commission should reject Ameren's proposal to institute penalty daily cashouts that are not tied to a market price.

IX. PROPOSED SMALL VOLUME TRANSPORTATION PROGRAM

In its IB, Staff recommends that the Commission not order Ameren to begin a program to allow transportation for small volume customers. Instead, it advises the Commission to wait for a report to the legislature mandated by the Act before ordering Ameren to begin a small volume transportation ("SVT") program. (Staff Rev. IB, 175-176) In contrast, RGS argues that the Commission should order Ameren to file an SVT tariff and proposes a timeline and agenda for workshops to accomplish this goal. (RGS IB, pp. 6-9) Ameren indicates that it would only start a program if so ordered by the Commission. (Ameren Ex. 35.0 (Rev.), p. 13) Ameren concludes that a workshop process, prior to an investigation for the Office of Retail Market Development ("ORMD") report, would be "premature and redundant." (Ameren IB, pp.190-192)

RGS attacks Staff's recommendations in several ways. First, RGS asserts that the Commission favors competition, which should lead to the Commission ordering Ameren to begin an SVT program. (RGS IB, pp. 3-5) Further, it points out that Ameren is the last big Illinois utility without an SVT program. (*Id.,* pp. 5-6)

To date, the Commission has not mandated SVT tariffs for a utility that did not first file to implement one. The decision of whether Ameren should have one should not be based upon whether the other large utilities in Illinois have one. The decision should be based on whether there are net benefits to customers from an SVT. (Staff Ex. 34.0, pp. 3-4) RGS has not provided empirical support for a finding that the program would benefit customers.

RGS argues that it "provided or cited to a substantial volume of evidence about the "value and benefits of mass market natural gas choice" to support its contention that competition has been beneficial for customers. (RGS IB, pp. 13-14) Staff questioned that empirical evidence, since it largely consists of the number of customers, but not customer savings. And, while fixed price products hold some value for customers, which is not dependent on cost savings, RGS did not present evidence that shows those products had reasonable premiums. (Staff Ex. 34.0, p. 4) The only evidence for individual transportation customers buying gas at lower prices than they could buy from the utility is a footnote on CUB's Market Monitor website relating to one provider's products (Tr., September 13, 2011, pp. 342-343) and for aggregation products that are not comparable to individual customer sales discussed in this docket. (RGS Ex. 2.1)

RGS advocates workshops based on Mr. Crist's 'framework' to develop tariffs. (RGS IB, pp. 6-7, 15) ICEA agrees. (ICEA IB, pp. 6-7) Staff, on the other hand, argues that if the Commission does agree to order an SVT program, Mr. Crist's 'framework' should just be one element of workshop content. The Commission should not decide on the requirements of an SVT program as advocated by RGS such as Purchase of Receivables, price to compare, or how to allocate costs. These should all be discussed within the workshops. (Staff Ex. 34.0, pp. 4-5)

ICEA's arguments in its IB are similarly short of facts. It relies upon RGS evidence that, as Staff has noted, is suggestive, but ultimately not persuasive. Further, ICEA argues that in Ameren's case, alternative suppliers may offer 'multi-product' discounts. (ICEA IB, pp. 5-6) However, ICEA does not cite to the record for this point, and it is unclear what evidence supports its assertion.

RGS argues that waiting for the Section 19-130 report amounts to constricting development of natural gas competition. RGS also posits that that legislation "communicates a clear expectation that there should be a competitive market now and that the ORMD report is intended to identify any reasons that there is not a competitive market…" (RGS IB, p. 17) However, the legislation could have mandated that all Illinois jurisdictional utilities file tariffs to implement an SVT program, but the plain language does not. RGS *infers* that the legislation *presumes* that transportation programs will be implemented, but that interpretation ignores that the language does not *impose* transportation tariffs.

RGS posits that it is ironic that Staff uses Section 19-130 as a 'barrier' to competition. (*Id.*, pp. 17-18) Staff disagrees with this assertion. Staff views the ORMD report as an opportunity to review the programs of all utilities to determine the best methods to deliver services to utility customers. Such an approach allows the Commission and legislature to consider policy for all utilities and not just one at a time. (Staff Ex. 34.0, pp. 5-6)

RGS' assertion that there is no evidence concerning how the ORMD report will be compiled (RGS IB, pp. 18-19) is equally applicable to the workshops RGS is advocating. While the concerns are legitimate, requiring workshops will not alleviate them. The Commission should wait for the report to the legislature mandated by the Act before ordering Ameren to begin small volume transportation. The process may be time consuming, but workshops would also require time. Further, the report is required to consider input from all interested parties. It will provide an opportunity for a broad range of entities to provide input. Whereas it is unknown how much participation there would be in the workshop process or whether it would achieve consensus. Ameren would ultimately have to file tariffs to implement an SVT program. If that resulted in a litigated docket, it could take an additional eleven months. The Commission should chose the method which would provide the most efficient and comprehensive basis for making a determination about SVT tariffs. It should wait until it can utilize the report from ORMD.

X. OTHER

A. Rate Zone Schedules in Future Rate Filings

B. Original Cost Determination

C. Depreciation Rate Study

XI. CONCLUSION

For the reasons set forth in its Revised Initial Brief and this Reply Brief, Staff respectfully requests that the Commission’s Order in the instant proceeding reflect

Staff's modifications to the Companies' proposed general increases in rates for gas and electric delivery services.

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Respectfully submitted,

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