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).	:	

BRIEF ON EXCEPTIONS OF THE STAFF OF THE ILLINOIS COMMERCE COMMISSION

December 8, 2011

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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 Brief on Exceptions to the Proposed Order ("PO") issued by the Administrative Law Judges ("ALJs") on November 15, 2011.

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"). The PO is well-written, clear, and concise, and reflects the issues raised by the Company, Staff, and the other parties who have intervened. Although Staff supports most of the conclusions contained in the PO, there are some issues which Staff takes exception to which are stated below. Staff addresses issues to which it replies in the order in which they appear in the PO.

IV. RATE BASE

B. Contested Issues

2. ADIT – FIN 48

The PO errs in its conclusion for ADIT-FIN 48 in accepting the simple analogy that the FIN 48 amounts are "like customer advances and customer deposits." (PO, p. 18) The PO fails to recognize the evidence that the FIN 48 amounts are dissimilar from customer advances and customer deposits in that the Company must exercise its judgment in taking a tax position in order for the FIN 48 amounts to be created. It is not as simple as a loan automatically being created from the Company accepting a customer deposit. If the Company never asserts its uncertain position, this incremental rate base reduction cannot happen. (*Id.*, p. 17) The compromise position proposed by Staff would provide incentive to the Company to exercise its judgment to take the position, which may benefit ratepayers, but at the same time would protect ratepayers from any negative financial consequences.

The PO decision will likely result in companies not asserting aggressive tax positions, which will increase rates. The PO errs in concluding that these FIN 48 amounts will still be created in the future if the Commission requires a rate base deduction for them. There likely will be no saved interest expense from the Internal Revenue Service ("IRS") for the Company to keep, as implied in the Commission Conclusion, because no aggressive tax position will exist. Ultimately, the Company will seek less aggressive tax positions, with the higher tax expense passed on to ratepayers.

The compromise proposed by Staff and accepted by the Company is balanced in providing the Company latitude in pursuing such aggressive tax positions that positively affect ratepayers, but also providing protection to ratepayers in that if the Company ends up losing such positions, no interest or penalties resulting from the uncertain tax position will be assessed to ratepayers. Therefore, the following language changes to page 18 of the PO should be adopted by the Commission:

d. Commission Conclusion

Whether FIN 48 amounts should be deducted from rate base is an issue of first impression before the Commission. But as the parties have demonstrated, other state commissions have addressed this issue and come to different conclusions. Therefore, regardless of the outcome here, the Commission will not be the sole outlier in the face of a consistent regulatory practice.

~~Like~~ Unlike customer advances and customer deposits, FIN 48 amounts represent non-shareholder supplied funds that are not created unless the Company takes an aggressive tax position that may ultimately benefit ratepayers. Each of these types of funds essentially represents loans and accrues interest, however the FIN 48 amount is unique. The FIN 48 amount is not created unless AIC and its auditors have concluded that it is more likely than not that AIC will not prevail on its tax positions. Thus, the FIN 48 amounts represent funds that AIC will have to pay to the government with respect to tax positions it takes, using its judgment. ~~GCI does not appear to characterize FIN 48 amounts as interest free loans, which AIC seems to suggest GCI is doing. In light of GCI's arguments,~~ ~~t~~The Commission ~~can see no clear reason why~~ believes this distinction is controlling in determining that the FIN 48 funds that have not been repaid to the taxing authorities should not be deducted from rate base. We agree with ~~T~~the primary argument against GCI's proposal ~~is~~ in that it would discourage utilities from taking aggressive tax positions, which will ultimately increase rates. But by requiring AIC to not receive rate recovery for any interest expense or penalties resulting from failure to succeed in its aggressive tax positions, ratepayers are protected from the Company taking unreasonable tax positions simply to gain a free loan from ratepayers. To conclude otherwise may result in utilities taking more conservative tax positions than necessary, which would ultimately increase rates. ~~allowing AIC to recover from ratepayers any interest accrued on FIN 48 funds in its cost of service, AIC should still~~

~~have an incentive to make such tax arguments. If it prevails, AIC retains the interest expense that the IRS will not be asking for. If it fails, AIC will pay the interest expense that it has collected in its cost of service.~~ Accordingly, the Commission adopts ~~GCI's~~ the AIC and Staff position, and directs that no interest or penalties resulting from any IRS determination on FIN 48 funds may be recovered from ratepayers. ~~that have not been repaid to the taxing authorities be deducted from rate base. AIC may recover from ratepayers any interest accrued on FIN 48 funds in its cost of service.~~

3. Cash Working Capital

The PO rejects Staff's proposal to calculate Cash Working Capital ("CWC") based on the statutorily required remittance date for the Energy Assistance Charge ("EAC") rather than the date when the Company chooses to remit them. (PO, p. 19) The PO's conclusion would have ratepayers bear the cost of AIC's decision to pay these taxes early when there is no requirement for AIC to do so. The Company is under no obligation to pay these taxes early and it is not reasonable for the ratepayers to bear the cost of the Company's decision to do so. Furthermore, such a result is inconsistent with the Commission's decision in the most recent Commonwealth Edison rate case Docket No. 10-0467. In that Final Order, the Commission concluded:

> The Commission agrees with Staff's interpretation as to the EAC/REC and GRT/MUT tax issues. For the EAC/REC tax, the utility shall remit all moneys received as payment to the Illinois Department of Revenue by the 20th day of the month following the month of collection. Under the GRT/MUT tax, this ordinance requires ComEd to file a monthly tax return to accompany the remittance of such taxes, due by the last day of the month following the month during which such tax is collected. Both the statute and ordinance requires ComEd to remit these pass-through taxes after they have been collected from customers. ComEd stated in its briefs that the Company correctly pays these taxes in the month following activity that occurs in a prior "tax liability" month. The Commission concludes that the CWC calculation for GRT/MUT pass-through taxes should reflect zero revenue lag days and 44.21 expense lead days and zero revenue lag days and 35.21 expense lead days for EAC/REC pass-through taxes as supported by Staff. (ICC Docket # 10-0467, Final Order, p. 48)

Regardless of when the Company chooses to remit the pass-through taxes, the CWC calculation should be based on how long the Company could have access to these funds rather than what the Company chooses to do with them. The Company threatens the Commission that if Staff's recommendation were adopted, the low income customers would be negatively impacted because Ameren would effectively remit no EAC charges for the comprehensive low income energy programs administered by the Illinois Department of Commerce and Economic Opportunity for one month. However, Ameren could decide to discontinue its practice of paying the funds in advance of the statutory due date at any time regardless of the decision the Commission makes in this proceeding. Ameren has no obligation to remit the funds before the remittance is statutorily required.

Staff recommends the following changes to pages 18 and 19 of the PO:

Cash Working Capital

There is a single issue with respect to the cash working capital ("CWC") methodology, relating to the lag days associated with Energy Assistance Charges ("EAC") that AIC collects from its customers and remits to the State of Illinois. AIC and Staff agree that the EAC funds are, on average, available to AIC on the 16th day of each month. AIC remits the EAC funds as of the 20th day of each month, and thus calculates that the funds are available to AIC for four days. Staff notes that the enabling legislation requires funds to be remitted by the 20th day of the following month (See 305 ILCS 20/13(f)), and thus calculates that AIC has the use of the funds for up to 35 days.

The question is whether the additional month that AIC could hold the funds should be imputed for CWC purposes. If AIC were to change its practices, it would mean that it would effectively remit no EAC charges to the State for one month. Hence, at the test year level of EAC charges, in the first year of the change, AIC would remit about $2.3 million less to the State than it would under its current practices. AIC <u>makes the argument</u> ~~states~~ that this could impact the comprehensive low income energy programs administered by the Illinois Department of Commerce and Economic Opportunity with these funds. AIC requests that, in calculating the CWC requirement, the Commission recognize AIC's past method of remitting this pass-through tax and avoid any negative impacts on the State, low-income customers, and AIC. Staff, on the <u>other</u> hand, contends that ratepayers should not bear the <u>additional</u> cost of AIC's unnecessary early payment and urges the Commission to base the CWC calculation on AIC's access to these funds and not the date AIC chooses to remit them. However, Ameren could decide to discontinue its practice of paying the funds in advance of the statutory due date at any time regardless of the decision the Commission would make in this proceeding. Ameren has no obligation to remit the funds before the remittance is statutorily required. Thus, the Commission has no choice but to base the CWC requirement on the statutory deadlines for the payment of these funds.

The Commission adopts ~~understands~~ Staff's position and concludes that the CWC calculation is based on 35 days that the Company has access to the EAC funds. ~~but is not inclined to adopt it. Given the circumstances surrounding the EAC, the Commission does not believe that the adjustment sought by Staff is warranted. The Commission will revisit this issue, however, if AIC alters its EAC remittance schedule.~~ The statute requiring the collection of these charges states very clearly that the funds are to be remitted by the 20th day of the month following the month of collection. The Company has chosen to remit these charges in advance of when statutorily required. It is the customers who are supplying these funds and while the Commission appreciates the Company's decision to remit these funds in advance, the customers should not bear any additional burden for that decision.

5. Accumulated Provision for Injuries and Damages

The PO rejects Staff's proposed adjustment to reduce Rate Base by the Accumulated Provision for Injuries and Damages ("APID"). (PO, p. 27) The PO does so because it accepts AIC's incorrect argument that injuries and damages are reflected on a cash basis. The evidence shows that what AIC has done is to normalize the expense and normalizing the Injuries and Damages expense is not shifting to a cash basis as the Company suggests. (PO, p. 26) The removal of the expense accruals and replacement with the average cash claims paid is an attempt to normalize the expense. It is not a shift in accounting principles.

As pointed out in Staff's Direct Testimony, many of the state's largest utilities propose this Rate Base deduction including: Commonwealth Edison, North Shore Gas Company, Northern Illinois Gas Company and The Peoples Gas Light and Coke

Company. (ICC Staff Ex. 4.0, pp. 9-10) Each of these utilities recognizes that ratepayers have funded the APID and are entitled to a Rate Base deduction. The only difference between the way these utilities treat APID and the way Ameren treats APID is that Ameren has chosen to normalize the Injuries and Damages expense and believes that the way it normalizes the expense shifts the Company from an accrual basis to a cash basis of accounting. Normalizing an expense is not a shift from the accrual basis to a cash basis regardless of the manner the normalization occurs.

Furthermore, the effect of the PO's conclusion is counterintuitive. The customers are paying more for Injuries and Damages expense because of this normalization adjustment and the Company argues that the additional funds supplied by the customers because of this adjustment negates their entitlement to a Rate Base deduction. Therefore, Staff recommends the following changes to page 27 of the PO:

Commission Conclusion

There is a single question that must be answered to determine the treatment of the APID. Who has funded the reserve? The Company suggests that the normalization of the Injuries and Damages expense has removed the expense accruals from the revenue requirement and replaced them with an average of cash claims paid resulting in a cash basis for ratemaking purposes. The Company concludes that the end result of this adjustment is that the customers have not funded the reserve and are therefore not entitled to a Rate Base deduction. Staff's position is that the normalization adjustment simply changes the amount and not the nature of the expense and that the customers have funded the reserve. It appears to the Commission that regardless of how the amount of Injuries and Damages expense is derived, it is the customers who pay for the expense and ultimately fund the reserves and are entitled to the corresponding Rate Base deduction. ~~The Commission previously addressed this issue in an earlier proceeding concerning AIC's legacy utilities, Docket Nos. 07-0585 et al. (Cons.). In that proceeding, the AG raised arguments very similar to what Staff raises now. In resolving the issue, the Commission found in favor of the legacy utilities and concluded that use of a cash basis eliminates the existence of a reserve balance for ratemaking. The Commission also concluded in that Order that while a reserve balance still exists on the utilities' balance sheets, it is only for reporting, not ratemaking, purposes. (September 24, 2008 Order at 8-9) The Commission sees nothing in Staff's arguments that would~~

~~lead it to deviate from its past treatment of this issue.~~ Accordingly, the Commission ~~rejects~~ adopts Staff's position on this issue and rejects ~~adopts~~ AIC's position.

V. OPERATING REVENUES AND EXPENSES

B. Contested Issues

7. Electric Distribution O&M Expense

Staff does not object to the PO regarding AIC's O&M expenses. However, Staff is concerned that the specific method that the Commission chose to address the facts of this case may be construed as setting a precedent for handling the same issue in future cases. Therefore, Staff proposes revisions to the third paragraph on page 59 of the PO as follows:

> Staff concerns about AIC's budget decisions are legitimate and should be addressed in this Order, despite AIC's arguments to the contrary. As the Commission understands Staff's recommendation, AIC should spend each year whatever is appropriate, prudent, and reasonably necessary to ensure that its core mission as a regulated electric distribution company is met: the provision of safe and reliable electric service. The objective is not to ensure that a certain amount of money is spent each year. The objective is to ensure that the electric distribution system is reasonably and prudently maintained so that customers receive safe and reliable service. While Mr. Rashid acknowledges that there is no evidence in the record of this case of a correlation between reduced O&M spending in a given year and reliability in that year as it is portrayed through reliability indices, the Commission is certain that the cumulative effects of reduced O&M spending will begin to degrade the safety and reliability of AIC's electric distribution system in the future.

Staff also proposes revisions to the fifth paragraph on page 59 of the PO as follows:

> In light of the foregoing, the Commission will utilize the average of AIC's O&M expenses for 2009, 2010, and 2011 to determine an appropriate test year amount of O&M expenses. Using the average of the three years results in a test year O&M expense level of $183,448,333, which can be rounded to $183,448,000. The Commission chose this method to address the specific issue of AIC's disproportionate O&M expense levels in the instant case. The Commission's intention is not to set a precedent for determination of appropriate O&M expense levels in future cases. Rather

than reward AIC for treating electric O&M expenditures as a discretionary expense through inflated test year O&M levels, in future rate cases the Commission will reward AIC for demonstrating a commitment to making necessary expenditures to allow the provision of safe, reliable service between rate cases.

VI. COST OF CAPITAL/RATE OF RETURN

C. Common Equity Balance

Staff takes exception to the PO conclusion that AIC's common equity balance should be reduced by purchase accounting adjustments. (PO, p. 71) AIC's common equity balance should be reduced by the goodwill balance. The Company's purchase accounting adjustment overstates the common equity balance for ratemaking purposes for the following reasons. First, the purchase accounting adjustment includes accounts unrelated to purchase accounting. Second, the purchase accounting adjustment increased in 2011, even though straight-line amortization indicates the balance should decrease ratably until the unamortized balance reaches zero. Finally, the 2007 AmerenIP rate case purchase accounting adjustment reflected a $63 million reduction to retained earnings that Ameren omitted from this case. (See Staff Rev. IB, pp. 50-53 and Staff RB, pp. 31-33)

Furthermore, contrary to the PO's implication, neither the Company's characterization of Account 114 nor the intertwining of purchase accounting and goodwill are inconsistent with Staff's recommendation to reduce the common equity balance by the goodwill balance. Staff does not oppose the accounting treatment authorized in Docket No. 04-0294. Rather, 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. (Staff RB, p. 32) To the extent the Company overstates its common equity balance by including an inflated purchase accounting adjustment to reduce the goodwill balance, the Company would earn a return on capital that is improper for ratemaking purposes. Moreover, Staff's recommendation is consistent with recently enacted legislation, which requires the Commission to approve performance-based formula rates that exclude goodwill from the utility's capital structure. (See Section 16-108.5(c)(2) of the Act, added pursuant to Public Act 97-0616) Although performance-based rates authorized by P.A. 97-0616 represent a new regulatory regime, the mandatory adjustment to common equity is goodwill rather than purchase accounting, which would cause AIC to have different capital structures for gas delivery services versus electric delivery services in future ratemaking proceedings.

Finally, Staff respectfully requests that the Commission strike language provided in the second paragraph of the Commission Conclusion on page 70 of the PO, which suggests that communication between Staff and AIC concerning the purchase accounting adjustment in the instant case was insufficient. While the occurrence of discussions between Staff and other persons are disclosed through ex-parte reports, which show that Staff and AIC discussed purchase accounting adjustments on multiple occasions, the content of settlement discussions are privileged and are not a matter of record. The record in this proceeding does not reflect the extent to which there were discussions between Staff and AIC on this issue. As such, the admonition is inappropriate because it reaches outside the record and assumes facts not of record. Further, it does not improve the clarity or rationale behind the Commission's conclusions regarding AIC's common equity balance but only serves to unjustly criticize.

Therefore, Staff respectfully requests that the Commission revise pages 70-71 of the PO, as shown below, to adopt Staff's recommended common equity balance, which subtracts goodwill instead of the Company's proposed purchase accounting adjustments. Furthermore, regardless of whether the Commission adopts Staff's recommended common equity balance, Staff requests the Commission strike the second paragraph of the Commission Conclusion presented on page 70 of the PO regarding communication between Staff and AIC on this issue.

3. Commission Conclusion

Staff recommends removing from the common equity balance the balance of goodwill on AIC's books. AIC argues that Staff's proposal reduces the common equity balance by too much because a portion of the goodwill balance on its books is offset by purchase accounting transactions.

~~As an initial matter, the Commission observes that this issue involves rather technical accounting issues that are neither easily explained nor understood. While the Commission does not fault either AIC or Staff for their efforts on a difficult issue, it seems to the Commission that thorough communication could have resulted in a mutual understanding between the parties. Unfortunately, this did not happen and the Commission is forced to resolve this difficult issue.~~

In direct testimony, Ms. Phipps proposed removing $411 million of goodwill from AIC's common equity balance. She notes that AIC proposed to use the September 30, 2009, balance of the purchase accounting adjustments reflected in Account 114-Electric Plant Acquisition Adjustments. She asserts that that balance reflects bookkeeping entries to Account 114 that do not affect AIC's common equity balance.

In rebuttal testimony, Mr. Stafford states that the netting of purchase accounting adjustments against Account 114 goodwill is required to be reported annually on AIC's Form 21 ILCC as a difference between AIC's Form 1 and Form 21 ILCC balance sheets. He claims that AIC's purchase accounting adjustments are verified by an accounting officer in the filing of Form 21 ILCC, and verified separately by an accounting officer at the time of rate case filings. Mr. Stafford also asserts that the purchase accounting adjustments are intertwined with goodwill. The Commission also notes that in Docket No. 04-0294, the Commission found that:

> The Commission also adopts the recommendation of Staff witness Ms. Pearce that the impact of push down accounting should be collapsed into account 114, plant acquisition adjustments, for all Illinois regulatory purposes, such as reporting in Form 21 ILCC. (Order at 33-34)

In rebuttal testimony, Ms. Phipps states that goodwill is a direct result of purchase accounting. She does not, however, directly respond to Mr. Stafford's arguments about Account 114 nor attempt to refute his arguments about the intertwining of purchase accounting and goodwill because, as the Commission understands it, Staff agrees conceptually with AIC's arguments regarding Account 114 and the intertwining of purchase accounting and goodwill. Nevertheless, Staff opposes reducing the common equity balance by an amount less than goodwill given the Company has not explained why the purchase accounting adjustments include accounts unrelated to purchase accounting and which do not decrease ratably until they reach zero. The Company also did not offer a persuasive explanation for why the $63 million retained earnings adjustment that appeared in AIC's 2007 rate case does not appear in the instant case. The Company's inadequate explanation for those anomalies made it impossible for Staff to verify the Company's balance of goodwill, less purchase accounting adjustments.

~~As previously discussed, the Commission understands purchase accounting to be technical and complex. It appears to the Commission that while easy to understand, Staff's recommendation on this issue is overly simplistic.~~ Thus, the Commission concludes that while the record supports AIC's position that purchase accounting and goodwill are intertwined, due to unexplained variations in the accounts and the amounts amortized that Staff identified to which AIC could not adequately explain, t~~. It is clear to the Commission that Staff's recommendation does not reflect this fact. T~~he record does not support~~s~~ AIC's position that the common equity balance should be reduced by $350,833,351. ~~This adjustment reflects a netting of accounting adjustments against the goodwill balance which is supported by the record of this proceeding. Substituting this value into Staff Ex. 24.0, Schedule 24.03 in place of the value used by Staff, $411,000,000, produces an average common equity balance of $1,889,251,000, which~~ Thus, the Commission believes that Staff's recommended common equity balance should be used for purposes of setting rates in this proceeding.

*　　*　　*　　*　　*

F. Cost of Long-Term Debt

Technical correction for PO, p. 87 – "7.93%" should be "7.39%," as shown below:

In its Reply Brief, Staff contends that AIC errs when it states that 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. Staff asserts that it set the coupon rate for the remaining $50 million of AmerenIP's October 2008 bonds equals to the ~~7.93%~~7.39% embedded cost of long-term debt.

G. Cost of Common Equity

7. Commission Conclusion

a. DCF

The PO concludes that it is appropriate to average the multi-stage DCF results of Staff, IIEC and the GCI. However, the table on page 141 erroneously contains a 9.60% estimate from IIEC for Gas instead of IIEC's 8.43% multi-stage DCF estimate. Hence, the PO must be corrected to reflect the proper cost of common equity for the Gas operations of AIC.

When using the proper IIEC multi-stage DCF estimate of 8.43% to compute the average multi-stage DCF estimate, the result becomes 8.65%, as shown in the table below.

DCF Results

	Gas
Staff	8.63%
IIEC	8.43%
GCI	8.90%
Average	**8.65%**

While Staff has advocated using spot prices for estimating the cost of equity in this proceeding, the ROE approved in the PO also incorporated the multi-stage DCF analyses of IIEC and AG/CUB, which both relied on average stock prices. However, Staff agrees with the PO's conclusion that the timing of stock prices is not a significant issue in this case and, therefore, does not object to the inclusion of the multi-stage DCF results of IIEC and AG/CUB.

In addition, the PO did not adopt Staff's proposed financial risk adjustment to reflect the difference in financial risk between AIC and the electric and gas samples. Since the ROE estimates adopted in the PO also reflect the analyses of IIEC and CUB, the impact of Staff's proposed financial risk adjustment on the overall cost of capital is minimal. Hence, Staff will not argue to reflect the proposed financial risk adjustment in the PO ROE.

f. Approved ROE

In estimating the ROE that should be authorized in this proceeding, the PO gave equal weight to the multi-stage DCF analyses of Staff, IIEC and AG/CUB and averaged that result with Staff's CAPM estimate. When using the proper multi-stage DCF estimate of 8.65% for Gas, the estimated ROE becomes 8.98%. After deducting the 16 basis points to reflect the reduced risk resulting from the uncollectibles riders, the final ROE for the Gas operations is 8.82%, as shown below.

DCF Results

	Gas
Staff	8.63%
IIEC	8.43%
AG/CUB	8.90%
Average	8.65%
CAPM	9.31%
Estimated ROE	8.98%
Risk Adjustment	0.16%
Approved ROE	**8.82%**

When the 8.82% Gas ROE is multiplied by the common equity ratio authorized in the PO, the weighted cost of equity becomes 4.699%, which changes the authorized return on rate base to 8.205%.

Authorized Rates of Return on Rate Base
AIC Gas Delivery Services

Capital Component	Balance ($)	Proportion	Cost (%)	Weighted Cost (%)
Short-term Debt	6,473,198	0.183%	2.24	0.004
Long-term Debt	1,591,564,788	44.878%	7.44	3.339
Preferred Stock	59,158,692	1.668%	4.98	0.083
Common Equity	1,889,251,000	53.272%	8.82	4.699
Bank Facility Fees				0.080
Total	3,546,447,678	100.000%		**8.205**

Accordingly, Staff recommends the following changes to the PO:

****

Recommended Language (PO, p. 141):

DCF Results

	Electric	Gas
Staff	9.55%	8.63%
IIEC	9.73%	~~9.60%~~ 8.43%
GCI	9.56%	8.90%
Average	**9.61%**	~~**9.04%**~~ **8.65%**

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Recommended Language (PO, p. 145):

DCF Results

	Electric	Gas
Staff	9.55%	8.63%
IIEC	9.73%	~~9.60%~~

AG/CUB	9.56%	8.43% 8.90%
Average	9.61%	**~~9.04%~~** 8.65%
CAPM	10.32%	9.31%
Estimated ROE	9.97%	~~9.18%~~ 8.98%
Risk Adjustment	0.16%	0.16%
Approved ROE	**9.80%**	**~~9.01%~~ 8.82%**

H. Authorized Rates of Return on Rate Base

Having reached conclusions regarding all contested aspects of ROR, the Commission finds that AIC's electric operations should be authorized a return on rate base of 8.727% and that its gas operations should be authorized a return on rate base of ~~8.306~~ 8.205%. The table below illustrates how the returns on rate base were derived.

Authorized Rates of Return on Rate Base

AIC Electric Delivery Services

Capital Component	Balance ($)	Proportion	Cost (%)	Weighted Cost (%)
Short-term Debt	6,473,198	0.183%	2.24	0.004
Long-term Debt	1,591,564,788	44.878%	7.44	3.339
Preferred Stock	59,158,692	1.668%	4.98	0.083
Common Equity	1,889,251,000	53.272%	9.80	5.221
Bank Facility Fees				0.080
Total	3,546,447,678	100.000%		**8.727**

AIC Gas Delivery Services

Capital Component	Balance ($)	Proportion	Cost (%)	Weighted Cost (%)
Short-term Debt	6,473,198	0.183%	2.24	0.004
Long-term Debt	1,591,564,788	44.878%	7.44	3.339

Preferred Stock	59,158,692	1.668%	4.98	0.083
Common Equity	1,889,251,000	53.272%	~~9.01~~ 8.82	~~4.800~~ 4.699
Bank Facility Fees				0.080
Total	3,546,447,678	100.000%		~~**8.306**~~ **8.205**

****

VII. COST OF SERVICE

B. Contested Issues

1. Use of AIC's Electric and Gas COSS

Staff takes exception to the PO's conclusion that the Company's rebuttal Rate Zone ECOSSs should provide the foundation for ratemaking in this case. That position, if ratified by the Commission, sets a dangerous precedent by accepting the results of a flawed review process in which the Company prevented a rigorous review of its ECOSS from taking place.

The problem with the PO's conclusion on this issue begins with the statement in the Commission Conclusion on p. 154 of the Order:

> While it is clear that the gas and electric COSS offered in AIC's rebuttal testimony are an improvement over the COSS submitted with the initial tariff filing, the Commission can not conclude that they are without flaws. But unfortunately, no COSS is without flaws.

The PO's statement that "no COSS is without flaws" is certainly true. However, describing the failures of Ameren's ECOSSs in this docket as simply characteristic of all such studies fails to recognize the particular problem with the Ameren studies in this case. That problem is Ameren's failure to present a serious set of Rate Zone ECOSSs until the rebuttal stage of this case which, in turn, prevented Staff from performing a meaningful review and analysis of those studies.

Thus, the fact that the Company's rebuttal ECOSSs have flaws is not the issue. Rather, it is that Ameren did not make a serious effort to present an ECOSS in compliance with the Order in Docket No. 10-0517 until the rebuttal stage of the case. (Staff Ex. 30.0, pp. 4-5) This left the parties with only the short time afforded by rebuttal to review and analyze the reasonableness of those studies. (*Id*., pp. 5-6) That is what makes Ameren's proposals in this case unacceptable.

The PO also states on pages 154-155:

> The problem with Staff's approach, however, is given that AIC apparently no longer records costs by Rate Zone (or at least has a gap in such records), it is not clear whether future COSS which will be similarly based on various allocators will be any more acceptable to Staff. Conceivably, the Commission could be faced with arguments favoring across-the-board rate revisions in AIC's next several rate cases. Going down this path is not consistent with the promotion of cost-based rates.

This conclusion is problematic as well because it makes an inaccurate assumption about Staff's position on this issue. Staff's intent was not to impose a set of conditions on the Company that it would be unable to meet in future rate cases. Rather, Staff sought to point out the fundamental deficiency in the Company's case on this key ratemaking issue. Staff's focus throughout the case was on Ameren's failure to present Rate Zone ECOSSs until the rebuttal stage of the case and how this shortcoming undermined Staff's review. (Staff Ex. 30.0, pp. 4-6) Staff's only requirement for the future is that Ameren present in a timely manner ECOSSs that provide a reasonable assessment of the cost to serve Ameren customers in each of the three rate zones. If Ameren is able to satisfy these criteria, then Staff will be prepared to recommend that rates be designed on a cost basis.

Whether the Company presents reasonable Rate Zone ECOSSs in future proceedings remains to be seen. However, if the Company's studies fall short, Staff will be prepared to object again if Ameren decides not to provide requisite information in a timely manner. If that happens, it will not be because of any unreasonable standard imposed by Staff but rather due to events such as in this case where Ameren's decision making impedes the regulatory process.

A further problem is that acceptance of the Company's Rate Zone ECOSSs here sets a bad precedent going forward. If Ameren is allowed to utilize this approach in this proceeding, it and other utilities will have the incentive to present substandard filings in future cases. Consequently, they may seek to get the rate case clock started and then fill in the details as the case proceeds.

The PO does find much to criticize about Ameren's approach in this case. The PO states that "[w]hen the legacy utilities initiated Docket No. 10-0517, it is not plausible that they truly felt they had no obligation to obtain the Commission's permission to submit a single gas COSS and a single electric COSS, as AIC suggests. (PO, p. 155) The PO also states that "AIC's choice of action leads one to question AIC's judgment and perhaps its motives." (*Id.*) Staff agrees, and submits that it is essential to send a clear message to the Company that actions like this should not be tolerated. Staff's proposed across-the-board rate design provides the most reasonable solution to the problems that Ameren created.

Based on the forgoing discussion, Staff proposes that the Commission Conclusion on pp. 154-156 of the PO be revised as follows:

f. Commission Conclusion

With regard to the gas COSS, the Commission understands that Staff and the other parties are in general agreement that AIC's gas COSS presented in its rebuttal testimony are sufficient for purposes of this proceeding. With regard to the electric COSS, no such general agreement exists among all parties and the Commission is presented with either adopting AIC's electric COSS from its rebuttal testimony or adopting Staff's proposal to change rates by an equal across-the-board percentage. Neither option is attractive.

As discussed above, in Docket No. 10-0517, the legacy utilities sought permission to do what AIC eventually did when it filed tariffs leading to the initiation of this rate case: AIC filed a single gas COSS and a single electric COSS for all of the Rate Zones combined. AIC did so even before receiving permission to do so in Docket No. 10-0517. To remedy this problem, the Administrative Law Judges issued on February 23, 2011 a deficiency letter to AIC directing it to submit the required gas and electric COSS for each Rate Zone. The Commission entered an Order in Docket No. 10-0517 on March 15, 2011 consistent with the deficiency letter. AIC complied with the deficiency letter on March 24, 2011. However, the studies provided were clearly deficient as demonstrated by Staff. It was not until rebuttal that the Company prepared a set of Rate Zone ECOSSs that sought to allocate the cost of service in a reasonable manner. ~~The Commission understands that AIC had ceased tracking individual costs by Rate Zone prior to the resolution of Docket No. 10-0517 and therefore provided separate COSS by Rate Zone based on various allocators. Using such allocators is consistent with what the legacy utilities had proposed in Docket No. 10-0517. While it is clear that the gas and electric COSS offered in AIC's rebuttal testimony are an improvement over the COSS submitted with the initial tariff filing, the Commission can not conclude that they are without flaws. But unfortunately, no COSS is without flaws.~~

Rather than use the less than perfect electric COSS offered by AIC, Staff urges the Commission to adopt equal percentage across-the-board revisions to rates. Staff acknowledges that rates based on cost of service are preferable but finds AIC's electric COSS too flawed to use. As Staff notes, Ameren did not make a serious effort to present an ECOSS in compliance with the Docket No. 10-0517 Order until the rebuttal stage of the case. This left the parties with only the short time afforded by rebuttal to review and analyze the reasonableness of those studies. It is this fact that makes Ameren’s proposals in this case unacceptable. ~~The problem with Staff's approach, however, is given that AIC apparently no longer records costs by Rate Zone (or at least has a gap in such records), it is not clear whether future COSS which will be similarly based on various allocators will be any more acceptable to Staff. Conceivably, the Commission could be faced with arguments favoring across-the-board rate revisions in AIC's next several rate cases. Going down this path is not consistent with the promotion of cost-based rates.~~

While the Commission has a longstanding commitment of basing rates on costs, it shares Staff’s concerns about AIC's approach in this case. ~~gas and electric COSS offered in its rebuttal testimony are not perfect, they are the least objectionable alternative for establishing the cost of serving each rate class. Staff's method for addressing electric cost assignment creates or exacerbates inequities among the rate classes and prolongs movement to cost-based rates. Accordingly, the Commission~~

~~adopts AIC's gas and electric COSS as presented in its rebuttal testimony for purposes of setting rates in this proceeding.~~

~~But the Commission's frustration with this issue does not end here.~~ When the legacy utilities initiated Docket No. 10-0517, it is not plausible that they truly felt they had no obligation to obtain the Commission's permission to submit a single gas COSS and a single electric COSS, as AIC suggests. Otherwise there would not have been any reason to include such a request in its petition. But rather than responsibly wait a few weeks for the conclusion of Docket No. 10-0517, AIC apparently ceased recording costs by Rate Zone and chose to file its new tariffs assuming it would receive the relief it requested. To be clear, a utility may file a rate case at the time of its choosing. But at the same time, AIC's choice of action leads one to question AIC's judgment and perhaps its motives. By taking the action it did, AIC effectively obtained in this regard what the Commission found it should not have.

In this rate proceeding, despite the circumstances surrounding the development of AIC's final COSS, the Commission has concluded that the least objectionable alternative on this issue is ~~AIC's~~ Staff's position. Therefore, the Commission accepts Staff's across-the-board, equal percentage approach to ratemaking in this case. That is not the Commission's only conclusion on this issue. The Commission notes that in ~~In~~ developing the gas and electric COSS, the record suggests that AIC witnesses Althoff and Schonhoff spent considerable time, with the help of Management Applications Consulting ("MAC"). They and others within AIC's employ (directly and indirectly) will likely spend considerable time in future rate proceedings on the issue of COSS. Until delivery service rates among the Rate Zones are the same or sufficiently close to consolidate, in each of those proceedings AIC will use allocators rather than actual costs to determine the COSS for each Rate Zone, effectively circumventing the relevant conclusion in Docket No. 10-0517. AIC's choices must not be without consequences and as the Commission observed in its conclusion on the COSS in Docket No. 10-0517, if AIC already implemented its proposals, it did so at its own risk and expense. (Order at 22) Collectively, the record reflects that AIC spent at least approximately $67,200 compensating Ms. Althoff, Mr. Schonhoff, and MAC. (See Ameren Exs. 38.0 and 54.0)[1] While the AIC witnesses spent time on other issues, the minimal information provided on Ameren Ex. 54.0 makes it impossible to allocate their compensation among the areas of their testimony. The Commission finds that it is appropriate to deduct from AIC's operating expenses the compensation paid to Ms. Althoff, Mr. Schonhoff, and MAC for AIC's failure to abide by the requirement to file separate gas and electric COSS in its initial rate filing as required, and which has lead to a situation where future COSS will be based on allocators in violation of the Order in Docket No. 10-0517. Within the scope of this rate proceeding, this amount is insignificant but under the circumstances it is the best the record can support concerning the imposition of consequences. The Commission recognizes that AIC has not sought to include in what is typically considered rate case expense under Section 285.3085 of Part 285 the compensation

[1] The Commission recognizes that AIC considers the individual dollar amounts paid to each witness and MAC confidential and proprietary. The Commission, however, finds that public use of the combined total is not unreasonable.

paid to Ms. Althoff and Mr. Schonhoff. But again, under the circumstances, the Commission finds that it is appropriate to make this adjustment to AIC's operating expenses. Moreover, given the ongoing nature of AIC's decision to disregard the requirement to submit separate electric and gas COSS for each Rate Zone, until delivery service rates are consolidated across Rate Zones, an adjustment shall be considered in future AIC rate proceedings disallowing expenses associated with the preparation, modification, and/or defense of the gas and electric COSS.

IX. RATE DESIGN

C. Contested Electric Issues

1. Treatment of PURA Tax Expense

a. Phase-in of PURA Tax Expense

The PO's support for Ameren's proposed phase-in to full recovery of distribution taxes from each rate class is ill-advised and should be rejected by the Commission. In justifying its conclusion, the PO notes that "… in AIC's last case, the Commission rejected AIC's argument that PURA tax charges should be excluded from any rate moderation to transition to full cost recovery in rates." (PO, p. 198) The PO also states that "[t]he Commission does not believe sufficient time has passed that all customer classes should pay the same cents per kWh PURA tax rate at the conclusion of this proceeding, and believe a gradual transition to full cost recovery still seems appropriate." (Id.) The PO then concludes that "AIC's phase-in plan provides the proper balance between movement to full cost recovery and mitigation of bill impacts, while giving consideration to rate gradualism." (Id.)

The problem with this conclusion is that it relies too heavily on the arguments and conclusions in AIC's previous docket and fails to consider the evidence in this case which supports the position of both Staff and the AG for full recovery of the tax on an equal per-kWh basis at the conclusion of this case.

The most significant problem with the PO's conclusion is the concern expressed about bill impacts that would arise from immediate movement to full cost recovery from all classes. Staff has shown conclusively that this would not produce undue impacts for large customers on the system despite the PO's contrary conclusion.

It is true that Staff's proposal to recover distribution taxes through a single per-kWh charge to all ratepayers would disproportionately impact large customers on a percentage basis, producing delivery service revenue increases as high as 47.44% for the Rate Zone II DS-4 class because of their failure to pay their fair share in the past. (Staff Ex. 14.0, p. 20) While these percentage increases appear to suggest that Staff's proposal unreasonably burdens the DS-4 class, closer inspection reveals that not to be the case. First, even with 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 DS-4 customers in Rate Zone III would pay .5161 cents per kWh on average. (Id., 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) for delivery service even before the higher rates went into effect as the result of the Final Order for 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. (Staff Ex. 14.0, p. 21)

There is further good reason to move to full recovery of distribution taxes through an equal per-kWh charge in this docket. It should be remembered that the change to an assessment based on usage resulted from passage of the 1997 Amendatory Act (35

ILCS 620/1a, P. 90-561, eff. 1-1-98). 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. 14.0, p. 22)

Finally, Staff's approach would align the recovery of distribution taxes with cost causation and make the Ameren approach consistent with the methodology the Commission approved in ComEd's last rate case, Docket No. 10-0467.

Thus, the Commission conclusion to adopt a phase-in approach to recovery of distribution taxes on an equal per-kWh approach should be rejected in favor of full movement to such an approach at the conclusion of this case.

Consistent with the forgoing arguments, the Commission Conclusion on p. 198 of the PO should be revised as follows:

vi. Commission Conclusion

The Commission first notes that all parties appear to agree that there is present in the current DS-4 PURA tax a subsidy to some customers which should be eliminated; however, the parties disagree as to when this should happen. AIC has proposed a three-year phase-out of the subsidy, while Staff and GCI suggest the subsidy should be eliminated all at once. IIEC suggests that AIC's proposal engenders a greater need for rate moderation, which is ignored by the parties. ~~The Commission notes that out of concern for bill impacts from the change in how this tax was allocated to customer classes, in AIC's last case, the Commission rejected AIC's argument that PURA tax charges should be excluded from any rate moderation to transition to full cost recovery in rates.~~ The Commission <u>understands that in Ameren's previous case it limited the movement to full recovery of PURA costs through an equal per-kWh charge for all customers to address bill impacts. However, the Commission further understands that this unequal recovery amounts to a subsidy of large customers at the expense of other customers on the system. Given this inequity and the fact that Staff has demonstrated that movement to full recovery of these costs under a per kWh charge applicable to all would not impose an unreasonable burden, the Commission believes that it is time to address this problem now, rather than later</u>~~does not believe sufficient time has passed that all customer classes should pay the same cents per kWh PURA tax rate at the~~

~~conclusion of this proceeding, and believe a gradual transition to full cost recovery still seems appropriate~~.

The Commission believes the ~~AIC's phase-in~~ plan to move to full recovery of PURA costs through an equal per-kWh charge for all customers provides the proper solution to this longstanding problem~~balance between movement to full cost recovery and mitigation of bill impacts, while giving consideration to rate gradualism~~. The Commission believes that large customers have already derived considerable benefits by not paying their full share of these costs and it would be unfair to other customers to allow this situation to continue any longer. ~~does not believe that customers will be confused by the annual adjustment for this particular expense and notes that it has approved annual adjustments in AIC's BGS pricing to eliminate current subsidies. The Commission approves AIC's electric rate mitigation and phase-in plan.~~

b. Exclusion of PURA Tax Expense from Rate Base

Technical corrections for PO, pp. 199-200 as shown below:

iii. Commission Conclusion

The Commission notes that the party's arguments on this issue are simply whether the Commission should continue to direct AIC to collect the PURA tax as a separate item on the bills and exclude the tax from ~~rate~~ base rates, or whether to return the tax to ~~rate~~ base rates. The Commission notes that AIC appears to express ambivalence on this issue, while IIEC urges the Commission to return the PURA tax to ~~rate~~ base rates, indicating that the Commission erred in AIC's last rate case where the Commission found that this tax was imposed on the customers, rather than on AIC.

The Commission is of the opinion that the exclusion of the PURA tax from ~~rate~~ base rates and its collection through AIC's Tax Additions Tariff is proper, and will not adopt any change on this issue for this docket.

X. PROPOSED RIDERS/TARIFF CHANGES

B. Contested Gas Issues

1. Rider TBS – Transportation Banking Service

The PO errs in the placement of language describing Staff's position regarding AIC's proposed addition of an Unsubscribed Bank Capacity Charge ("UBCC") to Rider

S. Further, the PO fails to include the formula to calculate the UBCC and language providing for an annual reconciliation, as recommended by Staff and agreed to by AIC, and to make an explicit finding regarding the UBCC.

b. Staff Position

Staff recommends inserting the following language at page 243 of the PO:

Staff also disagrees with AIC's claim that other utilities require fall and spring cycling targets, noting that Nicor, Peoples, and North Shore all have a single fall injection target. Staff suggests the Commission specifically rejected a spring target in Peoples and North Shores 2007 rate case, Docket Nos. 07-0241 and 07-0242 (Cons).

Staff notes that AIC proposes to recover the costs associated with unsubscribed bank capacity from sales customers through a charge called the UBCC in Rider S, as AIC states that a necessary element of the unbundled balancing service is an annual cost allocation to Rider T Customers of only the amount of bank capacity for which they subscribe. AIC contends these costs should be borne by sales customers because they are "the beneficiaries of the unsubscribed bank capacity."

Staff agrees that a cost mechanism is necessary to support this level of bank flexibility for transportation customers, and notes that the Commission has approved a similar mechanism in Nicor's Rider 5 – Storage Service Cost Recovery ("SSCR"). Staff therefore recommends that the Commission approve the UBCC. Further, if AIC's proposed addition of the UBCC to Rider S is allowed by the Commission, Staff recommends that the formula to calculate the UBCC and language providing for an annual reconciliation be included in Rider S. Staff also notes that AIC agrees with this language.

> Unsubscribed Bank Capacity Charge
>
> Effective on and after May 1, 2012, the cost of any unsubscribed bank capacity allocated to Rider TBS in the previous rate proceeding will be subject to monthly cost recovery from Rider S Customers on a per Therm basis. Such charge shall be based on the annual estimated Rider S Therms and shall be determined and filed at least once annually with the Commission as an informational filing. Such informational filing along with accompanying supporting information shall be filed with the Commission no later than the 20th of the month preceding the effective date of the new Unsubscribed Bank Capacity Charge. Annually, this filing shall occur during April to become effective May 1. An informational filing with supporting information filed after the 20th of the month, but prior to the effective date, shall be accepted only if

it corrects an error or errors from a timely filed informational filing for the same effective date.

The Unsubscribed Bank Capacity Charge shall be determined in accordance with the following formula:

UBCC = (A – (DR+MR) + RA) / T

Where:

UBCC = The Unsubscribed Bank Capacity Charge in Cents per Therm

A = The dollars allocated to Rider TBS in the most recent rate proceeding

DR = Projected revenues from Daily Balanced customer banking service charges for the 12-month period beginning May 1of the current year

MR = Projected revenues from Monthly Balanced customer banking service charges for the 12-month period beginning May 1of the current year

RA = The amount over/under recovered during the immediately preceding 12-month period ending April 30

T = The number of Therms of forecasted usage for the Rider S customers for the months remaining in the period from May 1 to April 30 in which the charge is to be applied.

The applicable Unsubscribed Bank Capacity Charge shall be included in the monthly PGA report submission and shall be applied along with other applicable Rider PGA and Rider S charges billed for service rendered during the Effective Month.

Annually, beginning in 2013, the Company shall provide a reconciliation to the Manager of Accounting by July 1 that compares UBCC revenue for the prior May through April recovery period with the costs that were to be recovered during the period. If the reconciliation adjustment results in a change of 0.01 cents per therm or greater to the current rate filed effective May 1, the Company shall make an informational filing by July 20th to set a new UBCC rate, effective August 1, for the remaining nine months of the current recovery period.

d. Commission Conclusion

The PO errs in its conclusion regarding the level of operational comparability and was diverted by a legal argument from Staff's Reply Brief regarding the Commission's directive. "During the course of this proceeding, it appears to the Commission that Staff has proposed certain changes or additions to Rider TBS, based on Staff's belief, as expressed in Staff's Reply Brief, that the Commission had settled the question of whether there were operational differences between AIC and Nicor." (PO, p. 247)

The passage referred to by the PO comes from Staff's RB:

> 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.
> (Staff RB, p. 77)

However, this belief by Staff that the Commission has already settled this matter does not mean that the record does not support the *sufficient* comparability. Even if the burden of proof falls on Staff, the record in this case demonstrates that these systems are similar. (Staff IB, pp. 153-154) Moreover, the Nicor Method uses the operational characteristics of Ameren's specific system to determine the proportional level of storage and deliverability for that system, not Nicor's capabilities. The Commission has determined that this method of determining proportionality is appropriate for multiple utilities with various operational differences in that it has been applied to Peoples Gas and North Shore as well as Nicor Gas using the specific characteristics of each utility. In fact, the PO in the current Peoples Gas North Shore case (Docket No. 11-

02080/0281 Cons.) also approves this method for determining the Critical Day ("CD") rights of transportation customers and the applicable cost methodology. Staff urges that the Commission make its decision in this docket consistent with its decisions in Nicor and Peoples Gas and North Shore.

Of course, Ameren's systems are different. (Staff IB, pp. 153-154) The question is not whether Ameren's systems are different, but rather whether hey are sufficiently different or sufficiently similar to apply the methods here.

Staff is willing to concede for purposes of this docket the issue of the level of total bank allocated at its current level while requesting that the CD withdrawal rights and bank limit be linked as described in testimony and briefs. (Staff IB, pp. 159-160)

The finding in the PO regarding the bank limit will not be challenged. The finding regarding the CD rights must be overturned because the tariff as written will give all transportation customers full current CD rights with the purchase of a single day of day's worth of Bank Limit ("BL"). The combination of the single charge and the fixed CD rights leaves a hole that allows transportation customers excessive withdrawal rights relative to what they pay. Staff believes that this tariff will result in daily-balanced transportation customers selecting little bank as they can avoid most storage charges without seeing any reduction in CD rights over current levels. Staff believes that this is an unintended result of the two decisions regarding the so-called "Equitable Method" and the bank limit / CD linkage.

The PO's concern about the affect of the "Equitable Method" would have on customers, especially monthly balanced customers, is warranted. "The Commission is concerned with the suggestion that AIC's method may result in negative impacts, such as to cause some customers to select no bank so as to avoid high initial bank charges."

(PO, p. 248) Thus, while it is necessary to link the CD rights to the bank limit, it is not required that they be expanded. Since the Banking Service Limit ("BSL") remains fixed at 5.48 Bcf, the level of CD rights under a linked (but less than proportional) CD will be equal or less than they are currently, leaving the Sales customers with no increased burden relative to Ameren's proposal and providing no increased threat to system integrity. As long as Transportation customers as a group take 91% or less of their current level, which Staff believes is very likely, then the CD needs will *decrease*.[2]

Both Ameren and Staff believe that the bank subscription levels will decrease. (Staff RB, p. 80-81) Therefore, if the system total BSL is set at 5.48 Bcf and the CD rights are set at 2.2% of the customer's BL, the CD rights would go *down* from their current levels. Staff believes that daily-balanced transportation customers will likely select a level of bank that gives them no more than the same level of rights they currently have. Monthly-balanced customers would face reduced CD rights but are unlikely to be severely hampered by this. (Staff Ex.13.0, pp. 18, 23) Those customers that require a higher level of CD rights could then subscribe to more than 10 days of bank by requesting a portion of the unsubscribed BLS. (Staff IB, p. 159)

In the alternative that the Commission does not desire to reduce monthly-balanced customers' CD rights, the Commission could leave those customers with current rights and single charge based on BL (with a minimum of 5 days) and institute the linked CD rights only for daily-balanced customers.

If the Commission uses Ameren's version of the Equitable Method, Staff recommends that the amounts be based on Daily Confirmed Nomination ("DCN")

[2] "A subscription of 4.97 Bcf would match Ameren's current commitments." (Ameren response to Staff DR DAS 5.04b - Staff Group Cross Ex. 12D, pp. 1-2); thus 4.97/5.48 equals 91%.

instead of Maximum Daily Contract Quantity ("MDCQ") because the tariff only allows the customers to withdraw 20% of DCN which is historically 43% of 20% of MDCQ. (Staff IB, pp. 166-168)

Staff therefore recommends the following changes to the language of the PO at page 246-248:

d. Commission Conclusion

The Commission notes that in AIC's last rate case, the Commission required AIC to submit a tariff implementing the Nicor method for determining bank size, however, the Commission further allowed AIC to offer an alternative, preserving the flexibility to determine the most appropriate banking provisions under Rider T for AIC. In accordance with the Order, the Commission recognizes that AIC held workshops to gather input for its proposed tariff. Reflecting concerns AIC addressed in the workshops, and as authorized by the Commission in Docket Nos. 09-0306 et al. (Cons.), AIC submitted alternative tariffs setting forth unbundled, subscribable banking service, identified as Rider TBS. AIC's proposal also provides for the allocation of on-system storage costs to Rider T customers, unsubscribed bank cost recovery language in Rider S, an election process that allows Rider T customers to subscribe to their preferred bank size up to a 15 day times MDCQ limit, and other implementation and service management provisions.

The Commission notes that Staff has proposed various other modifications to AIC's proposed Rider TBS by replacing certain portions of the tariff with Nicor banking provisions. It appears to the Commission that Staff proposes to modify various portions of the tariff including the MDCQ, system peak day deliverability, to adopt the Nicor BSL, and a single fall injection target. The Commission notes that AIC argues against many of Staff's recommended changes by asserting that there are significant operational differences between AIC's gas distribution system and that of Nicor.

During the course of this proceeding, it appears to the Commission that Staff has proposed certain changes or additions to Rider TBS, based on Staff's belief, as expressed in Staff's Reply Brief, that the Commission had settled the question of whether there were <u>significant</u> operational differences between AIC and Nicor. While Staff asserts that the Commission had determined there were no <u>significant</u> operational differences between AIC and Nicor, the Commission disagrees with that assessment. The Commission notes that in Docket Nos. 09-0306 et al. (Cons.), under the section of the Order regarding this issue the Commission found as follows:

> As for the subject of the workshops, which should be open to all those interested, the Commission notes less agreement by the parties. While Staff proposes that specific methods employed by other Illinois gas

> utilities be considered and modified for use by AIU, AIU urges the Commission to refrain from limiting discussion in any way. The Commission finds merit in Staff's proposal since it concerns methods which it is familiar with and would promote consistency among the gas utilities operating in Illinois. Customers with facilities served by differing gas utilities are apt to find such consistency attractive. AIU's view, however, deserves consideration as well. <u>By directing that the workshop participants develop tariffs implementing the same banking provisions of Nicor, Peoples, and North Shore, the Commission fears that it would be making a decision before having all of the facts</u>. (Order at 283, emphasis added)

As it appears the Commission had not determined there were no operational differences between AIC and Nicor, the Commission finds the burden would be on Staff to support the changes it has proposed to Rider TBS. The Commission finds that Staff has not met that burden, and believes the evidence is clear that there are significant operational differences between AIC and Nicor's gas distribution systems.

The Commission also notes that it appears that AIC is proposing to recover 50% of its storage costs through a Deliverability Charge, and the other 50% through a Capacity Charge, applying what it calls the "Equitable Method." Staff suggests that this method would allocate a significant portion of costs to the first day of bank, which would result in negative impacts to customers. Staff argues in favor of the Nicor method for allocation of storage costs. IIEC also argues against AIC's use of the Equitable Method, and suggests instead calculating the appropriate storage costs and unbundled bank charges using a capacity allocation of storage costs. The Commission is concerned with the suggestion that AIC's method may result in negative impacts, such as to cause some customers to select no bank so as to avoid high initial bank charges. Based on the evidence presented, the Commission is of the opinion that the method endorsed by <u>Staff and</u> IIEC is more appropriate for determining storage costs.

The Commission recognizes that the dispute between Staff, AIC, and IIEC over transportation banking provisions is rooted in complex issues of gas storage operation, transportation customer behavior, and accounting. As a result, the Commission believes that it must exercise caution in picking and choosing among the various aspects of the parties' proposals. The Commission is particularly concerned that certain aspects of Staff's proposals would increase the rights of transport customers at the expense of sales customers, which the Commission feels it can not support based on the record in this proceeding. The Commission also finds that Staff has failed to demonstrate that there is sufficient operational comparability between AIC and Nicor that would provide a basis for applying many aspects of Nicor's tariffs to AIC. The Commission therefore finds the proposed <u>BSL of 5.48 Bcf in </u>Rider TBS is ~~and changes to Rider T tariffs proposed by AIC, except with regard to the Equitable Method discussed above, are~~ the more reasonable and should be approved<u>. However, to balance the decision about the Equitable Method with the BSL, the Commission will link the Rider TBS CD rights to 2.2% of each transportation customers' Bank Limit as proposed by Staff. The Commission believes that this will not cause the Sales</u>

customers to be at greater risk because the record indicates that transportation customers will likely subscribe to lower levels than they currently do. Therefore, Rider TBS will be implemented as proposed by AIC, except for the CD rights, Equitable Method and as outlined below regarding cashout provisions in both Rider TBS and Rider T which will mirror the current Rider T cashout provisions.

For the reasons indicated above to indicate approval AIC's proposed UBCC and the related language proposed by Staff, Staff recommends inserting the following language at page 248 of the PO:

> The Commission recognizes that the dispute between Staff, AIC, and IIEC over transportation banking provisions is rooted in complex issues of gas storage operation, transportation customer behavior, and accounting. As a result, the Commission believes that it must exercise caution in picking and choosing among the various aspects of the parties' proposals. The Commission is particularly concerned that certain aspects of Staff's proposals would increase the rights of transport customers at the expense of sales customers, which the Commission feels it can not support based on the record in this proceeding. The Commission also finds that Staff has failed to demonstrate that there is sufficient operational comparability between AIC and Nicor that would provide a basis for applying many aspects of Nicor's tariffs to AIC. The Commission therefore finds the proposed Rider TBS and changes to Rider T tariffs proposed by AIC, except with regard to the Equitable Method discussed above, are the more reasonable and should be approved. In tandem with Rider TBS, the Commission also approves the addition of the UBCC, as modified by Staff's proposed language changes, to Rider S.

2. Rider T – Cashout Provisions

b. Staff Position

The PO errs in the placement of language describing Staff's position regarding AIC's proposed addition of an Unsubscribed Bank Capacity Charge ("UBCC") to Rider S.

Staff recommends deleting the following paragraphs from pages 252 – 253 of the PO:

~~Staff notes that AIC proposes to recover the costs associated with unsubscribed bank capacity from sales customers through a charge called the UBCC in Rider S, as AIC states that a necessary element of the unbundled balancing service is an annual cost allocation to Rider T Customers of only the amount of bank capacity for which they subscribe. AIC contends these costs should be borne by sales customers because they are "the beneficiaries of the unsubscribed bank capacity."~~

~~Staff agrees that a cost mechanism is necessary to support this level of bank flexibility for transportation customers, and notes that the Commission has approved a similar mechanism in Nicor's Rider 5 – Storage Service Cost Recovery ("SSCR"). Staff therefore recommends that the Commission approve the UBCC. If AIC's proposed addition of the UBCC to Rider S is allowed by the Commission, Staff witness Jones recommends that a formula to calculate the UBCC and language providing for an annual reconciliation be included in Rider S, as shown in Staff Ex. 6.0, pp.12-14. Staff also notes that AIC agrees with this language.~~

XI. PROPOSED SMALL VOLUME TRANSPORTATION PROGRAM

A. AIC Position

B. Staff Position

C. CUB Position

D. RGS Position

The PO errs in describing the RGS position regarding Staff participation in the ORMD report. On cross-examination, Dr. Rearden indicated uncertainty regarding the approach the ORMD would take to develop the report from the Commission to the legislature. He did not know what would be in the report. However, Section 19-130 of the PUA plainly states that the ORMD "shall gather input from all interested parties as well as from other bureaus within the Commission." All Commission bureaus are Staff. The RGS' reply brief did not show uncertainty about Staff's participation, only the form of that participation. (RGS RB, at 11, citing to Tr. 617:10-618:5)

Therefore, the following language change to page 264 of the PO should be adopted by the Commission:

RGS further notes that no evidence has been presented by Staff of how the process for developing and drafting the ORMD report will work, and Staff witness Rearden acknowledged that he has no idea what the scope, content, or timing will be of the ORMD report~~, or whether Staff will even participate~~. Indeed, RGS notes that Dr. Rearden identified a further fundamental problem with reliance on the ORMD Report process – the date by which the ORMD Report is due is unclear even to Staff, and may not occur until July 2013. RGS suggests that in light of the scope of Section 19-130, it would not make sense to delay the workshop process or the filing of a tariff resulting from that workshop process when Staff cannot articulate a benefit from further delay. RGS recommends that the Commission approve a workshop process on the issue of a SVT program for AIC, to commence within one month of the final order, and to last no longer than six months.

E. ICEA Position

F. Commission Conclusion

Staff disagrees with the PO's recommendation to order Ameren to file small-volume transportation tariffs after workshops. Staff showed that RGS had not demonstrated that small volume programs generate net benefits to utility customers. While Staff acknowledged that utility customers did take service under transportation tariffs, it remains an open question the extent to which they are better off than sales customers. That is, RGS did not show that transportation customers paid lower prices for their gas or that the premiums paid for fixed price purchases were reasonable. (Staff RB, p. 96)

Staff further disagrees with the Commission Conclusion that waiting for the ORMD report before ordering a small-volume program is a barrier to competition. The ORMD report will provide the Commission with a platform to investigate all aspects of transportation programs for every natural gas utility. (Staff IB, p. 176) Not only can the report provide the basis for recommended statutory reforms, it can also support changes to existing transportation programs for all natural gas utilities. Ultimately, the

Commission can avoid excessive delays by choosing when to issue the report to the Legislature. (*Id*.)

Therefore, Staff recommends that the Commission refrain from ordering Ameren to file an SVT tariff at this time.

Finally, Staff notes that workshops do not drive the process. If the Commission orders Ameren to file an SVT tariff, Staff agrees that the workshop schedule that the PO lays out would allow parties to reach consensus or resolve issues to the extent possible. Staff expects to fully participate in that process if so ordered. However, if Ameren is not ordered to file SVT tariffs, then workshops are not necessary, and the ORMD report will be the next step. Staff, as noted above and mandated by Section 19-130, will fully participate in that process.

Staff recommends the following changes to pages 265-267 of the PO:

The Commission notes that it has long had a policy favoring competition in energy markets, and the Commission believes that customers will generally benefit from being given the opportunity to participate in a well-designed competitive market. The Commission also recognizes that the Act also generally supports competition in the market, and that the Commission has consistently advanced this view. In this proceeding, the Commission is presented with RGS and ICEA urging it to continue further down the road toward competitive markets by bringing customer choice to AIC's residential and small commercial customers, while Staff, CUB, and AIC suggest the Commission take a slower approach and await the report from the ORMD, which will apprise the Commission on the state of competition in Illinois' gas and electric markets, as well as barriers to retail competition.

The Commission ~~is troubled however, when some of the parties suggest that this issue not proceed any further in this docket, and~~ agrees that this issue should be addressed following the filing of the ORMD report. ~~The Commission notes that t~~The evidence presented in this docket on the ORMD process appears minimal, with a suggestion by Staff witness Rearden that the report may not be concluded until the middle of 2013~~, and his indication that he is not sure that Staff will even participate~~[alt.] and the uncertainty about how the information in the report will be assembled and presented.

The Commission ~~does not~~ agrees ~~with the argument~~ that the report from ORMD pursuant to Section 19-130 of the Act should be ~~a prerequisite for~~ completed before we order the development of a mass market natural gas choice program. Although, ~~T~~the Commission finds the language of Section 19-130 to be pro-competition, ~~noting that Section 19-130 appears to presume that there should be competitive markets in Illinois, with an apparent mandate to the ORMD to identify barriers to the development of those competitive markets and propose solutions to eliminate those barriers.~~, Section 19-130 did not mandate that every Illinois natural gas utility have a small volume program. ~~The Commission believes it would be contrary to both the letter and the spirit of Section 19-130 to use that section as a reason not to advance competition in Illinois, and we decline to read the section in that manner.~~ In the Commission's view, it would be premature to initiate~~ion of~~ a workshop process to develop and implement a mass market natural gas choice program ~~is entirely consistent with Section 19-130, and in no way conflicts with its intent or impinges upon~~ before the ORMD report ~~process that it envisions~~ is issued by the Commission.

~~While the Commission recognizes that any process, including a workshop, will take time, the Commission believes that this issue would best be addressed by commencing the workshops sooner, rather than later. The Commission acknowledges that there may be some overlap between the conducting of the workshops and the preparation of the ORMD report; however, the Commission suggests the parties may find some synergies available between the two.~~

~~The Commission finds it appropriate therefore, to direct Staff to host workshops on the issue of whether an SVT is appropriate for the AIC service territories, with the issues to be covered including those addressed by the parties, which appear to include: whether there would be any benefit to customers from such a program, whether the costs of implementing such a program would be reasonable, whether there is utility support for the competitive market, will there be full utility cost recovery for the utility, and a properly adjusted price-to-compare. The Commission recognizes that there will most certainly be other issues that arise during the workshop process, and the Commission encourages the parties to fully explore these issues. This workshop process is open to all interested stakeholders and should include participation by Staff, including the ORMD.~~

~~The Commission recognizes that it has used a workshop process in numerous other instances involving both choice issues as well as other more complex issues. The Commission is of the opinion that a workshop process provides flexibility and open access to all stakeholders to work out development and operational details for a choice program, to consider other examples of choice programs, and to debate and formulate a workable process to implement mass market choice for AIC customers. The Commission expects all parties to work in good faith during the workshop process, and believes that each party involved in this proceeding has expressed just such intent.~~

~~With regard to the timing of the workshops, the Commission finds that it would be appropriate for the workshop process to commence within sixty days of the date of this Order. The Commission also finds that a workshop of six months duration should be adequate. The Commission believes this will give all parties a sufficient opportunity to identify and debate any operational issues presented by an SVT; and as CUB notes, to~~

~~address any needed consumer protections. The Commission hopes that the workshops will allow the parties to have a full opportunity to identify potential issues and reach consensus (to the extent possible). The Commission therefore directs Staff to convene a workshop process within sixty days of this Order, with the workshop open to all interested stakeholders. The workshops should have the goal of developing a consensus on this issue, and the workshops shall conclude with AIC filing proposed tariffs with the Commission for an SVT within 45 days of the conclusion of the workshops, regardless of whether consensus is developed. The Commission recognizes that since consensus may not develop, AIC and any other party involved in the SVT proceeding may take a position either for or against the proposed tariffs.~~

XIII. CONCLUSION

For the reasons set forth in Staff's Initial Brief, Reply Brief, and this Brief on Exceptions, Staff respectfully requests that the Commission's Final Order in this proceeding reflect all of Staff's recommendations regarding the Company's request for a general increase in electric and gas rates.

December 8, 2011

Respectfully submitted,

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