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 ON EXCEPTIONS OF THE STAFF OF THE ILLINOIS COMMERCE COMMISSION

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Now come the Staff witnesses of the Illinois Commerce Commission ("Staff"), by and through their 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), and respectfully submit this Reply Brief on Exceptions to the Briefs on Exceptions ("BOE") filed by Ameren Illinois Company d/b/a Ameren Illinois (collectively, "Ameren," "AIC," or "Company"); the Illinois Industrial Energy Consumers ("IIEC"); and the Citizens Utility Board ("CUB"); which were filed on December 8, 2011, in response to the Administrative Law Judges' Proposed Order ("ALJPO") issued on November 15, 2011. Staff addresses issues to which it replies in the order in which they appear in the ALJPO.

IV. RATE BASE

B. Contested Issues

1. Capital Additions Adjustment

The Commission should adopt the ALJPO, including the revision that Staff included in its BOE. In its BOE, AIC stated, "… the ALJPO invents a new standard for evaluating the reasonableness of test year plant investment." (AIC BOE, p 3) This statement is false. The ALJPO does not invent a new standard; it rather affirms what the Commission rules require. If AIC's reprioritization of its capital projects dictated that it defer some of the projects, then those projects should be removed from rate base because they will not meet the Commission standard of "used and useful." Ameren has a responsibility to provide an accurate forecast for its future capital additions. Ameren did not live up to that responsibility in this docket.

If AIC decided to implement new projects that it did not include in its forecast, then Section 287.30 of the Illinois Administrative Code ("Code") requires it to update its schedules to reflect those changes to rate base. However, AIC indicated that Section 287.30 of the Code limited its ability to update its schedules by stating, "… an update was not appropriate because the net revenue requirement impact of the changes in plant investment were not material, as required by Part 287.30." (AIC BOE, p 6) AIC should have understood the limitations of Section 287.30 of the Code when it opted to utilize a future test year for its filing. Having made its decision to utilize a future test year, Ameren should be willing to accept those limitations. Staff's recommended adjustment for capital projects, which the ALJPO adopts, is appropriate, since Ameren's investment in those capital projects will not be used and useful during the test year.

In its BOE, AIC stated, "AIC brought the additional investment to Staff's attention simply to point out that the overall level of forecasted plant additions remained accurate." (AIC BOE, p 4) In fact, AIC revealed the additional investment only after Staff witness Mr. Rashid stated in his direct testimony that "[in] its rebuttal testimony, [AIC] should state whether it included other projects with completion dates after the end of 2012 in its proposed rate base." (Staff Ex. 12.0, p. 9) The Commission should not consider any project that is not included in AIC's forecast for the test year.

The premise that the Commission must consider the overall level of forecasted plant additions by comparing the cost of the cancelled projects and the cost of the proposed new projects is not supported by any rule, statute, or law. Contrary to what AIC states in its BOE, the ALJPO does not contradict the standard that Section 9-211 of the Act establishes for inclusion of plant investment in rate base; it affirms it. The ALJPO does not intend to reject AIC recovery of cost that it will allegedly incur in the future, but rather outlines why it is inappropriate that AIC recover that cost in the instant rate case. AIC will have the opportunity to recover previously unrecovered capital addition costs in a future rate case, after it demonstrates those capital additions meet the standards of Section 9-211 of the Act.

2. Accrued OPEB Liability

The AIC BOE fails to refute Staff's arguments that rate base should be reduced by the OPEB liability. Because the ALJPO correctly recognized the Company's strategy of using both single-issue ratemaking and retroactive ratemaking in an attempt to justify *not* reducing rate base for the OPEB liability, the Company had to re-package its arguments, now claiming the conclusion contains a mistake of fact and a mistake of law. (AIC BOE, pp. 11 – 12) Neither claim is correct.

The ALJPO correctly adopted Staff's proposed adjustment to reduce rate base for the projected average OPEB liability for the test year. In fact, AIC's own analysis shows the Company has been recovering OPEB expense from ratepayers since as far back as 1991. (Ameren Ex. 2.4) 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. 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)

AIC also argued that the rate freeze that was in effect prevented AIC from filing rate increases. In its BOE, AIC claims that ". . . it was impossible for the Company to have recovered all of its OPEB expense in rates." (AIC BOE, p. 11) 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 companies did seek and obtain rate increases during that time period. (Rev. Staff IB, p. 17) Moreover, the rate freeze is irrelevant to the prohibition on single issue ratemaking.

The facts have not changed, nor has the ratemaking theory that supports the treatment contained in the ALJPO. Therefore, the Commission should not accept the changes proposed by AIC in its BOE.

V. OPERATING REVENUES AND EXPENSES

B. Contested Issues

7. Electric Distribution O&M Expense

The Commission should adopt the ALJPO including the revision that Staff included in its BOE. In its BOE, AIC provided *part* of the record during its cross-examination of Staff witness Mr. Rashid. However, AIC omitted the following:

> Q. Okay. But we could look at Ameren's 2010 report. That report will tell us what the Company spent and it will also tell us its reliability performance during that year, correct?

> A. It may tell us a measure of reliability, but it is hard to say that, because such a utility has such a number index, like [SAIFI], would 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. So as I said before, spending does not correlate to reliability and having these indices does not necessarily mean reliability is good and the system is well maintained. (Tr., pp. 156-157, September 12, 2011)

Three AIC witnesses agreed that reliability would likely be negatively affected by reduced O&M spending in 2009, 2010, and 2011. (Staff Ex. 28.0, pp. 8 - 9) The fact that AmerenIP had a favorable System Average Interruption Frequency Index ("SAIFI") in 2009 does not necessarily mean that AIC's distribution system is well maintained. In spite of its acknowledgement that reducing O&M expenses would negatively affect the reliability of its distribution system (*Id.*), AIC admitted to having "significantly reduced its 2010 operating and capital budgets …" (Ameren Ex. 1.0E, p. 15) because AIC "determined that the revenues granted by the [previous rate case] Order were inadequate." (*Id.*)

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. (220 ILCS 5/8-401)

Although, on paper, AIC declares its commitment to comply with Section 8-401 of the Act, in the past AIC found a way to violate Section 8-401 by significantly reducing its O&M expenditures based on its perception that the revenues granted by the Commission in a previous rate case were inadequate. Staff is concerned that, depending on how AIC perceives the outcome of this rate case, AIC may decide to continue the approach of cancelling or deferring projects pertinent to O&M that are vital to the reliability of its distribution system. Therefore, for the reasons stated above, the Commission should adopt the ALJPO, including the revision that Staff included in its BOE.

VI. COST OF CAPITAL/RATE OF RETURN

F. Cost of Long-Term Debt

3. Commission Conclusion

Ameren's BOE recommends that the Commission modify the ALJPO to reject Staff's adjustment to the interest rate for the five-year bonds that AmerenCILCO issued during December 2008. (AIC BOE, p. 40) In AmerenCILCO's 2009 rate case, the Commission adopted Staff's adjustment, which removed the incremental risk reflected in AmerenCILCO's credit rating resulting from its affiliation with CILCORP and AERG by assuming the same business risk level for AmerenCILCO that the rating agencies assigned AmerenIP and AmerenCIPS. (Rev. Staff IB, pp. 61-62) Staff responded to each of the AIC BOE arguments regarding the AmerenCILCO bonds in its Revised Staff Initial Brief ("IB"), pp. 61-65, and the Staff reply brief ("RB"), pp. 37-42. Nevertheless, Staff's response to the AIC BOE follows.

Foremost, the AIC BOE errs by focusing exclusively on AERG and ignoring the fact that AmerenCILCO's intermediate parent company, CILCORP, also adversely affected AmerenCILCO's credit rating. The AIC BOE, pp. 38-40, never mentions CILCORP, excepting a quotation from the ALJPO on p. 39.

The AIC BOE argues that AERG contributed to, rather than detracted from, AmerenCILCO's credit quality. (AIC BOE, p. 39) To the contrary, Staff's testimony illustrated that AERG cash flows were more volatile than a typical regulated transmission and distribution utility, which denotes higher business risk. Second, CILCORP paid approximately $31 million interest expense annually in connection with $210 million outstanding indebtedness that constrained CILCORP's financial metrics. As such, between 2005 and 2008, AERG's net income totaled $135 million, whereas CILCORP interest expense totaled $130 million. Thus, contrary to the arguments in the AIC BOE, Staff's testimony illustrated that AmerenCILCO was essentially "squeezed" between AERG's higher operating risk and additional financial risk from CILCORP. (Staff RB, pp. 64-65; Rev. Staff IB, pp. 40-41)

Furthermore, the AIC BOE alleges that Staff concluded AmerenCILCO would be the highest rated utility in the United States by Moody's, if not for its affiliation with AERG. (AIC BOE, p. 38) This is factually wrong on two levels. First, the AIC BOE argument assumes facts not in evidence; that is, the highest rating Moody's has conferred upon a utility. (Staff RB, pp. 39-40) Second, Staff raised AmerenCILCO's actual senior secured debt rating by two notches to A3, based on the difference in credit ratings implied by comparing AmerenCILCO's credit metrics to benchmarks for Medium risk versus Low risk utilities. (Rev. Staff IB, pp. 61-62)

Moreover, the AIC BOE alleges that since Fitch Ratings downgraded AmerenCILCO in May 2010, then it follows that AERG did not adversely affect its credit rating in December 2008. (AIC BOE, pp. 38-39) To the contrary, Staff analyzed AmerenCILCO's business risk in December 2008, when CILCORP was AmerenCILCO's intermediary parent company and AERG was AmerenCILCO's subsidiary. In contrast, the Fitch Ratings report that serves as the foundation for AIC's flawed argument was published in May 2010, more than one year after the December

2008 bond issuance that Staff adjusted. Even if the Company's argument had merit, which it does not, the AIC BOE essentially recommends that the Commission apply hindsight to reach the Company's desired conclusion. Staff recommends the Commission reject the Company's plea.

Finally, the May 2010 Fitch Ratings report cites several factors that contributed to the downgrade of AmerenCILCO's ratings, including the consolidation of AmerenCILCO, AmerenIP and AmerenCIPS. Towards that end, given that CILCO's assets (excluding AERG) comprise a mere 16% of AIC assets, it is not surprising that Fitch Ratings assigned AmerenCILCO the same rating as AmerenIP and AmerenCIPS in light of the announced merger of the three Ameren Illinois utilities. (Staff RB, pp. 41-42)

For all the foregoing reasons, the Commission should reject the AIC BOE arguments and adopt the ALJPO conclusions regarding the adjusted interest rate for the long-term debt that AmerenCILCO issued during December 2008.

G. Cost of Common Equity

7. Commission Conclusion

a. DCF

AIC continues to argue that the third-stage growth rate for the DCF analysis should be based on historical growth in real GDP and inflation. The Company insists that the Commission should ignore current market data and the preponderance of Commission Orders on this issue and instead follow the ruling made in the recent rate case for Commonwealth Edison, Docket No. 10-0467 ("ComEd rate case"). As Staff explained in its Reply Brief, the Company fails to acknowledge that the growth rate accepted by the Commission in the ComEd rate case was an abrupt departure from prior Commission findings. (Staff RB, p. 45) The Order in the ComEd rate case represents an exception to Commission precedent in determining the long-term growth rate and should not be followed here.

Further, the evidence in the record of this proceeding supports Staff's long-term growth rate and reveals that the Company's historic long-term growth rate is overstated. Staff presented several forecasts of nominal economic growth in support of its long-term growth rate. In addition, Staff showed that the Company's historic long-term growth rate was not sustainable. (Rev. Staff IB, pp. 78-81; Staff RB, p. 46)

In response to the ALJPO's acceptance of spot stock prices in the DCF cost of equity analysis, AIC states that Staff's approach fails to address volatility or randomness. The Company is apparently ignoring Staff's analyses that demonstrated the limited impact of volatility on stock prices and showed that Staff's results are not heavily dependent on the particular spot date.

The Company relies on the same arguments that it has presented throughout the case which were rejected by the ALJs in the ALJPO. The Commission should follow the well-thought out conclusions presented in the ALJPO and reject AIC's DCF results.

d. Adjustments to ROE

The Company claims there is no basis for an uncollectibles rider ROE adjustment because the riders provide reciprocal benefits. The ALJ's considered this argument and properly concluded that "Whether the uncollectible riders also benefit ratepayers is irrelevant. All else equal, the presence of the uncollectible riders reduces the variation in AIC's revenues and therefore, its risk." (ALJPO, p. 143) The ALJs are correct that since these cost recovery mechanisms ensure more timely and certain collection of bad debt expense, they provide greater assurance that the Company will earn its authorized rate of return. Staff's ROE adjustment for this reduction in risk reflects the approach accepted by the Commission in the last rate case for the Company. The adjustment is not static; it 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 existence of the uncollectibles riders. Hence, the level of the adjustment can not be compared directly to that made to other utilities without considering the relative risk levels of the utilities. (Staff RB, pp. 49-50)

VII. COST OF SERVICE

B. Contested Issues

2. Allocation of Public Utilities Revenue Act Tax

e. Commission Conclusion

Response to IIEC

The IIEC's arguments on this issue are flawed and should be rejected by the Commission.

The IIEC begins by claiming that "the Proposed Order states that the Commission is not persuaded by the only hard evidence in the record." (IIEC BOE, p. 7) The quote is not accompanied by any citation to the record so it appears that IIEC is creating a straw-man argument to try to justify an untenable position. The IIEC then proceeds to argue that "over 70% of the tax expense is actually a function of Ameren's

1997 expense for the tax on plant in-service". (IIEC BOE, p. 7) Finally, the IIEC asserts that "[n}o party has presented empirical evidence to refute that presented by IIEC." (*Id.*)

The IIEC's claims have been thoroughly refuted during the course of this proceeding. With regard to the 70% claim, Staff has explained that while the starting point for the tax levels after the 1997 Amendment of the Public Utilities Revenue Act ("PURA") (35 ILCS 620/1a, P.A. 90-561, eff. 1-1-98) corresponds to previous tax levels based on invested capital, that law made usage the determining factor for these taxes. Furthermore, the total amount of distribution taxes utilities collect each year increases 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) Thus, the fact remains that sales are now the driving force in determining these taxes which the ALJPO properly recognized in its decision.

The IIEC goes on to maintain that "the fact that the Commission may have considered the allocation of the PURA Tax in another case does not mean the Commission can ignore the record evidence in this case." (IIEC BOE, p. 9) In fact, the evidence presented by the IIEC in this case was refuted rather than ignored. The problem for IIEC is that it presents the same set of evidence in each rate case and that evidence is consistently found wanting. That is the reason the ALJs and Commission reject the IIEC's arguments on a consistent basis. What would be most illogical is for the Commission to consider that same evidence once again in this case and suddenly find that the IIEC now makes sense. Fortunately, the ALJPO avoided this pitfall.

Contrary to IIEC's assertion, Staff fully discussed IIEC's empirical evidence and showed why it falls short. Staff noted the fact that the distribution tax was previously determined by the levels of investment plant, and the initial levels of the taxes paid by individual utilities were based on previously calculated amounts determined by their respective plant investment levels. However, Staff further noted that 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) This means the basis for the tax has fundamentally changed.

In fact, the IIEC's arguments on this issue have all been thoroughly vetted for both Ameren and ComEd and they were properly rejected by the ALJs in this case, as the Commission has done in all previous cases where they were presented. The Commission should affirm the ALJPO's decision on this issue.

3. Minimum Distribution System

e. Commission Conclusion

<u>Response to IIEC</u>

The IIEC's arguments against the ALJPOs' conclusions on the minimum distribution system are flawed and should be rejected.

The IIEC focuses on safety and reliability issues associated with NESC standards and contends that "[s]uch specifically identified, minimum NESC compliance costs are independent of demand -- *i.e.*, not demand-related." (IIEC BOE, p. 15) The IIEC goes on to argue that 42% of Ameren's distribution system is customer-related based on the cost of complying with these standards and notes that the Proposed Order acknowledges some of these safety and reliability expenditures are not demand-related. (*Id.*, pp. 15-19)

The IIEC's argument is fundamentally illogical. There is no question that certain distribution investments address safety and reliability concerns. However, the IIEC has no basis for claiming that they are somehow customer-related. In fact, 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 as the IIEC proposes. (Staff Ex. 30.0, p. 23)

The IIEC also takes on this issue of new versus existing customers, arguing "[n]o party (including Ameren and Staff) presented any evidence that supports the notion that it is necessary or appropriate to distinguish new and existing customers in allocating utility distribution costs." (IIEC BOE, pp. 20-21) The IIEC's claim is unfounded. In fact, the IIEC's argument on the issue focused on new customers and contended that "the costs of complying with the NESC reflect real and tangible costs that utilities must incur in connecting customers to their system" (*Id.*, p. 51) However, Staff noted that these investments are made not only to serve new customers, but also to maintain reliable service for existing customers, as Mr. Stowe has acknowledged. (Tr., September 15, 2011, p. 725) The IIEC's argument only focused on new customers. This is a fundamental problem because the IIEC's minimum system approach does not distinguish between costs for new and existing customers, but instead would be applied to both. (Tr., September 15, 2011, p. 726-727)

4. Single/Dual Phase vs. Three-Phase

d. Commission Conclusion

Response to IIEC

The IIEC's arguments against the ALJPO's conclusion on the allocation of single-phase lines is misguided and should be rejected by the Commission.

The IIEC contends that only 0.2% of the load of Primary and High Voltage customers is served by single-phase and dual-phase circuits on the Ameren system. (IIEC BOE, p. 27) Therefore, the IIEC believes that virtually all the cost of single-phase and dual-phase primary circuits should be allocated to secondary voltage customers. (*Id.*)

The IIEC's argument fails to consider that the requirement by primary customers for three-phase service does not produce cost savings but instead can serve to increase costs for the utility. 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) At a minimum, primary customers should not be rewarded for imposing these restrictions on the utility's costing flexibility as IIEC proposes to do.

VIII. REVENUE ALLOCATION

B. Contested Issues

2. Rate Impact Mitigation

Response to IIEC

The IIEC's argument that rate mitigation for class revenue allocations should be applied at the subclass level lacks merit and should be rejected by the Commission.

The IIEC contends that the lack of protection at the subclass level exposes certain subclasses to "increases from 105% to almost 500% over current rates for some rate subclasses in just two years". (IIEC BOE, p. 34) The IIEC expresses particular concern because the ALJPO in this case deviates from Ameren's last rate case when rate mitigation did extend to the subclass level. The IIEC further notes that "the Proposed Order holds that the Commission did not intend to create a "minimum rate impact criteria" with its order in *2009 Ameren*, Ameren's last rate case." The IIEC goes on to contend that it "is not aware that any party made such an argument in this case." (IIEC BOE, p. 35)

There is good reason why the ALJPO deviated from the previous Commission Order on this issue. The subsidies to large customers should not go on forever despite the efforts of the IIEC. It should be remembered that the level of increase being discussed by the IIEC is so large (up to 500%) because of past failures to bring rates in line with costs. Thus, IIEC's clients have derived significant benefits over the years at the expense of other customers on the system. Now, however, IIEC is seeking to turn the tables by claiming its clients are the victims because they are being asked to pay more (but not all) of their fair share of costs. If the Commission was to give in to these arguments, then it would be allowing large customers to continue to receive benefits they do not deserve. That would be patently unfair to other customers on the system. Thus, it is essential that IIEC's proposal to extend rate mitigation to the subclass level should be rejected.

As Staff has noted, the primary reason for the large percentage increases proposed 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) Adoption of the IIEC position would allow this inequity to continue much further down the road.

IX. RATE DESIGN

B. Contested Electric Issues

1. Treatment of PURA Tax Expense

a. Phase-in of PURA Tax Expense

vi. Commission Conclusion

<u>Response to IIEC</u>

The IIEC's argument on the phase-in of distribution taxes is misplaced and should be rejected.

In opposing the ALJPO's decision, the IIEC returns once again to the issue of rate mitigation and repeats many of the arguments presented in the preceding discussion of rate mitigation. (IIEC BOE, pp. 40-42) As a result, the proposal is subject to the same deficiencies that plague the mitigation proposal. In essence, what IIEC seeks is a subsidy from other rate classes for many years to come. A more reasonable and fair approach is to make large customers pay that share of distribution taxes they cause to be incurred. This is the fundamental principle of cost-based ratemaking.

b. Exclusion of PURA Tax Expense from Rate Base

iii. Commission Conclusion

<u>Response to IIEC</u>

The Commission should reject the IIEC's argument for the removal of distribution taxes from base rates.

In defense of its position, the IIEC claims that "[n]o other Illinois utility has ever been ordered to isolate that expense for such extraordinary treatment." Furthermore, the IIEC claims "no party -- not even Ameren -- advocated that approach." (IIEC BOE, p. 44)

The foundation for the IIEC's argument is incorrect. This is what the Commission had to say in ComEd's last rate case, Docket No. 10-0467:

> In light of the Commission's prior treatment of the Illinois Electricity Distribution Tax in the Ameren Order, the Commission adopts ComEd's proposal to modify its rate design to provide a separate volumetric charge for the recovery of the Illinois Electricity Distribution Tax and uncollectible costs associated with the application of the tax for all of the reasons stated herein. (Final Order, Docket No. 10-0467, May 24, 2011, p. 285)

Based on the preceding passage, the ALJPO's conclusion is consistent with the Commission's Orders in the Ameren and ComEd cases and the IIEC has no basis for claiming that it deviates in any meaningful way from recent practices.

c. Collection of PURA Tax Expense as Separate Per kWh Charge on Bill

iv. Commission Conclusion

Response to IIEC

The IIEC returns to the issue of PURA tax recovery by claiming that recovery through a separate volumetric charge is unjustified. (IIEC BOE, p. 50) The basis for the IIEC's claim is that the tax is not a pass-through and therefore is not worthy for recovery through a separate volumetric charge. (*Id.*, p. 51) The IIEC's real concern on the issue is that the proposal amounts to "an anomalous per kWh charge for customers whose base rates are measured by demand." (*Id.*, p. 50)

While the IIEC may prefer recovery on a demand basis, cost principles argue otherwise. Since the Commission has determined these costs are based on usage, recovery through a demand charge would fail to adhere to cost-causation principles.

The IIEC's arguments should be rejected and the ALJPO's decision to recover these costs by a separate per-kWh charge should be affirmed.

X. PROPOSED RIDERS/TARIFF CHANGES

B. Contested Gas Issues

1. Rider TBS – Transportation Banking Service

AIC proposed a two-factor "Equitable Method" ("EM") to recover underground storage costs. (AIC IB, p. 174) Both Staff and IIEC recommend the rejection of the EM. (Staff IB, pp. 163-166; IIEC IB, pp. 95-99) The ALJPO sided with Staff and the IIEC on this matter. (ALJPO, p. 248) AIC takes exception to the ALJPO's rejection of the EM. (AIC BOE, p. 57) AIC lists several reasons in support of its objection to the ALJPO. (AIC BOE, pp. 57-58) Staff will address two of the objections here. However, Staff's testimony and briefs adequately address these and the other rationales that AIC has raised in its BOE.

First, AIC objects that the EM is appropriate because, "the capacity only method supported by Staff and IIEC ignores the deliverability rights afforded under our banking service. Therefore, it should be rejected." (AIC BOE, p. 57) Staff disagrees with this characterization. The ALJPO's adoption of Staff's cost allocation methodology without the linkage leaves the ALJPO's tariff cost allocation as a capacity-only allocation. (Staff BOE, pp. 29-30) However, Staff's proposed cost allocation has never been "capacity-only" because its cost allocation proposal all along has included a linkage between the annual capacity and the peak day deliverability. Thus AIC's statement is misleading.

Second, AIC posits that "the idea that use of the Equitable Method will cause customers to leave transportation service, espoused by Staff and cited in the ALJPO, is unsupported by any study [CITE] [sic.] and is therefore not a sufficient basis for rejecting the Equitable Method." (AIC BOE, p. 58) AIC suggests that the lack of a formal study precludes the Commission from drawing any conclusion from its proposal. Rarely does the Commission or Staff have time to conduct formal studies to determine the likely impact of the proposals they consider. Rather, this is AIC's proposal, and the burden of proof is on AIC to support it. AIC has not provided any analysis to demonstrate that their proposal will not drive customers back to sales service.

On the contrary, it is reasonable to conclude that the use of the EM will drive current transportation customers back to sales service given the large migration to transportation service that has occurred since the 2007 case; it is probable that these new customers are the marginal customers that have found transportation service economic. Increasing costs for transportation service relative to sales service, which is what the "equitable method" will do, will make transportation service relatively more expensive and will push the most recent marginal customers back to sales service.

Therefore, the ALJPO is correct to rely on this realistic concern. Staff's BOE proposal addresses these twin concerns. (Staff BOE, pp. 29-30)

XI. PROPOSED SMALL VOLUME TRANSPORTATION PROGRAM

Response to CUB and Ameren

Staff recommends that the Commission first conclude its Section 19-130 report before ordering Ameren to initiate an SVT program. (Staff IB, p. 176) CUB implies that Staff's position encompasses, in part, how workshops should proceed. (CUB BOE, p. 5) However, Staff did not recommend workshops at all. Instead, it recommended that the approach to be used to study retail gas markets be left open. Staff is not changing its proposed language filed with its BOE for the order. (Staff BOE, pp. 36-38)

However, if the Commission decides to order workshops in this docket, then it should clarify what it intends for the workshops to accomplish. In that vein, Staff does not oppose the language offered by CUB in its BOE with respect to this issue. That is, on pages 6 and 7 of CUB's BOE, it offers acceptable language for what should be expected from any workshops that are ordered. As set forth below, Staff is not endorsing all of CUB's exceptions on the SVT program.

CUB points out that the ALJPO gives the workshops the scope to investigate whether an SVT program holds net benefits for customers and obliges Ameren to file

SVT tariffs after the workshops. (CUB BOE, pp. 2-3) Ameren largely concurs on this point. (Ameren BOE, pp. 60-61) The Commission should make it clear in its Final Order the extent to which it is interested in a discussion about the net benefits from SVT tariffs in its workshops, especially in light of the report mandated by Section 19-130. In particular, Staff's view, as noted above, is that if the Commission wishes to investigate the SVT program's net benefits, the Section 19-130 report to the legislature is the appropriate venue for doing so.

Staff also agrees with Ameren and CUB that while it is relatively easy to write tariffs to accomplish what the PO appears to mandate, it takes longer to design and implement the back office functions that are needed to accommodate Ameren's SVT program. (Ameren BOE, p. 59; CUB BOE, p. 2) Staff is not endorsing the language proposed by Ameren in its BOE, but it might be prudent to order Ameren to file a timetable for starting its SVT program rather than for it to file tariffs after the workshops are concluded.

XIII. CONCLUSION

As articulated in Staff's Initial Brief, Reply Brief, Brief on Exceptions and this Reply 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.

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Respectfully submitted,

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