

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

AMEREN ILLINOIS COMPANY : **Docket No. 11-0279**
d/b/a Ameren Illinois :

Proposed general increase in electric delivery :
service rates. :

AMEREN ILLINOIS COMPANY : **Docket No. 11-0282**
d/b/a Ameren Illinois :

Proposed general increase in natural gas :
rates. : **(Consolidated)**

REPLY BRIEF ON EXCEPTIONS
OF THE ILLINOIS INDUSTRIAL ENERGY CONSUMERS

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INDEX

	<u>PAGE</u>
INTRODUCTION	1
ARGUMENT	
I. Response to AIC - Charitable Contributions (Ameren Exception 4)	2
II. Response to AIC - ROE/DCF (Ameren Exception 8)	6
III. Response to AIC - Single/Dual Phase v. Three-Phase Issue (Ameren Exception 11)	11
IV. Response to AIC - Proposal to Include a New Section IV.C.A. Increase for Charges in General (Ameren Exception 18)	13
V. Response to AIC - Rider TBS - Equitable Allocation Method (Ameren Exception 19)	13
VI. Response to Staff - Use of AIR Rebuttal ECOSS	16
VII. Response to Staff - Phase-In of the PURA Tax	18
VIII. Response to AG/CUB/AARP - Phase-In of the PURA Tax (AG/CUB/AARP Exception 3)	22
CONCLUSION	23

ILLINOIS INDUSTRIAL ENERGY CONSUMERS
REPLY BRIEF ON EXCEPTIONS

In this Reply Brief on Exceptions, the Illinois Industrial Energy Consumers (“IIEC”) will respond to certain positions taken, and arguments and exceptions made, by Ameren Illinois Company (“AIC” or “Ameren”), the Staff of the Illinois Commerce Commission (“Staff”) and the Illinois Attorney General, Citizens Utility Board and AARP (“AG/CUB/AARP”) in their respective Briefs on Exceptions (“BOE”) to the Proposed Order of November 15, 2011 (“Proposed Order” or “PO”). IIEC’s failure to address any specific argument, exception or position of any specific party in this Reply Brief on Exceptions should not be taken as an endorsement or acceptance of that argument, exception or position unless otherwise expressly stated herein.

Specifically, IIEC will respond to:

- (i) AIC’s exception to the Proposed Order’s treatment of Charitable Contribution Expense (Ameren Exception 4);
- (ii) AIC’s exception to the Proposed Order’s determination of an acceptable long-term growth rate for deriving the Discounted Cash Flow (“DCF”) result in establishing the appropriate return on common equity (“ROE”) for AIC (Ameren Exception 8);
- (iii) AIC’s exception to the Proposed Order’s conclusion on the allocation of single/dual phase circuits versus three-phase circuits (Ameren Exception 11);
- (iv) AIC’s proposal to add a new Section IX.C.4. - Increase for Charges in General (Ameren Exception 18);
- (v) AIC’s exception to the Proposed Order’s rejection of the use of the Equitable Method for cost allocation to transportation customers (Ameren Exception 19);

- (vi) Staff's exception to the Proposed Order's decision to use AIC's rebuttal electric cost of service studies ("Rebuttal ECOSS");
- (vii) Staff's proposal to modify the Proposed Order to eliminate any phase-in of the PURA tax; and
- (viii) AG/CUB/AARP's proposal to modify the Proposed Order to eliminate any phase-in of the PURA tax (AG/CUB/AARP Exception 3).

ARGUMENT

I. Response to AIC - Charitable Contributions (Ameren Exception 4)

AIC offers four main arguments (in various iterations) to contest the Proposed Order's fact finding that AIC's proposed test year expense for charitable contributions is unreasonable and should be disallowed. (AIC BOE at 13-17). IIEC addressed this issue in its Initial and Reply Briefs. (IIEC Br. at 7-11; IIEC R. Br. at 2-5). Though most of those arguments were anticipated by and refuted in the Proposed Order, IIEC will address AIC's major contentions. Ultimately, none of AIC's arguments provide a reason for rejection of the Proposed Orders findings regarding the utility's proposed test year charitable contributions expense.

First, AIC portrays the Proposed Order's determination as a dramatic change in law and policy. The Proposed Order makes no changes in law or policy. Instead, the Proposed Order simply makes findings of fact, based on record evidence that AIC does not challenge substantively. For instance, AIC claims that the Proposed Order would establish an arbitrary geographical "policy" on charitable contributions. (AIC BOE at 13). Different conclusions based on distinctive records does not establish a geographical policy simply because the affected utilities are located in different parts of the state.

Similarly, AIC claims that the Proposed Order “seeks to establish a ‘presumption’ or rule” that economic conditions are relevant to a determination of reasonableness. That is not a presumption, but common sense. As the Proposed Order observed, “reasonableness is not an assessment that can be made in a vacuum.” (PO at 37). Further, “[c]haritable contribution amounts found reasonable in some circumstances need not be accepted as such under different circumstances.” (*Id.*). AIC does not dispute the circumstances the Proposed Order considered, arguing only that another utility got more in the circumstances of that utility’s different case.

AIC, on the other hand, would have the Commission implement AIC’s presumption that a proportional recalculation of “what the other guy got” is reasonable -- regardless of relevant conditions shown by the record evidence. (AIC BOE at 15 (“AIC’s 2012 budgeted amount is roughly proportional to the \$6.1 million that the Commission recently approved for Commonwealth Edison Company (ComEd.)”).

Second, AIC alleges that the Proposed Order “contradicts the requirements of Section 9-227 of the Public Utilities Act.” (AIC BOE at 13; 220 ILCS 5/9-227). AIC is wrong. AIC argues the statutory provision that “[i]t shall be proper for the Commission to consider [charitable contributions] as an operating expense,” constitutes a predetermination that its expense must be allowed. (AIC BOE at 13). However, not even AIC could maintain that extreme, clearly inaccurate, interpretation in the face of Commission charitable contributions expense disallowances that AIC acknowledges and the utility’s own proposal for certain disallowances of its own expense. (*See* AIC

BOE at 14, *citing Re Commonwealth Edison Co.*, Dkt. 10-0467, Order, May 24, 2011 at 108-109 (which allowed certain disallowances), and 16 (AIC proposal for partial disallowances)).

Section 9-227 requires the Commission to "consider" proposed charitable contribution expenses. It does mandate unquestioning approval of the inclusion of those expenses in rates, as AIC appears to suggest. The past Commission decision on which AIC bases much of its argument is in accord. Charitable contribution expenses "should be carefully considered in accordance with the statute," to determine, *inter alia*, whether the contributions "meet the requirements of the Act." (*Re Commonwealth Edison Co.*, Dkt. 10-0467, Order, May 24, 2011 at 109). Though Section 9-227 bars rules establishing a presumptive disallowance, contribution expense is not unconditionally approved for ratemaking purposes. The reasonableness and purpose requirements of Section 9-227 are open fact questions left for the Commission to decide on the record evidence.

The Proposed Order specifically found that AIC's evidence in this record was not adequate to establish that its expense met the purpose and reasonableness requirements of Section 9-227.

The Commission is also concerned by the limited description for each donation under the heading of "Investment Categories" on Ameren Ex. 28.1. From the list, it is not readily apparent what each organization does and/or how a donation fits under Section 9-227 as being for the public welfare or for charitable scientific, religious or educational purposes.

* * * *

[T]he Commission simply can not determine the reasonableness with sufficient certainty from what AIC provided.
(PO at 38).

AIC argues that this illustrative analysis shows that the Proposed Order “emphasizes the question of the reasonableness of individual contributions, rather than addressing the overall total as required by BPI II.” (AIC BOE at 15). In fact, the Proposed Order was providing a single example of AIC’s failure to provide adequate evidentiary detail for the Commission to find that the contributions were either “for the public welfare or for charitable scientific, religious or educational purposes” or reasonable, as Section 9-227 requires. The Proposed Order found that AIC did not provide sufficient evidence so that the Commission could determine “what each organization does and/or how a donation fits under Section 9-227 as being for the public welfare or for charitable scientific, religious or educational purposes” or its “reasonableness.” (PO at 38). AIC identified no error in that assessment of the record. AIC merely quoted the opinion of its witness Mr. Ogden that “the entities designated to receive donations are well-established civic and charitable organizations that provide support to charities in the communities within our service territory.” (AIC BOE at 16). However, that opinion was unsupported by specific evidence. (PO at 38 (“The Commission is also concerned by the limited description for each donation under the heading of "Investment Categories" on AIC Ex. 28.1"))).

Third, AIC argues that the Proposed Order is “contrary to established Commission precedent.” (AIC BOE at 13). As AIC knows well, the concept of binding legal precedent is not applicable to Commission decisions. (PO at 38; *Mississippi River Fuel Corp. v. Illinois Commerce Comm.*, 1 Ill. 2d 509 (1953) at 513). Where, as here, the decisive issues are questions of fact, the “recent Commission decisions finding other utilities’ charitable contribution expense reasonable in

amount and recoverable” are essentially irrelevant to the Commission’s determination on this record. Instead of providing the evidence to establish the statutory qualifications for its proposed expense, AIC simply relied on its argument that it is entitled to what ComEd got, regardless of the distinctive record in this case.

Fourth, AIC complains that the Proposed Order observed what most people know -- that true charity is not coerced. (AIC BOE at 14). However, the Proposed Order does not rely on that observation as the legal basis for its determination. (PO at 38). (As shown above, there are independent, sufficient reasons for the Proposed Order’s disallowance.) The criticized observation was made in the context of the Proposed Order’s assurances that “the Commission by no means intends to suggest that AIC can not or should not make any of the donations that it proposes.” Because AIC is, of course, “free to make any such donations” (*id.*), the only question the Proposed Order examined is whether AIC’s customers should be compelled to fund the utility’s proposed contributions through their monopoly delivery service rates.

The Proposed Order provides clear evidentiary bases and sound reasoning for its determinations on AIC’s Section 9-227 issues -- the reasonableness and purpose of the contribution expense. The Proposed Order’s findings and conclusion are supported by the record and well-reasoned. The Proposed Order’s conclusion on this issue should be adopted.

II. Response to AIC - ROE/DCF (Ameren Exception 8)

AIC’s exceptions include one cost of equity issue that IIEC addressed, the growth rate for the final, infinite stage of the DCF model of AIC’s witness Robert Hevert. “[I]n determining the

future real GDP growth rate, Mr. Hevert used a historical value – the GDP growth rate experienced by the United States over an 80 year period.” (AIC BOE at 41). IIEC addresses the growth rate issue in its Initial and Reply Briefs. (IIEC Br. at 21-22, 24-28; IIEC R. Br. at 14-17). In the view of IIEC’s expert Michael Gorman, that long-term growth rate estimate is inflated and not reflective of current market participants’ growth outlook; it also produces an overstated DCF estimate. (Gorman, IIEC Ex. 3.0-C at 3:53). The Proposed Order also found Mr. Hevert’s results unreliable, describing his use of a growth rate based on historical data “problematic.” (PO at 141).

AIC observes that, in a recent ComEd rate case, the Commission found a historically derived GDP growth forecast acceptable as a reasonable proxy for investors' long-term growth expectations. (AIC BOE at 41). AIC then argues that the Commission cannot make a different finding in this case, on what AIC (inaccurately) labels identical evidence. (*Contrast* AIC BOE at 44 (“substantially identical evidence”).

That argument asks the Commission to replicate -- for AIC -- the result from a cherry-picked decision that is, in fact, an anomaly in the Commission's treatment of projections based on historical data. In other recent cases, the Commission has consistently relied on Staff's and IIEC's use of analysts' growth projections. Just as consistently, the Commission has rejected future growth rates, including GDP growth, based on historical data. Even a brief review of the Commission’s recent cases confirms that AIC is relying on the exception, not the rule.

In ComEd’s 2005 rate case, the utility proposed the use of a historically derived GDP growth rate. The Commission examined specifically whether the “use of GDP growth rates to estimate

long-term growth expectations of individual companies in the DCF model improperly overestimates the model's results." (*Re Commonwealth Edison Co.*, Dkt. 05-0597, Order, July 26, 2006 at 153).

In addition to finding that the record evidence showed the rejected projections to be higher than the expected company-specific growth rates, the Commission made a more general observation that is also relevant to Mr. Hevert's growth projection. The Commission found that utilities' below average risk, captured in their betas of less than 1.00, belies an assumption that they will grow at the same rate as the overall economy. (*Id.*). Ultimately, the Commission rejected ComEd's historically derived GDP growth rate estimate of 6.60%, concluding that "the ComEd proposal is excessively high due to its improper application of the GDP growth rates." (*Id.* at 155).

In ComEd's next case, the ICC again rejected the use of a historically derived GDP growth rate proposed by the utility's witness (Hadaway).

. . . Hadaway [sic] used a historical GDP of 6.5% as his estimate of future GDP. Published expectations of future GDP growth are much lower.

We agree with Staff and Intervenors that Hadaway's [sic] conclusions, based on the assumption that utility investors expect a sustainable utility growth rate about 20% (6.05/5) greater than the economy as a whole, is unlikely.

(*Re Commonwealth Edison Co.*, Dkt. 07-0566, Order, Sep 10, 2008 at 97).

The pattern continued in AIC's last rate case, Dkt. 09-0306 *at al.* There the Commission provided additional commentary on its traditional distrust of historical growth rates.

The Commission agrees that the traditional constant growth model would in this instance result in suggested growth rates that would exceed the growth rate for the U.S. economy in perpetuity, which

appears unlikely. . . . The Commission will also decline to use either Ms. McShane's sustainable growth DCF model, or her three-stage DCF. The Commission finds that like Mr. Thomas, Ms. McShane's over-reliance on historical data is problematic. (*Re Central Illinois Light*, Dkt. 09-0306 *at al.* (cons.), Order, Apr 29, 2010 at 215-216).

In a recent Illinois-American Water Company case, the Commission again adopted a return based on the use of forward looking growth estimates. (*Re Illinois American Water Co.*, Dkt. 09-0319, Order, Apr 13 2010 at 112). Though the Commission did not discuss the issue specifically, Staff's use of forecast surrogates for dividend growth (*id.* at 94) was the basis for its DCF cost of equity estimate. The Commission concluded:

Based on the evidence, the Commission believes that Staff's analyses are supported in the record, produce reasonable results and should be utilized. (*Id.* at 112).

Overall, the Commission has more consistently rejected historical GDP growth rate estimates as surrogates for investor expectations for future growth. And it has viewed published GDP growth projections as a reasonable proxy for the ceiling on growth rates for a utility.

Having found the single decision that supports its proposal, AIC complains that the Proposed Order does not distinguish that decision. AIC contends that the Proposed Order's determination is unsustainable because its conclusion is not the same as that in the ComEd decision. AIC argues that a different decision "simply would not be possible: same question, same evidence, opposite result." (AIC BOE at 43). As the Proposed Order recognizes, different results are possible, as Commission decisions are not *res judicata*. (PO at 38). And the evidence is not "identical." AIC's assertions

to that effect consider only its own evidence. AIC does not consider the evidence presented by intervenors in this case, which is not the same as that in the ComEd case. Also, AIC's characterization of the record evidence is not consistently absolute. At various points in AIC's BOE, the evidence is only "virtually identical" (AIC BOE at 43), "substantially identical" (*Id.* at 44), or 10% different (*Id.* at 43 (3.4% vs. 3.3% real GDP growth rate)).

Moreover, AIC does not even acknowledge the more numerous decisions that reject its position. AIC also does not identify record evidence to support a finding in this case that would replicate the ComEd decision. Although AIC claims that it is "not asking the Commission to reach a decision based on the evidentiary record in the ComEd case," (AIC BOE at 44) the insufficiency of this record to support the result it seeks means that is exactly what AIC is doing.

Regarding AIC's argument that the Blue Chip forecast supports its growth rate, there are two fatal flaws. (AIC BOE at 44-45). First, AIC's argument seeks to update only one element of the analysis, ignoring any other appropriate changes. Second, if AIC wants to use analysts projections, as IIEC recommended (Gorman, IIEC Ex. 3.0-C at 30) it should use the Real GDP growth projection in the same June Blue Chips report AIC references. The report projects a Real GDP growth of 2.70% and a GDP Chained Price Index of 2.20%, which supports a long term nominal GDP growth of 4.90%, significantly lower than Mr Hevert's growth rate. It is illogical to rely on Blue Chip's 30-Year Treasury as a proxy for forecast GDP growth when Blue Chip already provides that projection

AIC criticizes Staff's DCF cost of equity estimates because they are based on spot prices. (AIC BOE at 45). IIEC's estimates, however, do not share that criticized methodological feature

with Staff's analyses. AIC offers noting in its BOE to refute IIEC's recommended cost of equity.

In sum, AIC has provide no basis for rejecting or modifying the Proposed Order's determination of AIC's cost of common equity. The Proposed Order's finding should be approved.

III. Response to AIC - Single/Dual Phase vs. Three-Phase Issue (Ameren Exception 11)

AIC takes technical exception to the Proposed Order's conclusion on the single/dual-phase vs. three-phase issue to "clear up" findings in that conclusion. Specifically, AIC proposes to amend the Conclusion to read as follows:

Currently, AIC combines the costs of single-, dual-, and three-phase circuits and allocates the combined total cost of each voltage level to secondary, primary, and high voltage customers on the basis of each class' entire contribution to coincident peak demand at each voltage level. IIEC proposes to shift all but 0.2% of the costs of single- and dual-phase circuits from DS-3 and DS-4 primary voltage customers and allocate them entirely to DS-1, DS-2 and DS-5 secondary voltage customers. IIEC's proposal, however, leaves the costs of three-phase circuits allocated among all electric rate classes on the basis of coincident peak demand, including the costs of three-phase circuits dedicated entirely to three-phase customers and providing no benefit to secondary customers.

For the reasons stated in IIEC's prior briefs, IIEC disagrees with the Proposed Order's conclusion on this issue. (*See*, IIEC BOE at 26-33; IIEC R. Br. at 39-50; IIEC Br. at 61-64).

However, IIEC would like to point out to the Commission that AIC's suggested changes do not improve the accuracy of this flawed conclusion, but tend to be misleading and inaccurate.

First, AIC proposes to remove the word "entire," from the phrase "entire contribution to coincident peak demand," in the first sentence of the conclusion. IIEC believes this change is misleading. As IIEC witness Stowe testified, AIC ". . . has combined the costs of single- and dual-

phase primary with the cost of three-phase circuits, then allocates the combined total to its secondary, primary and high voltage customers.” (Stowe, IIEC Ex. 2.0 at 35:760-763). By eliminating the word “entire,” AIC appears to suggest that something other than the total coincident peak demand of the class is used to allocate these costs. It might even be construed to refer to a proportional allocation of cost responsibility - even though such recognition of actual cost causation is what IIEC proposes and what AIC argues against. This clearly is not the case.

AIC has also suggested an additional reason for the Proposed Orders’ mistaken rejection of IIEC’s recommended allocation of single/dual-phase primary circuits. AIC suggests that the Proposed Order find that IIEC’s method leaves “the costs of three-phase circuits dedicated entirely to three-phase customers and providing no benefit to secondary customers” allocated among all the electric rate classes. IIEC has reviewed the testimony, exhibits, and briefs in this case, and that review revealed no evidentiary support for this proposed finding.

This argument or statement first appears in AIC’s Reply Brief. There the Company states:

Under IIEC’s approach, the costs of all three phase lines would be shared among all customers, even those lines utilized entirely by three phase customers. (AIC R. Br. at 60).

However, this sentence is not supported by a citation to the record evidence. The only citation following this statement is to AIC’s Initial Brief at page 126 and Ameren witness Schonhoff’s surrebuttal testimony at page 15. (AIC Br. at 126; Schonhoff, Ameren Ex. 49.0 Rev. at 15). However, a review of Ameren’s Initial Brief and the cited testimony fails to disclose any evidentiary

support for Ameren's bold statement. AIC's proposed modification is not based on record evidence, and it cannot offer any support for the Proposed Order's erroneous conclusion.

No party has proposed to modify the allocation of three-phase costs in this case. Indeed, Staff has testified that the allocation of three-phase costs is not the issue in this case. (Lazare, Sept 15, Tr. 845-846). It is misleading for Ameren to suggest through its proposed modification that the allocation of costs of *any* three-phase circuit is either in dispute or improper.

For the reasons stated above, Ameren's "clarification" of the Proposed Order on the single/dual-phase vs. three-phase issue should be rejected and the conclusion itself should be modified as recommended by IIEC in its Brief on Exceptions. (*See*, IIEC BOE at 31-33).

IV. Response to AIC - Proposal to Include a New Section IX.C.4 - Increase for Charges in General (Ameren Exception 18)

AIC proposes to add a new Section IX.C.4. - Increase for Charges in General to the Proposed Order. IIEC believes this subject is already adequately addressed in Section VII.B.1 of the Proposed Order, which deals with cost of service and the use of AIC's electric and gas cost of service studies. Insertion of the language requested by Ameren would be redundant and is unnecessary.

V. Response to AIC - Rider TBS - Equitable Allocation Method (Ameren Exception 19)

AIC takes exception to the Proposed Order's rejection of the Equitable Method for the allocation of storage costs to transportation customers. (AIC BOE at 57). Ameren's proposal would recover 50% of the storage costs through a capacity charge and 50% through a deliverability charge. (*Id.*).

The Proposed Order correctly rejected the use of the Equitable Method in this case based on the evidence presented. (PO at 248). As IIEC explained, the Equitable Method is a method used by FERC to allocate the cost of a full storage product, not a balancing service product. The Equitable Method is also used to allocate the costs between customer groups that are very different from the end-use sales and end-use transportation customers served by AIC. The Equitable Method is inconsistent with the way storage capacity is allocated to transportation customers. Those costs are allocated to transportation customers on the basis of customer's MDCQ, not deliverability. The Equitable Method is not used by other Illinois utilities and it has not been approved previously for use by the Illinois Commerce Commission. IIEC explains each of these arguments in greater detail in its Initial Brief. (*See*, IIEC Br. at 95-96). For all of these reasons, the Proposed Order has correctly rejected the use of the Equitable Method in this case.

AIC also observes that in rejecting the Equitable Method, the Proposed Order adopts IIEC's recommended capacity allocation for determination of appropriate storage costs and unbundled storage charges. (AIC BOE at 58). IIEC made this recommendation because of its objections to the use of the Equitable Method and because the Equitable Method overstated the "probable" and the "maximum" deliverability used by transportation customers on a peak day. AIC notes that IIEC made this argument. (*Id.*). Interestingly, AIC does not dispute that the Equitable Method overstates both the "maximum" and the "probable" deliverability used by transportation customers on a peak day as IIEC has argued. Instead, AIC opines that "customers should pay for the service they have available to them." (*Id.*). IIEC is in agreement and its proposed allocation totally reflects this

principle. AIC also states that “peak day deliverability for transportation customers does impose a cost on AIC that should be reflected in the allocation.” Again, IIEC’s proposed cost allocation properly reflects this concern by basing its entire allocation on peak day demands. AIC, on the other hand, ignores peak day deliverability and bases its allocation on an amount of gas that it could not and would not deliver on a peak day because it exceeds the amount of gas that a customer is allowed to take on a peak day.

Therefore, in addition to the theoretical inappropriateness of AIC’s proposed allocation method, it must not be adopted here because it is incorrectly applied.

Next Ameren suggests that like a storage service, its tariffs provide the ability to build an empty bank and permit the use of banking service and traditional summer fill and winter withdrawal patterns. (AIC BOE at 58). However, this Ameren argument is contradicted by the testimony of Mr. Eggers, its witness on this subject. Mr. Eggers claimed in his direct testimony that the AIC bank service “functions as a balancing service and not a storage service.” (Eggers, Ameren Ex. 14.0G Rev. at 11:227-228). In rebuttal, the Ameren witness testified that the primary function of Ameren’s banking service was to provide the level of service that transportation customers needed to balance the difference between their daily nominations of gas supply and their actual use. (Eggers, Ameren Ex. 34.0 at 6:115-119). Therefore, Ameren is incorrect in suggesting that its service is “exactly like a storage service.” (AIC BOE at 58).

For these reasons and for the reasons stated in IIEC's Initial Brief and Reply Briefs, the Proposed Orders' rejection of the Equitable Method and adoption of IIEC's capacity Allocation Method should be approved by the Commission. (*See*, IIEC Br. at 95-99; IIEC R. Br. at 77-78).

VI. Response to Staff - Use of AIC Rebuttal ECOSS

Staff takes exception to the Proposed Order's decision to use the AIC rebuttal ECOSSs as the foundation for ratemaking in this case. (Staff BOE at 17). Staff argues that AIC's "failure to present a serious set of Rate Zone ECOSSs until the rebuttal stage of this case" prevented a "meaningful review and analysis of these studies" by the Staff. Therefore, Staff reasons that AIC should be sent a clear message by rejecting AIC's rebuttal ECOSSs and instead adopting Staff's across-the-board equal percentage approach to ratemaking.

IIEC supports the Proposed Order's decision to reject Staff's recommendation. IIEC addressed the use of the AIC rebuttal ECOSSs in its Initial and Reply Briefs. (IIEC Br. at 38, 64-65, 67-68; IIEC R. Br. at 50-52). Staff's approach involves much more than simply increasing all of the AIC rate classes by an equal percent. Staff's approach in this case could have resulted in immediate delivery service rate increases in excess of 500% for some rate subclasses. (*See*, Stephens, IIEC Ex. 5.0 at 6:104-108).

Staff continues to be the only party that opposes the use of AIC's rebuttal ECOSSs as a starting point for revenue allocation. Furthermore, Staff failed to identify a single specific criticism of the AIC rebuttal ECOSS in its record presentation in this case, and Staff does not identify any specific criticism in its Brief on Exceptions. Indeed, Staff actually argued in its Initial Brief in this

case that the rebuttal ECOSSs were an improvement over the earlier studies presented by AIC. (Staff Rev. Br. at 107). Staff's sole objection to the use of the rebuttal ECOSS is that Staff had insufficient time to review and analyze those studies in this case. (*See*, Staff BOE at 17-19).

IIEC respectfully submits that rejection of the electric rebuttal ECOSSs on the grounds that Staff was not able to review these studies, when other parties to the case were able to do so, would be unreasonable. No other party opposes the use of the Company's studies on these grounds. IIEC is not concerned that a precedent would be established if the Ameren rebuttal ECOSSs are accepted as a starting point for rate design and revenue allocation in this case. The circumstances in this case are highly unusual and not likely to be repeated. From IIEC's point of view, rejection of the Ameren rebuttal ECOSSs, as a starting point for revenue allocation and rate design, and adoption of the Staff's revenue allocation and rate design approach would do substantially more harm than good. In addition, although Staff's proposal is intended to send a clear message to Ameren, Ameren is the one party that is least likely to be affected by Staff's recommendation. This is a revenue allocation issue, and Ameren should collect the same total revenues under Staff's recommendation as under the Proposed Order's approach. It is customers that will be harmed under Staff's recommendation, not Ameren.

Therefore, Staff's exception to the Proposed Order's adoption of the Ameren rebuttal ECOSSs as a starting point for revenue allocation and rate design in this case should be rejected.

VII. Response to Staff - Phase-In of the PURA Tax

Staff takes exception to the Proposed Order's decision to phase-in the PURA tax over the next 24 months. (Staff BOE at 22-24). Staff recommends the Proposed Order be modified to require there to be an immediate full recovery of the PURA tax expense through an equal per kWh charge for all customers. (Staff BOE at 25). IIEC disagrees with Staff's proposed modification.¹

Staff reasons that the Proposed Order was mistakenly concerned about the bill impacts that would result from Staff's proposal. (Staff BOE at 23). However, it is the Staff that is mistaken.

First, Staff calculated an increase in delivery service rates for the DS-4 rate class in Rate Zones 1 and 2 of 47.44% under its proposal. (*Id.*). This increase is well above the level the Proposed Order has concluded requires rate moderation for all of AIC's rate classes, including the DS-4 rate class.² Staff does not explain how or why a class rate increase for the DS-4 rate class that is well above the level necessitating rate moderation for all other AIC rate classes, does not require rate moderation itself.

¹ IIEC continues to support the rate moderation approach the Commission adopted in AIC's last case as its principal position. IIEC also recommended, if the AIC approach to phase-in of the PURA tax is adopted that the approved rate moderation approach be applied to each step of the phase-in. (*See*, IIEC BOE at 40-44).

² The Proposed Order concludes that increases in this case should be limited to 150% of the average increase or 10%, whichever is greater, for the customer rate classes in each rate zone. (PO at 186). The electric rate increase approved in the PO for Rate Zone 1 is 4.79%, for Rate Zone 2 is 7.03%, and for Rate Zone 3 is 2.00% (PO at 271-272). Therefore, the rate moderation caps for the rate zones would be 10% for Rate Zones 1 and 3 and 10.55% for Rate Zone 2 (150% times 7.03%). The 44.47% increase Staff wishes to impose on DS-4 customers, even at the rate class level, is much greater than any of the rate increases deemed moderate by the Proposed Order.

Second, Staff's evidence fails to consider or even to discuss the impacts of the Staff proposals at the rate subclass level. Staff's rates would produce increases of 504.2% for certain subclasses in Rate Zone 1, 120.3% for certain subclasses in Rate Zone 2 and 394.2% for certain subclasses in Rate Zone 3. (Stephens, IIEC Ex. 5.1). The Rate Zone 1 increases are more than 10.5 times the 47.44% increase Staff has suggested would not disproportionately impact customers. The Rate Zone 3 increases are almost nine times that level and the Rate Zone 2 increases are more than two times that level. Staff has presented absolutely no evidence suggesting that increases of these magnitudes would not have a disproportionate impact on the affected customers that requires moderation.

Next, Staff suggests that its increases would produce "only" a .5161 cents per kWh increase, on average, for DS-4 customers. (Staff BOE at 23). Staff again overlooks or ignores the impact of its proposal on the AIC rate subclasses. In addition, Staff is apparently unaware or unconcerned that increases of .5161 cents per kWh in the cost of electric service can result in millions of dollars of increased costs for large consumers of electricity, who use large numbers of kWh. (Stephens, IIEC Ex. 5.0 at 12:263-266).

Staff also suggests that the rates produced under its approach compare quite favorably with distribution rates paid by High Voltage customers on the ComEd system. (Staff BOE at 23). However, Staff's rate comparison is flawed. The rate classes in ComEd, such as the High Voltage rate class, are not directly comparable to the AIC rate classes. ComEd High Voltage customers are served at 69,000 volts or higher, irrespective of demand. The AIC DS-4 customers have demands

of 1 MW or more and are served at all voltages. (Stephens, IIEC Ex. 5.0 at 12:271-275). Thus, Staff has not demonstrated any similarity between the AIC DS-4 rate class and the ComEd High Voltage rate class and, thus not shown the validity of its rate comparison.

In addition, Staff has not determined whether the load factors and usage levels of the customers in the ComEd and AIC rate classes were comparable. (*Id.* at 12-13:276-278). Thus, the Staff has not shown that it has made an apples-to-apples comparison.

Lastly, the Staff did not take into consideration the potential cost differences between one utility and another in making its analysis and reaching its conclusions. (*Id.* at 13:279-283). Differences in costs can explain differences in rates.

Thus, Staff's evidence is inconclusive, and its position inexplicably flies in the face of Staff's recommendation on this very issue in the last Ameren rate case. In the last Ameren case, Staff adamantly supported inclusion of the PURA tax in the rate moderation criteria. (*See*, April 29, 2010 Order, Dkt. 09-0306, et al., (Cons.) at 289). Staff's evidence here does not justify any decision to exclude the PURA tax from any Commission approved rate moderation approach in this case.

Staff also reasons that the DS-4 customers have received a subsidy from other ratepayers for 13 years and, therefore, it is somehow reasonable to immediately increase delivery service rates for some customers within the DS-4 class by more than 500% to correct that alleged subsidy, something Staff overlooked or ignored for 13 years.³ Furthermore, Staff's assumption that a subsidy has

³ IIEC, for the reasons identified in its Initial and Reply Briefs, does not believe there is any subsidy associated with the allocation of the PURA tax. (IIEC Br. at 39-50; IIEC R. Br. at 58-60, 63-68, 70).

existed for 13 years is not based on any analysis of AIC's rates over the last 13 years. Instead, it is based on the mistaken belief that the PURA tax paid by Ameren is exclusively a function of kWh delivered. That is not the case. (*See*, IIEC Br. at 39-50; IIEC R. Br. at 20-31; and IIEC BOE at 3-6, 8-11).

Finally, Staff argues that its approach, which will increase rates for some customer groups by more than 500%, will more closely align PURA taxes with cost causation and make the AIC approach consistent with the methodology approved in ComEd's last rate case. (Staff BOE at 24).⁴ First, as noted above, IIEC strongly disagrees that Staff's approach is consistent with cost causation because the PURA tax paid by Ameren is not exclusively a function of kWh delivered. Second, the methodology approved in ComEd's last rate case was one that had been in existence for a number of years and the approval of that methodology in ComEd's last case, did not result in the huge increases that Staff elects to ignore in this case. (*See, Re Commonwealth Edison Co.*, Dkt. 10-0467, May 24, 2011 Order at 282). Staff offers no good public policy reason why it is necessary to increase rates by 500%, 394% or even 120% in this case, simply because doing so would make Ameren's recovery of the PURA tax consistent with ComEd's. Indeed, Staff's approach is simply poor public policy and poor ratemaking policy. Staff's proposal should not be adopted by the Commission in this case.

⁴ IIEC, for the reasons identified in its Initial and Reply Briefs, does not believe there was any subsidy associated with the allocation of the PURA tax prior to 2010. (IIEC Br. At 39-50; IIEC R. Br. at 58-60, 63-68, 70). Certainly, the Commission's orders in the twelve rate cases involving the utilities currently comprising AIC did not find evidence of any subsidies.

VIII. Response to AG/CUB/AARP - Phase-In of the PURA Tax (AG/CUB/AARP Exception 3)

AG/CUB/AARP support a flash cut to PURA tax cost recovery on an equal per kWh basis (without regard to bill impacts), but if a flash cut is not approved by the Commission, then AG/CUB/AARP recommend an alternative phase-in. (AG/CUB/AARP BOE at 11-12). IIEC has addressed the flash cut approach to PURA tax cost recovery in its response to Staff in Section VIII above, and in its Initial and Reply Briefs. (IIEC Br. at 70-81, 82-86; IIEC R. Br. at 52-56, 62-68, 68-74). It will not repeat those arguments here.

The AG/CUB/AARP alternative proposal for phase-in of the PURA tax, which provides no semblance of moderation for the classes most adversely affected, should not be adopted and the Proposed Order should not be modified to require its adoption. IIEC addressed the AG/CUB/AARP alternative in its Reply Brief. (IIEC R. Br. at 73-74). The alternative proposal should be rejected for several reasons.

First, as AIC confirms, it is impractical and cannot be implemented. (Jones, Ameren Ex. 31.0 at 41:855-861; IIEC R. Br. at 73). Second, the AG/CUB/AARP proposal, if adopted, could result in Rate Zone 3 and Rate Zone 1 customers paying for the PURA tax revenue shortfall associated with the PURA tax phase-in while similarly situated customers in Rate Zone II would not. (IIEC R. Br. at 73). Finally, the AG/CUB/AARP proposal is little better than a flash cut. It is likely to produce increases of a magnitude that would justify application of the Commission's rate moderation policies to minimize rate shock. (*See*, IIEC R. Br. at 73-74).

The AG/CUB/AARP proposal has not been supported by any other party in this case. And it may create discriminatory rates and requires customers in one rate zone to subsidize customers in another rate zone. The proposal is not worthy of consideration. The Proposed Order should not be modified to adopt the AG/CUB/AARP alternative proposal.

CONCLUSION

For the reasons stated in this Reply Brief on Exceptions, the Commission should reject the exceptions of AIC, Staff and the AG identified and addressed by IIEC.

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