

**STATE OF ILLINOIS  
ILLINOIS COMMERCE COMMISSION**

AMEREN ILLINOIS COMPANY,	:	
d/b/a Ameren Illinois	:	
	:	12-0001
Rate MAP-P Modernization Action	:	
Plan Pricing Filing	:	

**INITIAL BRIEF OF THE ILLINOIS INDUSTRIAL ENERGY CONSUMERS**

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## INDEX

<b>I.</b>	<b>INTRODUCTION/STATEMENT OF THE CASE</b>	<b>1</b>
<b>A.</b>	<b>Procedural History</b>	<b>1</b>
<b>B.</b>	<b>Legal Framework and Standards</b>	<b>7</b>
<b>C.</b>	<b>Participation in EIMA/Formula Rates Without AMI Plan Approval</b>	<b>24</b>
<b>II.</b>	<b>RATE BASE</b>	<b>26</b>
<b>A.</b>	<b>Overview</b>	<b>26</b>
<b>B.</b>	Uncontested or Resolved Issues	
1.	Gross Plant in service (except for C.8)	
2.	Accumulated Depreciation	
3.	Plant Held for Future Use	
4.	ADIT - Deferred Compensation	
5.	Materials and Supplies	
6.	Cash Working Capital - Employee Benefits/Payroll Lead	
7.	Customer Advances	
8.	Customer Deposits	
9.	OPEB Liability	
<b>C.</b>	<b>Contested Issues</b>	<b>28</b>
1.	<b>Cash Working Capital</b>	<b>28</b>
<b>a.</b>	<b>Pass-Through Taxes Revenue Lag</b>	<b>28</b>
<b>b.</b>	<b>Revenue Collection Lag</b>	<b>31</b>
<b>c.</b>	Income Tax Lead and Lag	
<b>d.</b>	Vacation Pay	
2.	<b>ADIT - FIN 48</b>	<b>33</b>
3.	<b>ADIT - Projected Additions</b>	<b>37</b>
4.	Accrued Vacation Pay as Operating Reserve	
5.	Account 190 Asset - Unamortized ITCs	
6.	Account 190 Asset - Step-Up Basis Metro	
7.	CWIP Not Subject to AFUDC	
<b>8.</b>	<b>Average Rate Base - Projected Plant/ADR/ADIT</b>	<b>41</b>
9.	Other	
<b>III.</b>	<b>OPERATING EXPENSES</b>	<b>50</b>
<b>A.</b>	<b>Overview</b>	<b>50</b>
<b>B.</b>	Uncontested or Resolved Issues	
1.	Adjustment for Athletic Ticket/Event Expenses	
2.	Adjustment for Contributions to Political Groups/Quincy Gems	

3.	Adjustment for EEI Memberships Dues Allocated to Lobbying .....	
4.	Correction for Previously Disallowed Depreciation Expense .....	
C.	Contested Issues .....	
1.	Section 9-277 Donations/Charitable Contributions .....	
2.	Account 909 - Advertising Expense .....	
a.	Signage Costs .....	
b.	Brand Related Expenses .....	
c.	E-Store Costs .....	
d.	Other Account 909 Expenses .....	
3.	Account 930.1 - Corporate Sponsorship .....	
4.	Regulatory Asset Amortization .....	
5.	Other .....	
IV.	REVENUES .....	
A.	Uncontested or Resolved Issues .....	
B.	Contested Issues .....	
1.	Late Payment Revenues .....	
V.	<b>RATE OF RETURN .....</b>	<b>50</b>
A.	<b>Overview .....</b>	<b>50</b>
B.	Uncontested or Resolved Issues .....	
1.	Rate of Return on Common Equity .....	
C.	<b>Contested Issues .....</b>	<b>52</b>
1.	Year End or Average Capital Structure .....	
2.	CWIP Accruing AFUDC Adjustment .....	
3.	Common Equity Balance - Purchase Accounting .....	
4.	<b>Subsequent Discussions/Report on Capital Structure .....</b>	<b>52</b>
5.	<b>Common Equity Ratio/Cap Limit .....</b>	<b>53</b>
6.	Balance and Embedded Cost of Long-Term Debt .....	
7.	Balance and Embedded Cost of Preferred Stock .....	
8.	Cost of Short-Term Debt, including Cost of Credit Facilities .....	
9.	Other .....	
VI.	REVENUE REQUIREMENT .....	
VII.	COST OF SERVICE AND RATE DESIGN .....	
A.	Resolved Issues .....	
1.	Standard of Review for Rate MAP-P Class Cost Allocation and Rate Design .....	

2.	ECOSS Class Cost Allocation .....	
3.	Class Revenue Allocation .....	
4.	Rate Design .....	
5.	Section 16-108.5(c)(4) Protocols - Weather Normalization and Common Costs .....	
B.	Contested Issues .....	
<b>VIII.</b>	<b>FORMULA RATE TARIFF .....</b>	<b>56</b>
A.	Uncontested or Resolved Formula/Tariff/Filing Issues .....	
1.	Uncollectibles Expense - Reconciliation in Rider EUA .....	
2.	Interest Rate Formula for Reconciliation Computation .....	
3.	Miscellaneous Staff/AIC Agreed-Upon Tariff Language Changes .....	
4.	Period of Time for Filing Compliance Formula Tariff with ICC .....	
<b>B.</b>	<b>Contested Formula/Tariff/Filing Issues .....</b>	<b>56</b>
1.	<b>Incentive Compensation - Stated Level/Test of Reasonableness ...</b>	<b>57</b>
2.	<b>Incentive Compensation - Metrics/Requirements .....</b>	<b>58</b>
3.	<b>Affiliate Service Charges - Stated Level/Test of Reasonableness ...</b>	<b>59</b>
4.	<b>Rate Case Expense - Stated Level/Test of Reasonableness .....</b>	<b>60</b>
5.	<b>Schedules to be Included in Rate MAP-P/Tariff Complexity .....</b>	<b>61</b>
6.	<b>Filing of Final Approved Formula Template/Schedules with ICC .</b>	<b>66</b>
7.	<b>Rulemaking - Formula Rate Process .....</b>	<b>67</b>
8.	<b>Other .....</b>	<b>67</b>
<b>C.</b>	<b>Contested Reconciliation Issues .....</b>	<b>69</b>
1.	<b>Year End or Average Rate Base .....</b>	<b>69</b>
2.	<b>Interest Rate on Under/Over Collections .....</b>	<b>70</b>
3.	Other .....	
<b>D.</b>	<b>Other Legal Issues .....</b>	
1.	CUB's Additional Steps for Commission Review of Project Costs .....	
<b>IX.</b>	<b>OTHER .....</b>	
A.	Resolved or Uncontested Issues .....	
1.	Original Cost Determination .....	
2.	Uncollectibles Expense - Net Write Off in Rider EUA .....	
3.	Net Plant Allocator .....	
4.	Depreciation Study .....	
5.	Rate Case Expense - Section 9-229 Statement .....	
<b>B.</b>	<b>Contested Issues .....</b>	
1.	Income Taxes - Interest Synchronization .....	
2.	Gross Revenue Conversion Factor .....	
<b>X.</b>	<b>CONCLUSION .....</b>	<b>70</b>

## **INITIAL BRIEF OF THE ILLINOIS INDUSTRIAL ENERGY CONSUMERS**

A diverse group of large electricity consumers, Air Products & Chemicals Company, Inc., Archer-Daniels-Midland Company, Caterpillar Inc., Enbridge Energy LLC, GBC Metals Company, Keystone Consolidated Industries, Inc., Marathon Petroleum Company LP, Olin Corporation, Tate & Lyle Ingredients Americas, Inc., Viscofan USA, Inc., Washington Mills Hennipen, Inc., and the University of Illinois,, intervened in this proceeding. They refer to themselves collectively as the Illinois Industrial Energy Consumers (“IIEC” or “IIEC Companies”). Pursuant to Section 200.800 (83 Ill. Adm. Code Part 200.800) of the Rules of Practice of the Illinois Commerce Commission (“ICC” or “Commission”), and the briefing schedule set by the Administrative Law Judges, the IIEC Companies named above present their Initial Brief in this docket for the Commission’s consideration.<sup>1</sup>

### **I. INTRODUCTION/STATEMENT OF THE CASE**

#### **A. Procedural History**

These proceedings were initiated on January 3, 2012, by Ameren Illinois Company d/b/a Ameren Illinois (“Ameren” or “Company”), pursuant to Public Act 97-616 (relevant portions are part of Section 16-108.5 of the Illinois Public Utilities Act (“PUA”) (“Section 16-108.5”). (220 ILCS 5/16-108.5)). Ameren seeks Commission approval of a formula rate – Modernization Action Plan Pricing tariff (Rate MAP-P) – pursuant to Section 16-108.5 and an adjustment of its delivery

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<sup>1</sup> This brief follows the agreed outline for briefs in this proceeding. Captions relevant to the issues addressed by IIEC are in **bold** typeface in the Table of Contents to this brief. IIEC has inserted additional sub-captions where needed to better organize this brief.

service rates in accordance with that formula rate. In Section I.B. below, IIEC discusses the formula rate statute ("Section 16-108.5") and its application in this case.

IIEC presented the direct and rebuttal testimony of three witnesses -- Mr. Michael P. Gorman, Mr. Stephen M. Rackers, and Mr. Robert R. Stephens, all of the firm Brubaker & Associates, Inc. (Gorman IIEC Ex. 1.0 and IIEC Ex. 4.0 and 4.1; Rackers, IIEC Ex. 2.0 and 2.1 and IIEC Ex. 5.0, 5.1 and 5.2; and Stephens, IIEC Ex. 3.0). Their analysis of Ameren's filing revealed that modifications were needed to accomplish the statutory objective of assuring recovery of Ameren's actual costs during a specific year through an appropriate tariff mechanism. They recommended specific changes, explained the reasons those modifications are needed, and made other ancillary proposals in their testimony.

Mr. Gorman holds a B.S. degree in Electrical Engineering and a Masters Degree in Business Administration. He is a former member of the Staff of the Illinois Commerce Commission, where he performed a variety of analyses for formal and informal investigations by the Commission. These included analyses relating to annual system production costs and working capital. (IIEC Ex. 1.0, App A at 1:9-20). He is the former Director of the Financial Analyst Department for the Commission Staff. In that capacity, he provided analyses and testimony before the Commission on rate of return, financial integrity, financial modeling, and related issues. He is a former financial consultant with Merrill Lynch. He has been employed at the firm of Brubaker & Associates since September 1990. In engagements for that firm, he has provided testimony and analyses relating to utility cost of capital, mergers and acquisitions, utility reorganizations, operating expense and rate

base, and cost of service. (*Id.* at 2:21-49). He has testified before the Federal Energy Regulatory Commission and numerous state regulatory commissions. (*Id.* at 3:52-60).

Mr. Gorman provided expert testimony: (i) on Ameren's proposal to use an end-of-year rate base to establish the Rate MAP-P revenue requirement, recommending the use of an average year rate base to determine Ameren's initial revenue requirement and for the annual reconciliations pursuant to Section 16.108.5(d) (220 ILCS 5/16-108.5(d)); (ii) that a 50% common equity ratio cap be included in Ameren's formula rate as the presumptive maximum reasonable equity ratio; (iii) that Ameren's actual common equity ratio in this case (54.38%) is unreasonable and should be rejected; (iv) that the Commission should establish upper limits in the development of Ameren's formula rate revenue requirement on Ameren's actual costs for rate case expense, affiliate service charges, and incentive compensation expense that would serve as triggers for close scrutiny of amounts in excess of the stated ceilings; and (v) that as a further condition on formula rate recovery of incentive compensation expense, Ameren should be permitted to recover such costs of rewarding employees only if the performance metrics and reliability standards established under Section 16-108.5(f) have been met.

Mr. Rackers holds a B.S. degree in Business Administration, with a Major in Accounting, from the University of Missouri. He is a licensed certified public accountant. (*Id.* at 2). He was formerly employed by the Missouri Public Service Commission for a period of 34 years. There he conducted audits and examinations of accounts, books, records and reports of utilities subject to the jurisdiction of the Missouri Commission. He aided in planning audits and investigations by the Missouri Commission. He also participated in the development of Commission Staff positions,

-serving as lead auditor and case auditor in individual cases, as assigned by the Missouri Commission. He has presented testimony in electric, gas, telephone and water and sewer cases during his time at the Missouri Commission, including testimony on rate making principles and to utility revenue requirements. He joined the firm of Brubaker & Associates in March of 2012. (Rackers, Ex. 2.0 App. A at 1-2). Mr. Rackers recommends changes to Ameren’s calculation of the cash working capital (“CWC”) component of Ameren’s rate base and to Ameren’s treatment of accumulated deferred income taxes (“ADIT”) in calculating in rate base.

Mr. Stephens has a B.S. degree in Engineering from Southern Illinois University. He holds an M.B.A. from the University of Illinois at Springfield. He has been employed as a mechanical engineer, at the Illinois Department of Energy and Natural Resources, and as an Energy Planner for the City of Springfield municipal utility. He also was employed at the Illinois Commerce Commission as a Senior Economic Analyst and later as a Commissioner’s Executive Assistant. He joined the firm of Brubaker and Associates in 1997. He is currently a principal in the firm and has participated in the analysis of various rate and restructuring matters in numerous states. (Stephens, IIEC Ex. 3.0 App. A at 1 and 2). Mr. Stephens addresses the appropriate structure of the tariff used to implement formula based rates. He concluded that Ameren’s proposed rate MAP-P is unduly complex and difficult to understand. In particular, it contains more details than necessary to implement the statutory requirements for formula rates set forth in Section 16-108.5, as described by the record evidence in this case and discussed below in IIEC’s brief.

Based on the record evidence (including the IIEC testimony described above), IIEC takes the following positions and makes the following recommendations:

1. The Commission should firmly and diligently exercise its continuing ratemaking authority under Article IX of the Public Utilities Act, which the legislature emphasized in Section 16-108.5 of the PUA, as the Commission considers and approves or modifies Ameren's formula rate and charges.
2. The Commission should reject the Company's proposal to use an end-of-year rate base for the calculation of the formula rate revenue requirement and adopt the conclusion of IIEC and other parties (and the Commission, in its first implementation of a formula rate under Section 16-108.5) that use of an average year rate base more accurately represents the actual costs that should make up Ameren's revenue requirement.
3. The Commission should reject Ameren's proposal to determine its formula rates by using a rate base that includes projected plant additions and the build-up in accumulated depreciation, but does not recognize the contemporaneous build-up in ADIT, which directly affects the value of investment used to provide Ameren's regulated service.
4. Ameren's CWC allowance for EAC should be measured consistently with the Commission's determinations in the most recent ComEd traditional rate case (Dkt. 10-0467) and the most recent Ameren electric rate case (Dkts. 09-0306 *et. al.* (consol.). EAC should be assigned a zero-day lag, instead of a revenue lag of 34.54 days.
5. The Commission should reject the excessive 30.67 day revenue collection lag proposed by Ameren. The revenue collection lag should reflect the 21 days allowed by Illinois Administrative Code section 280.90 for timely residential customer bill payments. This lag determination was accepted by the Commission in Ameren's last electric rate case (Dkt. 09-0306 *et. al.* (consol.), where Ameren's lag calculation for CWC was based on the same unsupported assumptions used in this case.
6. The Commission should reject Ameren's reduction of the ADIT balance used in determining rate base to reflect uncertain tax positions ("UTPs"), as defined by Financial Accounting Standard 48

(FIN 48). Ameren will enjoy the deferred tax benefits of the UTPs at issue, which Ameren views as access to non-investor capital, until the internal Revenue Service makes a final determination in the future.

7. In determining Ameren's prudent and reasonable capital structure, the Commission should impose a cap or limit of 50% on Ameren's actual equity ratio, until a common equity ratio cap is established through a subsequent regulatory process.
8. The Commission, pursuant to its authority to modify Ameren's formula rate tariff, should simplify the tariff, so that it is more intelligible and useful to Ameren's customers.
9. Consistent with its ruling in the recent ComEd formula rate case (*Commonwealth Edison Company*, ICC Dkt. 11-0721, Order, May 29, 2012, (the "ComEd Formula Rate Case" and the "ComEd Formula Rate Case Order")), the Commission should amend its rate case administration rules to establish requirements similar to the traditional rate case filing requirements of current Parts 285 and 286, or apply the relevant portions of Parts 285 and 286 to Ameren's annual formula rate filings.
10. As part of its review process, the Commission should identify predetermined levels of regulatory (rate case) expense, incentive compensation expense, and affiliate charges expense that (if exceeded) would trigger a formal investigation of Ameren's proposed costs and the resulting rates.
11. The Commission should further limit the inclusion of incentive compensation costs in Ameren's formula rate by finding that such incentive payments are prudent and reasonable only when its service performance meets the reliability metrics adopted by the Commission.
12. The Commission should adopt the Staff proposal or the AG/AARP proposal respecting the appropriate interest rates to be applied to reconciliation balances.

## **B. Legal Framework and Standards**

### *1. The Formula Rate Regime*

Section 16-108.5 effects significant changes in this Commission's approach to setting rates for Ameren's regulated distribution delivery service. (Nelson, Jun 20 Tr. at 51). That statutory provision prescribes a formulaic determination of Ameren's return on equity, requires formalization (in tariff form) of the revenue requirement equation traditionally used in Illinois, institutes a process for the reconciliation of Ameren's rates -- but not its actual revenues -- with Ameren's costs (based mainly on its FERC Form 1 data) during the rate year, and establishes an earnings collar that allows Ameren's actual earnings to vary by as much as 50 basis points from the formula cost of equity used to set rates. (*See* 220 ILCS 5/16-108.5 (c)(5); Gorman, IIEC Ex. 1.0 at 4:98)).

Other aspects of the Commission's regulation of Ameren's rates remain essentially unchanged. Indeed, with the single exception of Ameren's return on equity, Section 16-108.5 repeatedly emphasizes the Commission's duty to maintain (if not intensify) its Article IX review of all costs included in the utility's revenue requirement.<sup>2</sup> (220 ILCS 5/16-108.5(c)(3)). The Commission's recognition and diligent performance of its Article IX duties will determine whether the Commission's regulatory oversight is adequate, whether its determinations of Ameren's prudently incurred, reasonable costs are accurate, and whether the rates imposed on ratepayers are just and reasonable.

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<sup>2</sup> Article IX is referenced nine times in Section 16-108.5.

Ameren claims – incorrectly – that under the new formula rate and reconciliation regime, which Ameren is implementing for the first time in this case, Ameren’s ratepayers will be responsible for Ameren’s actual cost of delivery service under Section 16-108.5 and under its proposal. (*See*, Nelson, Ameren Ex. 11.0 at 20:413-415). As explained in this brief, Ameren is wrong on both counts. The formula rate structure does not reconcile what Ameren collected from ratepayers with the Ameren’s rate year costs, and Ameren’s cost determinations are flawed. Nonetheless, Ameren’s assertion is the basis for suggestions that inaccuracies in the determination of various costs can be ignored, because “actual data will be included in future true-ups” and variances will be corrected through reconciliation. (*See, e.g.*, Stafford, Ameren Ex. 13.0 at 22:457). In fact, an approach that countenanced knowing adoption of rates based on inaccurate costs would violate the Article IX mandate that rates imposed under PUA be just and reasonable and the Article XVI requirement that “charges for delivery services . . . be cost based.” (220 ILCS 5/9-101; 16-108(c)).

More important, the formula reconciliation adjustment of Section 16-108.5 takes no consideration of the amount ratepayers have actually paid, and it makes no adjustment for excess or insufficient amounts paid by ratepayers. (*Compare* 220 ILCS 5/16-108.5(c)(5) and 220 ILCS 5/16-108.5(c)(6)). The statutory reconciliation is of only the “revenue requirement [based on projected costs] effected in rates” and “what the revenue requirement would have been had the actual cost information for the applicable calendar year been available at the filing date.” (220 ILCS 5/16-108.5(c)(6)). Ameren’s revenues (what customers pay) are not reconciled to its actual costs,

and its revenues may vary widely from those costs, since they are not limited directly by the statute or any effect of the reconciliation.<sup>3</sup> Ameren's revenues are constrained only indirectly, by an earnings collar that permits large differences between the amount ratepayers pay and the prudent, just and reasonable costs Ameren actually incurs in providing service. (220 ILCS 5/16-108.5(c)(5)). Initial rates that are not based on cost are not just or reasonable, and they are unlawful. Relying on a reconciliation process that does not reconcile the charges customers actually pay with the costs Ameren actually incurs cannot cure those failings.

Still, Ameren has used the claim that it will recover only its actual costs as a justification for mechanistic treatments of its proposed costs. (*See, e.g.*, Nelson, Ameren Ex. 21.0R at 7:133-134; Nelson, June 20 Tr. at 50). A reconciliation that does not actually remedy over-collections from ratepayers cannot reasonably be the basis for lessened scrutiny of the utility's proposed costs. Those costs if used to set initial rates, could inflate the rates and the dollars customers actually pay. Because Ameren's revenues will not be reconciled to its actual costs (as documented in its FERC Form 1 for the rate year), the statutory reconciliation offers no firm prospect of correction or restitution for customers through the annual reconciliation of rates. These factors increase the importance of vigorous regulatory review. Consistent with that view of the Commission's role, the General Assembly (in Section 16-108.5) has repeatedly mandated full Article IX reviews of formula rate proposals -- for both initial and reconciliation rates.

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<sup>3</sup> This is true even before the effects of the earnings variances permitted by the earnings collar are considered. (*See* 220 ILCS 5/16-108.5(c)(5)).

Ameren’s implementation of that statutory process is a distinct second source of inaccuracy in matching the costs Ameren incurs to provide service with what customers pay for that service. Ameren’s strained interpretations of the formula rate statute are the source of many of the contested issues in this case. As noted, the singular focus of the formula rate statute is the accurate determination of a utility’s actual costs for a specific rate period and timely recovery of those costs, using a reconciliation process for added precision. Ameren, however, proposes an interpretation of the statute that attempts to estimate costs for a time period– the year rates are in effect – that is far removed from the FERC Form 1 actual costs and near-term projected costs used to set initial rates. (Nelson, Ameren Ex. 11.0 at 5:104-105 – trying to explain why “use of a year end rate base ensures a match between the rates paid by ratepayers and the cost of the plant used to provide them service at that time.”

2. *Commission Authority/Duties and Statutory Standards*

Section 16-108.5 explicitly commands, with very limited exceptions, that the Commission continue its scrutiny of proposed costs and rates in accordance with current relevant law, including Article IX of the PUA, and with the Commission’s customary practice.

The Commission shall initiate and conduct an investigation of the tariff in a manner consistent with the provisions of this subsection (c) and the provisions of Article IX of this Act to the extent they do not conflict with this subsection (c).

\* \* \*

Such review [of proposed rates and tariffs] shall be based on the same evidentiary standards, including, but not limited to, those concerning

the prudence and reasonableness of the costs incurred by the utility, the Commission applies in a hearing to review a filing for a general increase in rates under Article IX of this Act.  
(220 ILCS 5/16-108.5(c)) (Explanation added)..

Thus, any suggestion that a formula rate – even when incorporated in a tariff – displaces the Commission’s rate setting function or diminishes its review authority (except where a conflict with statutory formula rate requirements in Section 16-108.5(c) exists) has been expressly rejected by the General Assembly.

The Commission is not authorized to forego this mandated rigorous Article IX review of proposed costs and rates, in deference to numbers that appear in an annual Ameren filing with another regulatory body (its FERC Form 1). The formula rate statute states explicitly “Nothing in this Section is intended to allow costs that are not otherwise recoverable to be recoverable by virtue of inclusion in FERC Form 1.” (220 ILCS 5/16-108.5(c)(6)). Even in adopting FERC filings as a starting point for future formula rates, Illinois’ General Assembly expressly required that:

The performance-based formula rate approved by the Commission shall do the following:

- (1) Provide for the recovery of the utility's actual costs of delivery services that are prudently incurred and reasonable in amount consistent with Commission practice and law.

(220 ILCS 5/16-108.5 (c) (emphasis added))

The first requirement of – and the first limitation on – Illinois’ formula rate process is that it “[p]rovide for the recovery of the utility's actual costs of delivery services that are prudently incurred and reasonable in amount consistent with Commission practice and law.” (220 ILCS 5/16-

108.5(c)(1)). As noted, that consistency expressly includes the provisions of Article IX of the PUA, “to the extent they do not conflict with this subsection (c).” (220 ILCS 5/16-108.5(c)). With respect to the most consequential contested proposals in this case, there is no such conflict. Adherence to the directives of both Article IX and new Section 16-108.5 is possible, sensible, and required.

Ameren’s proposed implementation of the PUA’s provisions, however, creates conflicts that do not exist in the statutory provisions themselves. For example, Section 16-108.5’s requirement that Ameren recover only its “actual costs of delivery services that are prudently incurred and reasonable in amount consistent with Commission practice and law” is fully consistent with the limitation, in Section 9-211 of the PUA, on the Commission’s authority to approve excessive rate base amounts. (220 ILCS 5/16-108.5(c)(1); 220 ILCS 5/9-211). Ameren proposes to augment the projected plant additions permitted under Section 16-108.5 by the use of year-end rate base amounts – instead of its actual capital costs reflecting only the “value of such investment . . . prudently incurred and used and useful in providing service” during the pertinent calendar year. (220 ILCS 5/9-211). Ameren’s approach creates an easily avoidable violation of PUA Article IX’s statutory limitations, which were recently judicially affirmed.<sup>4</sup> (220 ILCS 5/9-211; *Ameren Illinois Company*

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<sup>4</sup> Moreover, nothing in Section 16-108.5 “is intended to legislatively overturn the opinion issued in *Commonwealth Edison Co. v. Ill. Commerce Comm’n*, Nos. 2-08-0959, 2-08-1037, 2-08-1137, 1-08-3008, 1-08-3030, 1-08-3054, 1-08-3313 cons. (Ill. App. Ct. 2d Dist. Sept. 30, 2010).” (220 ILCS 5/16-108.5(j); *Commonwealth Edison Co. v. Ill. Commerce Comm’n*, 405 Ill. App. 3d 389 (2<sup>nd</sup> Dist. 2010)). That decision held that Section 9-211’s limitation encompassed both historical and projected rate base costs used to set rates. It did so even though the rate base adjustment at issue (accumulated depreciation) was not specifically named in a Commission rule. (*Id.* at 405 ). The substance of that decision was affirmed (and extended to ADIT) in a recent Ameren appeal. (*Ameren Illinois Company v. Ill. Commerce*

*v. Ill. Commerce Comm'n*, 967 N.E. 2d 298, 359 Ill. Dec. 568 (Ill. App. Ct. 4<sup>th</sup> Dist. Jan. 10, 2012); *see also, ComEd Formula Rate Order* at 59).

Ameren also argues that recognizing the effect of ADIT on its projected rate base and capital costs is barred, because ADIT is not specifically mentioned in Section 16-108.5 and will be “caught” in reconciliation charges. (*See, e.g., Stafford, Ameren Ex. 13.0* at 22:456; *Stafford, Ameren Ex. 23.0R* at 15:317-318). However, that interpretation and application of the statute would preclude the Commission’s performance of its duty to determine the amount of Ameren’s prudently incurred, reasonable costs used to provide service -- and to use only those costs in setting its rates. (220 ILCS 5/9-201(c); *ComEd Formula Rate Order* at 59). Moreover, Ameren’s argument is essentially meaningless as a consequential distinction, since all deviations from its actual costs of service -- no matter how unreasonable -- will be caught in reconciliations. But, as already noted, the Commission lacks authority to approve rates that are not based on Ameren’s prudent and reasonable costs.

The Commission's obligation to recognize only prudent and reasonable costs for use in formula rate calculations requires that wherever practicable the Commission must take account of both projected costs and projected cost offsets that significantly affect the rate base or the formula rate revenue requirement used to set rates. A deliberate, knowing calculation of an excessive

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*Comm'n*, 967 N.E. 2d 298, 359 Ill. Dec. 568 (Ill. App. Ct. 4<sup>th</sup> Dist. Jan. 10, 2012)).

revenue requirement that excludes significant offsets to projected costs is neither just and reasonable nor lawful.

A great deal of Ameren's testimony in this case purported to support formula rate proposed implementation details with lay opinions on the intent of the legislature as to particular provisions of the formula rate statute. Even allowing for the latitude customarily afforded regulatory witnesses charged with implementing statutory provisions, the speculative testimony in this case warrants a caution. Testimony regarding the supposed "intent" of the legislature is -- as a matter of law -- incompetent and of no legal significance. Clearly, the Commission should disregard the speculation of non-lawyers as to the proper construction of new legislative language lacking a history of Commission implementation practice. Amazingly, for lay implementers of regulatory directives, many Ameren witnesses reject the Commission's guidance from the single instance of its implementation. At the end of the day, those lay opinions provide little insight to the record.

To be clear, IIEC does not include in this recommendation expert testimony on the effects of a particular statutory construction, which can be proper and valuable input to the Commission's deliberations. The coherence, practicality, and effects of specific implementations are frequently contested, based on varying interpretations of relevant statutory language by industry participants. Such testimony is allowed and credited in Commission proceedings. But that is not the same as arguing for a specific interpretation or implementation based on a witness' claim to know the intent of the General Assembly.

### 3. *The Commission Practice Standard*

By statute, Ameren's performance-based formula rate is to provide for recovery of Ameren's actual costs "prudently incurred and reasonable in amount consistent with Commission practice and law." (220 ILCS 16-108.5(c)(1)). Certain new matters, like reconciliation issues, have no direct precedent in prior Commission practice. However, Section 16-108.5 broader directives to the Commission -- to allow only prudently incurred, reasonable costs and to assure just and reasonable rates -- are supported by ample precedent in Commission practice, which can provide guidance for any novel demands of a formula rate regime.

In addition to statutory imperatives (prudence, just and reasonable), the Commission's established practices include adherence to a policy of cost causation and to ratemaking principles like rate stability and gradualism. Cost causation in particular requires rates that reflect Ameren's prudent and reasonable costs as accurately as practicable. Such accuracy also supports the statutory requirements. The formula rate statute requires that rates be just and reasonable. (See 220 ILCS 5/16-108.5(c)(6)). Therefore, a more accurate measurement of Ameren's actual cost of service during the initial rate period and during subsequent rate years is needed. Furthermore, it is apparent from the incorporation of a reconciliation process (220 ILCS 5/16-108.5(d)), that an accurate measure of Ameren's cost of service is a clear objective of the formula rate.

The Commission's consistent focus on cost causation should have the effect of minimizing the charges or credits needed to reconcile revenue requirements based on projected costs with revenue requirements based on actual costs for the same period. It seems appropriate to try to obtain

the most accurate cost of service projection that is practicable, thus minimizing the burdens of over-recovery for ratepayers or under-recovery for Ameren pending completion of a reconciliation process. That approach also advances the principles of rate stability, gradualism and cost causation that are elements of the Commission's regular practice and is supported by parties in this case. "The goal should be to have rates accurately reflect costs, and reconciliation is merely a tool to correct and adjust unavoidable imbalances." (*ComEd Formula Rate Order* at 167).

Absent an irreconcilable conflict with required elements of the formula rate, those established practices and principles of the Commission's Article IX regulation have been preserved by the formula rate statute. (220 ILCS 5/16-108.5(c)). Thus, the Commission's primary objective in each formula rate proceeding should be identical to its objective in other proceedings subject to Article IX regulation -- an accurate determination of Ameren's costs of service (revenue requirement) to support just and reasonable rates. That objective should not be subordinated to excessively narrow constructions of statutory language or to blind repetition of formula calculations, nor diminished by the mere prospect of a later reconciliation. An accurate determination at each stage of the two-part formula rate process is imperative, since -- under the structure of section 16-108.5 -- there is no guarantee that every dollar of revenue excess or deficiency will be corrected by a later credit or charge of equal amount. Moreover, inaccurate projections could combine to increase the aggregate error term and hurt customers and utilities alike.

Ameren's formula rate proposal and its proposed rates, however, rest on a series of contradictory arguments. Ameren takes both sides of issues as needed, to support its proposals. In

doing so Ameren directly challenges the statute's requirement for implementation in accord with prior Commission practice.

For instance, at times, Ameren narrowly construes Section 16-108.5, but not consistently so. Ameren argues that recognition of projected changes in accumulated deferred income taxes is barred (notwithstanding the appellate court's holding on the effect of PUA Section 9-211) simply because the formula rate statute does not expressly mention that rate base component.<sup>5</sup> (Stafford, Ameren Ex. 23 at 15:314-317). Similarly, Ameren would reject a more accurate average-year rate base amount because that figure (just like a year-end rate base amount) is not specifically mentioned in Section 16-108.5. (Nelson, Ameren Ex. 11.0 at 3:57; 220 ILCS 5/16-108.5). At the same time, Ameren inconsistently proposes, *inter alia*, that the Commission modify its prior determination respecting the inclusion of ADIT in the determination of rate base and change its prior practice on the treatment of Energy Assistance Charges in calculating cash working capital. There, Ameren finds the Commission's authority expansive, despite the formula rate statute's explicit (not inferred) mandate that the Commission's implementation be "consistent with Commission practice and law." (220 ILCS 5/16-108.5(c)(1)).

Similarly, Ameren has proposed a tariff of incredible detail and complexity to implement the formula rate statute. (Stephens, IIEC Ex. 3.0 at 2:25-29, 3-4:45-63). While Section 16-108.5(c)

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<sup>5</sup> In fact, the Commission and the Appellate Court have held that the PUA does speak to the need to take ADIT into account in determining rate base. (*See Ameren Illinois Company v. Ill. Commerce Comm'n*, 967 N.E. 2d 298, 359 Ill. Dec. 568 (Ill. App. Ct. 4<sup>th</sup> Dist. Jan. 10, 2012); *Ameren CIPS et al.*, Dkts. 09-0306 et al., Cons., Order on Rehearing, Nov. 4, 2010 at 49).

permits a formula rate, it does not displace the Commission's role in setting rates or the tariff's function as customers' notice of the terms, conditions, and rates of service. Section 16-108.5 simultaneously emphasizes the Commission's Article IX authority to determine the formula's prudent and reasonable cost of service inputs, (for costs other than the return on equity) and the tariff's compliance with the PUA and Commission practice. (*See* 220 ILCS 5/16-108.5(c)(1) and (c)(3)).

Ameren's proposed tariff contains dozens of pages of spreadsheets, filled with arcane variables and references to even more spreadsheets, most of which are not in the tariff. (*See* Stafford, Ameren Ex. 2.1, and 2.2 Rev.; IIEC Cross Ex. 1 (Ameren Resp. to IIEC DR 7.01)). The Commission's duties would be hampered by the inflexible, excessively detailed calculations in Ameren's proposed tariff. Moreover, as explained earlier, any suggestion that mechanistic calculations in a formula rate tariff can supplant the Commission's rate setting function was firmly rejected by the General Assembly. Ameren's proposed tariff unnecessarily complicates the Commission's review, threatening to diminish the Commission's defined role,<sup>6</sup> and it denies customers (and the Commission) simplicity, certainty, or clarity. (Stephens, IIEC Ex. 3.0 at 6-7; 106-145).

The proposed tariff's detailed spreadsheets may require revision simply to implement Commission determinations that certain costs included in amounts shown on a FERC Form 1 do not

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<sup>6</sup> The Commission's Article IX review is an integral and substantive part of the ratemaking process. And the mandate imposes obligations on the Commission to protect the interests of ratepayers, as well as participating utilities.

meet Article IX standards. A lengthy list is needed to show changes to the tariff and supporting documents that were required by Ameren's own revisions of the revenue requirement calculation. (*See e.g.* Stafford, Ameren Ex. 13.0 at 3-7:56-145; Mill, Ameren Ex. 12.1). The task of crafting, ordering, and verifying similar revisions scattered through almost 200 pages of tariff, tariff appendix, and workpaper spreadsheets -- potentially for each Commission cost determination that varies from what Ameren proposed -- can present significant practical obstacles to the Commission's performance of its duties.

#### 4. *Staff and Intervenor Positions and Proposals*

The testimony of intervenor parties presents several shared concerns about Ameren's proposed implementation of the formula rate statute. Foremost are two concerns: (a) that Ameren's proposals do not respect the over-arching objective of the formula rate statute -- recovery of Ameren's actual costs for the pertinent calendar year; and (b) that Ameren is dismissive regarding the accurate cost of service determinations critical at each stage of the formula rate process.

Of particular concern is the revenue requirement determination for initial rates, which is based partly on Ameren's distortion of its rate base costs and its selective inclusion of elements that make up the Company's projected costs. (*See, e.g.*, Gorman, IIEC Ex. 1.0 at 5:108; Effron, AG-AARP Ex. 2.0 at 19:415-418, Smith, CUB Ex. 1.0 at 35:851-853). Because the statutory reconciliation process does not match what customers actually paid with Ameren's actual costs of service, there is a real danger that the customer overpayments resulting from inaccurate cost determinations will never be recovered from Ameren. Ameren's proposed implementation of the

statute includes projected additions to rate base, but would exclude contemporaneous decreases to rate base, such as ADIT (Stafford, Ameren Ex. 13.0 at 22:456-458; Rackers, IIEC Ex. 2.0 at 6-7:116-125) exacerbating that peril of unrecoverable over-collections.

That fundamental disconnect in the design of the reconciliation process (reconciliation of costs, not revenues) magnifies the importance of Commission oversight under PUA Article IX, as there is no readily apparent remedy when customer payments exceed Ameren's actual rate year costs, even after the reconciliation. Therefore, it is important the Commission exercise its authority under Article IX in a manner that insures that only Ameren's prudent and reasonable costs, determined as accurately as possible, are reflected in Ameren's formula rate at any given time.

By statute, this case must examine Ameren's proposed formula rate and make the initial determination of its revenue requirement and rates under the formula process. (220 ILCS 5/16-108.5(c)). This is the Commission's first implementation of the formula rate process for a Combination Utility, as that term is defined in Section 16-108.5(b) of the PUA. (220 ILCS 5/16-108.5 (b)). Although Ameren is the first (indeed only) Combination Utility to propose a formula rate under the formula rate statute, the questions presented in this case are not unique. The Commission has previously considered many of the contested issues in this proceeding in the recent ComEd Formula Rate Case (ICC Dkt. 11-0721), the Commission's initial implementation of the formula rate statute for any utility. The Commission's conclusions of law, and its decisions on how the formula rate statute should be implemented are relevant – and possibly determinative – in this case.

The General Assembly adopted only one formula rate statute. It is applicable to both a Participating Utility (ComEd) and a Combination Utility (Ameren). (220 ILCS 5/16-108(b)). The formula rate statute provisions that distinguish one utility type from the other relate almost entirely to the infrastructure improvement obligations imposed on the utilities, not to the formula rates or the associated cost and revenue requirement determinations. (*See*, 220 ILCS 5/16-108.5(b) and (b-10)). Ameren witness Craig Nelson agreed that “there is nothing in the Act that suggests that the utility should be entitled to recover anything other than its actual prudent and reasonable costs.” (Nelson, June 20 Tr. at 71).

A combination utility is mentioned only two times in the portion of the statute that deals with the implementation of the formula rate itself, and only once in the portion of the statute dealing with the reconciliation process. (*See*, Section 5/16-108.5(c) and (d)). The first instance deals with the amount of severance cost a combination utility may amortize. (*See*, 220 ILCS 5/16-108.5(c)(4)(C) and (F)). The next instance deals with the data that must be filed by a combination utility with multiple rate zones. (220 ILCS 5/16-108.5(d)(3)). None of these references suggest that the formula rate ultimately approved for a combination utility should be structured or implemented any differently than it would be for any other participating utility.

The Commission has thoroughly considered issues of interpretation with respect to the most contentious specific provisions of the formula rate statute. The Commission’s conclusions of law regarding that statute – the same statute being applied in this proceeding – are articulated in its order in the ComEd Formula Rate Case. (*See generally, ComEd Formula Rate Order*). The Commission’s

legal conclusions are definitive interpretations of its enabling legislation, which includes the formula rate statute, and are unless and until changed on further review -- either by the Commission itself on rehearing or by a reviewing court on appeal -- is the governing law. (220 ILCS 5/10-113). Since there is only one formula rate statute, the Commission cannot apply disparate interpretations of the same legislative provisions relating to the formula rate and reconciliation to participating utilities.

It is readily apparent that the major issues in the Commission's initial implementation of this new statute are questions of legal interpretation. The Commission's interpretation of its enabling legislation is entitled to considerable weight. The Commission's interpretation of statutory standards is entitled to deference. (*United Cities Gas Co. v. Illinois Commerce Comm'n*, (1994), 163 Ill. 2d 1, 205 Ill. Dec. 428, 643 N.E. 2d 719). The important point in this case is that the legal determinations of the ComEd Formula Rate Case decision the Commission's first interpretation and application of Section 16-108.5, cannot be ignored simply because Ameren proposes a different approach. The burden of persuading the Commission to reverse its well-reasoned positions is clearly a heavy one and for Ameren alone. (*See, e.g., Commonwealth Edison Company, General Increase in Electric Rates*, ICC Dkt. 10-0467, Final Order, May 24, 2011 at 285 - rejecting IIEC's argument on allocation of the Illinois Electric Distribution Tax based in part on a statutory interpretation made in an earlier Ameren rate case order.)

On factual matters, the Commission must render its decision on the basis of the record before it. IIEC has no quarrel with such factual determinations. However, determinations of historical fact in this case cannot be different from what the Commission found in the ComEd case. In particular,

the determination of what has been “Commission practice and law” regarding various traditional rate case issues is an explicit constraint in formula rate cases. Absent compelling evidence establishing a recognized factual or legal distinction, the Commission’s determinations of historical “Commission practice and law” must be the same for all utilities.

Ameren argues that, because the ComEd Formula Rate Case decision is under review, it should not be a factor in the Commission’s decisions on the legal and policy decisions in this formula rate case.

Ameren Illinois has made compelling arguments why the use of average rate base for reconciliation purposes should be rejected. Dismissing such testimony without rebuttal simply because the Commission has ruled on this issue in another docket, especially where the Order could still be modified on rehearing, should carry little weight, if any, in this proceeding. (Mill, Ameren Ex. 22.0 at 3:46).

The mere possibility that a currently effective Commission order might be modified is not a rational basis for ignoring the Commission’s conclusions on identical questions of historical fact or its legal conclusions respecting the same statute. First, the possibility of a Commission ordered change of position exists for every order, at any time. “[T]he Commission may at any time, upon notice to the public utility affected, and after opportunity to be heard as provided in the case of complaints, rescind, alter or amend any rule, regulation, order or decision made by it.” (220 ILCS 5/10-113). Second, absent legally effective distinctions that are not present in this case, historical “Commission practice and law” cannot be different from one case to another. And “[a]n application for rehearing shall not . . . operate in any manner to stay or postpone the enforcement [of a

Commission order], except in such cases and upon such terms as the Commission may be order direct.” (220 ILCS 5/10-113). Ameren’s argument is wrong as a matter of logic and law, and it is nonsensical as a matter of policy.

**C. Participation in EIMA/Formula Rates Without AMI Plan Approval**

The Administrative Law Judges in this case have raised the following question:

How does the Commission’s recent rejection of Ameren Illinois Companies’ advanced metering infrastructure plan in Docket 12-244 affect Ameren’s status, if at all, as a participating combination utility under PAs 97-0616 and 97-0646?  
(Notice of ALJ Ruling, Dkt. 12-0001, July 3, 2012)

In compliance with the ALJs’ request for comments on this issue, IIEC submits the following discussion and recommendations to assist the Commission’s deliberations. Section 16-108.5 provides in pertinent part:

For purposes of this Section, ‘participating utility’ means an electric utility or a combination utility . . . that voluntarily elects and commits to undertake (i) the infrastructure investment program consisting of the commitments and obligations described in Subsection (b) of this Section, notwithstanding any other provisions of this Act and without obtaining any approvals from the Commission . . . other than as set forth in this Section, regardless of whether any such approval would otherwise be required.  
(220 ILCS 5/16-108.5(b)).

In sum, a participating utility appears to be a utility that “voluntarily elects and commits” to undertake commitments and obligations described in Subsection (b) of Section 16-108.5.

Subsection (b) of Section 16-108.5 further provides that a combination utility that is a participating utility must ‘voluntarily commit’ to invest \$360 million over a ten year period “to upgrade and modernize its transmission and distribution infrastructure and in Smart Grid electric

system upgrades.” (220 ILCS 5.16-108.5(b)(2)(B)). For the purpose of Section 16-108.5, the phrase “Smart Grid electric system upgrades” has the meaning set forth in Subsection (a) of Section 16-108.6 of the Public Utilities Act (“PUA”). (220 ILCS 5/16-108.5(b), citing 220 ILCS 5/16-108.6).

Section 16-108.6 is the section under which Ameren filed its Advanced Metering Infrastructure Plan. Thus, to be eligible for a formula rate, Ameren had to voluntarily commit to make Smart Grid electric system upgrades described in Section 16-108.6.

Ameren has indicated, in its Petition for Rehearing in Docket 12-0244, that it “. . . cannot reasonably be expected to move forward with AMI implementation without the degree of regulatory certainty that either an approved Plan or an approved modified Plan, would provide.” (*See*, Ameren Corr. Pet. For Reh., June 28, 2012, Dkt. 12-0244 at 1). Thus, Ameren effectively declares that unless the Commission approves some version of an AMI plan the Commission has already found will not be cost beneficial as required by Section 16-108.6(c), Ameren no longer will be “voluntarily committed” to making the Smart Grid infrastructure and investment required by Section 16-108.5(b). (220 ILCS 5/16-108.6(c) and 16-108.5(b)).

If Ameren is not voluntarily committed to making the Smart Grid infrastructure investment described in Section 16-108.5(b), Ameren would not be eligible for formula rates. One could argue that Ameren is not currently “voluntarily committed” to making the infrastructure investments described in Section 16-108.5(b) given the statement in its Application for Rehearing. However, one could also make the argument that Ameren continues to be “voluntarily committed” to making such an investment pending the outcome of its request for rehearing in Docket 12-0244 and any rehearing proceeding.

If the course and timing of proceedings under Sections 16-108.5 and 16.108.6 yield approval of Ameren's AMI implementation plan and a continued Ameren investment commitment, the difficulties contemplated by the ALJs' questions may be resolved. However, given the fact that the Commission may be required to enter an Order in this case before the rehearing issue in Docket 12-0244 is resolved, if the Commission believes there is a need to address and resolve this question in this case, it should order the following steps (which are stated conditionally) for eventualities that diverge from the course prescribed by statute:

1. If the Commission refuses to grant rehearing in Docket 12-0244, and does so before it is required to enter an Order in this case, then accepting Ameren's declaration that it will not proceed with the investment required by Section 16-108.5(b), Ameren will have failed to continue its voluntary commitment to make said investment, would be no longer eligible for the formula rate and, therefore, its formula rate case should be dismissed.
2. If the Commission grants rehearing and after rehearing continues to believe that Ameren's plan should not be approved because Ameren has failed to demonstrate the investment in its Smart Grid is beneficial, given Ameren's declaration in its Petition for Rehearing, at that time the Commission should immediately initiate a hearing under Section 9-250 of the Act and require Ameren to show cause why it should be eligible to update its formula rate inputs<sup>7</sup> under Section 16-108.5(d) and continue to be considered to be a "participating utility" eligible for a formula rate. (220 ILCS 5/9-250).

## **II. RATE BASE**

### **A. Overview**

The fundamental premise of the formula rate process is to set rates to recover Ameren's actual costs of service during specific rate periods, through a combination of (a) rates based on projected

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<sup>7</sup> Assuming formula rates already had been approved in this proceeding.

costs for that period and (b) later reconciliation charges or credits intended to achieve a match with the utility's reported actual costs during that same period. (220 ILCS 5/16-108.5(d)(1)). Ameren's capital costs are a major component of that revenue requirement, and they must be measured accurately if the Commission is to set just and reasonable rates that reflect only Ameren's prudently incurred, reasonable costs. (Gorman, IIEC Ex. 4.0 at 11:248-253). Since rate base is one of the two factors that determine Ameren's cost of capital, the Commission's determination of Ameren's rate base is critical.

IIEC has identified three issues in Ameren's proposed calculation of rate base that directly affect the accuracy of the Commission's determination of Ameren's actual costs. The most significant issue is Ameren's proposal to use the year-end rate base amount reported in its FERC Form 1 as its investment for the entire calendar year rate period. (Gorman, IIEC Ex. 4.0 at 10:213-225). IIEC opposes Ameren's proposal because of the obvious inaccuracy of using a rate period's probable maximum investment amount as the value of investment value used to provide service to Ameren's customers throughout the rate period. (Gorman, IIEC Ex. 1.0 at 5:108, 5-8:117-162). Commission approval of Ameren's investment maximum in a year, as its investment for the entire rate period, would over-state Ameren's IIEC's second most significant rate base issue is Ameren's proposal to ignore the change in its accumulated deferred income taxes ("ADIT") over the relevant rate period. ADIT is the third largest component of Ameren's rate base, and its recognition would reduce Ameren's proposed rate base and revenue requirement by a non-trivial amount. (Rackers, IIEC Ex. 5.0 at 12:255-257). IIEC's third adjustment to Ameren's proposed rate base – and the one addressed immediately below in this brief – concerns the accurate measurement of its cash working

capital requirement.

Approval of a rate base amount that includes investment value that is not actually used to provide Ameren's regulated services during the relevant formula rate period would exceed the Commission's authority under the PUA. (See 220 ILCS 5/9-211). Each of these challenged aspects of Ameren's rate base proposal has the effect of inflating Ameren's rate base. Ameren's proposed rate base should be modified to eliminate investment amounts that are not actually used to provide service to its ratepayers during the rate year.

**C. Contested Issues**

**1. Cash Working Capital**

**a. Pass-Through Taxes Revenue Lag**

Ameren's calculation of a revenue lag of 34.54 days for Energy Assistance Charges ("EAC") is erroneous and unreasonable. Ameren is not required to remit EAC to the taxing authority until after Ameren already has the monies in-hand from customers. Ameren's decision to prepay its EAC remittances could be considered imprudent, and it is at the very least an unreasonable cost to pass on to the utility's ratepayers. In fact, in several prior cases, the Commission ordered a zero-day revenue lag for pass-through taxes (including EAC) See *Ameren Illinois Companies*, Dkt. 09-0306 *et. al.* (cons.), April 29 Order at 54-55; *Commonwealth Edison Company*, Dkt. 10-0467, May 24, 2011 Order at 48; and in the *ComEd Formula Rate Order* at 41-42. The Commission should do the same in this case.

The Commission's exceptional treatment of EAC in Ameren's most recent gas rate case (as Staff witness Kahle explains) was based on exigencies of state government finances that no longer

exist. (Kahle, Staff Ex. 5.0 at 6-7:119-132). Even in that case, a root cause of the EAC cash working capital controversy was the decision of Ameren management to voluntarily remit taxes ahead of the date required by the taxing authority. In the circumstances of this case (with governmental exigencies removed), Ameren's questionable prepayment decision and its subsequent attempts to compel ratepayers to pay increased capital costs are unreasonable. The resulting calculated CWC effect should be rejected. The Commission should deny recognition of any cash working capital requirement for Ameren's EAC remittances.<sup>8</sup>

The zero revenue lag proposed by IIEC and other parties simply reflects the pertinent facts: Ameren provides no EAC service for which it incurs out of pocket or cash expenses; Ameren acts as a mere conduit for EAC remittances; Ameren is only required to remit funds it has already collected; and Ameren's (possibly imprudent) voluntary early remittances do not engender prudent, reasonable CWC costs that should be recovered from Ameren's ratepayers. The Commission should assign zero days of lag to Ameren's EAC collections.

Ameren's delivery service rates recover its capital and operating costs of providing service to its customers. Ameren does not incur similar costs for EAC since it provides no service in that connection. (Heintz, June 20 Tr. at 195). Ameren witness Heintz confirmed that, in general, where the utility receives funds when there has been no service provided, there is no revenue lag. (*Id.* at 196). That is precisely the situation with respect to EAC. The utility is merely a conduit,

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<sup>8</sup> Some parties have proposed similar adjustment for other so-called pass-through taxes. (Kahle, Staff Ex. 5.0 at 5:89-90). In general, arguments that compel rejection of CWC for EAC also apply with equal force to certain other utility tax remittances.

forwarding EAC monies collected to the appropriate taxing authority. (Rackers, IIEC Ex. 5.0 at 9:193).

Even if one accepts Ameren's contention that there is a revenue lag associated with pass-through taxes (EAC in particular), Ameren's calculation of the revenue lag period is flawed. As shown in IIEC Exhibit 2.1, the Illinois Department of Revenue ("IDOR") Form RPU-6 instructions for remitting EAC repeatedly refer to collected revenues. Those instructions state plainly:

You must file Form RPU-6 on or before the 20th day of the month to report and pay the total amount of assistance charges you collected from your customers during the preceding month. (Rackers, IIEC Ex. 2.1).

Notwithstanding the IDOR instructions, Ameren made a management decision to base its remittances to IDOR on the amounts billed instead of the amounts collected. (Rackers, IIEC Ex. 5.0 at 9:183). Ameren has reflected that management practice – not the governing statutory requirements – in its cash working capital calculation, increasing its revenue requirement and ratepayers' rates.

Mr. Heintz also confirmed that when such funds are received there is an associated expense lead. (Heintz, June 20 Tr. at 196-197). There are equally serious problems on the lead side of Ameren's lead/lag calculation of EAC-related CWC. Moreover, Ameren's decision to make early remittances is not properly reflected in its expense lead determination. As AG witness Brosch confirmed, Ameren's calculation of days the utility has collected EA funds in its hands before remitting them to the taxing authority does not take account of actual customer payment behavior. (Brosch, June 21 Tr. at 407-408). Ameren begins its count of lead days at the end of its scheduled

collection of timely payments on bills from the prior month – not when it begins receiving payments. Ameren assumes that payments are made only in the month following its billings, then uses its mid-point assumption to calculate that the utility holds EAC funds only from the midpoint or 15th of the month after bills go out until the 20<sup>th</sup> of that month, when remittances are due – a period of only 4 days (15<sup>th</sup> to 20<sup>th</sup>). (Heintz, Ameren Ex. 15.0 at 8:164, Ameren Ex. 4.3).

Consider this illustration. Any EAC payments received during the month of May must be remitted on the 20th of June. (Rackers, IIEC Ex. 2.1). If one accepts the mid-point assumption of Ameren’s CWC analysis, (Heintz, Ameren Ex. 4.0 at 7:127 - explaining the method), Ameren would have use of those EAC funds from the average receipt date of (approximately May 16th) through the June 20th payment date, a period of approximately 35 days. (*See*, Rackers, IIEC Ex. 2.0 at 6:107-114). Ameren’s questionable lead calculation (four days) has the same effect as Ameren’s failure to account for its decision to remit based on billed instead of collected amounts – an understatement of the period Ameren has the use of customer supplied funds.

#### **b. Revenue Collection Lag**

Ameren’s proposed revenue collection lag (“collection lag”) component of its CWC calculation is excessive. Ameren’s CWC study calculates the utility’s revenue lag as 30.67 days. IIEC proposes a revenue lag of 21 days. IIEC’s proposal is not the result of a separate CWC study. It is a reason-based surrogate for the results of Ameren’s flawed CWC study, a study that rests on unsupported assumptions, lacks empirical validation, and implies that (as a group) Ameren’s customers pay their bills well after their 21-day due date. Ameren’s study results are not reasonable and lack record support.

To support its study, Ameren relies mainly on the Commission's acceptance of the so-called midpoint assumption. That study assumption posits that the midpoints of monthly utility payment periods are valid substitutes for empirical data on the timing and amounts of customer payments. (Heintz, Ameren Ex. 4.0 at 7:127).

Ameren's expert Heintz explained that "the midpoint methodology presumes that payments occur ratably over the course of a month." Yet Ameren reports forthrightly that its expert undertook no investigation to test whether the fundamental assumption underlying its CWC calculations actually bears any resemblance whatsoever to how Ameren's customers actually pay their bills. Mr Heintz acknowledges that "a deviation from the midpoint of the month would produce a different collection lag," Yet, Mr. Heintz concedes that he "has not conducted an analysis of whether payments occur ratably over the course of a month." (AG Cross Ex. 1)

The Commission has accepted that assumption in several earlier cases where utilities claimed a lack of utility-specific payment distribution data. At this point – after several such cases (*see* Heintz, Ameren Ex. 15.0 at 23:512-515) - bare reliance on that claim and the Commission's past acceptances of it are no longer reasonable. (Rackers, IIEC Ex. 5.0 at 4:65-68). In fact, it appears that the Commission's past orders are one reason Ameren made no effort to validate or to replace that foundational assumption, though a completed investigation or study could eliminate the need for such assumptions. (Heintz, Ameren Ex. 15.0 at 24-25:512-517).

IIEC's proposal is based on the provisions of Illinois Administrative Code section 280.90, which gives residential customers 21 days to pay their utility bills; before late fees may apply. (Rackers, IIEC Ex. 2.0 at 4:59-61). Under that provision, commercial, industrial and government

agencies have only 14 days. IIEC's proposed 21-day collection lag reflects an average period of time, with some customers paying before and others after 21 days. Costs associated with late paying customers that are not considered in late fees are included in the billing and collection expenses. (Rackers, IIEC Ex. 5.0 at 8:159-164). Since all these costs are being reflected in the calculation of rates, there is no need to include any additional adjustment to capture these costs. Ameren's ratable payment assumption (Heintz, Ameren Ex. 4.0 at 7:127-129) means a significant number of customers must pay in less than 21 days, IIEC's proposed 21-day collection lag is a conservative estimate that is, favorable to the utility – of the average collection lag.

Ameren does not deny that the 21 day payment period, in fact, does affect customer payment behavior. (IIEC Cross Ex. 3). There are meaningful consequences associated with not paying by the due date. (Rackers, IIEC Ex. 5.0 at 3:48-51). Customers who pay late can be assessed late fees, a customer's payment history can be negatively affected by late payments, and past due bills may impair a customer's future dealings with the utility. (*Id.*). The Commission's rule provides a reasonable measure to use as a replacement for an Ameren CWC calculation that continues to be based on assumed customer payment behavior that has never been validated.

## **2. ADIT - Fin 48**

Under Financial Accounting Standard 48 ("FIN 48"), Ameren is required to record a liability on its books for any tax deferral claimed on its tax returns that is more likely than not to be rejected by the taxing authority and require payment of an amount of deferred taxes. An expert assessment of the likelihood that a tax position will be rejected is required to determine the proper treatment of a tax position under FIN 48. (Warren, Ameren Ex. 18.0 at 5:100, 9:187-192). Claimed deductions

based on uncertain tax positions (“UTPs”) must be recorded as offsets to Ameren’s balance of accumulated deferred income taxes (“ADIT”). Because ADIT is a negative component of rate base, recognizing UTPs as an offset to ADIT has the effect of increasing the rate base Ameren proposes to use to set its rates. (Rackers, IIEC Ex. 2.0 at 7-8:140-151). Ameren witness Ronald Stafford reports that Ameren’s UTP reduction to ADIT is approximately \$43.7 million. Ameren’s proposed \$43.7 million offset to its deferred income taxes would overstate the rate base appropriately used for ratemaking.

In prior years, Ameren has taken tax deductions that reduced its state and federal income taxes, but that were not reflected in the income tax expense Ameren included in its delivery service rates. The resulting reduction in the taxes Ameren paid was reflected in its ADIT balance. As a result, the Company is currently realizing the full benefit of these tax deductions, and it is appropriate that the deferral of taxes the utility is enjoying be recognized (through the associated ADIT) in a reduction to the rate base used to set rates. (Rackers, IIEC Ex. 2.0 at 8:154-163). The effect of a tax deferral is an interest free loan of non-shareholder capital. The current treatment of UTP deferrals does not recognize the amount of that loan as interest free capital on which Ameren is not entitled to earn a return. (*Id.*). Ameren’s proposed recognition of UTPs reduces ADIT, increases rate base, and negates recognition of the interest free capital supplied by ratepayers through rates that include Ameren’s unreduced tax expense. Under these circumstances, UTPs should not be an offset to ADIT. (*Id.*).

The issue in this case is not the appropriate accounting for UTPs or Ameren’s identification of its uncertain tax positions. The issue actually presents questions of policy and law. The policy

question the Commission must answer is: “How should the risks of Ameren’s tax positions be apportioned between Ameren and its ratepayers?” Ameren acknowledges that this is an issue of ratemaking policy, and its expert Mr. Warran advocates the adoption of a ratemaking treatment that encourages Ameren to take aggressive tax positions. (Warren, Ameren Ex. 18.0 at 12-13:255-261). Ameren also claims that its position is supported by considerations of fairness. (Warren, Ameren Ex. 27.0 at 6:129-131). However, Ameren and its ratepayers have divergent views of fairness in these circumstances. At an unknown future date, with a final determination by the Internal Revenue Service, a change in the Company’s assessment of the uncertainty, or other events, each of Ameren’s UTPs will be resolved. (*See*, Warren, Ameren Ex. 18.0 at 9:187-190; Warren, June 22 Tr. at 574-575). The Commission’s ratemaking treatment of UTPs should be guided by the effects of the UTP claim before and after that resolution.

In Ameren’s view, fairness requires more than permitting Ameren to recover the interest on uncertain deferred tax amounts it must accrue under FIN 48 pending resolution of the UTP. Ameren insists that it must be protected against any loss of “the return it would have earned had it not taken the uncertain tax deductions. . . .” (Warren, Ameren Ex. 27.0 at 4:76-77). In all cases, Ameren wishes to be “in the same position it would have occupied had it never taken the uncertain tax position. . . .” (*Id.* at 6:130-131). Ameren’s position is that (a) the Commission should, encourage aggressive tax positions, because they may pay off with a win, even though its experts have determined that a win is unlikely, (b) any costs arising while the UTP remains unresolved should be paid by ratepayers, and (c) regardless of the resolution of the UTP, Ameren must be 100% protected against any financial consequences.

Fairness from the ratepayers' perspective looks different. First, Ameren has the responsibility for prudent management of its business, and it is compensated for the risks of that responsibility with a statutorily guaranteed return. (*See*, 220 ILCS 5/16-108.5). Ameren's business responsibilities include both tax planning and defending its tax positions. (Warren, Ameren Ex. 18.0 at 5:94-98). Though Ameren is the party best equipped and positioned to manage the risk represented by uncertain tax positions, (*see* Warren, Ameren Ex. 18.0 at 9:187-192). Ameren's proposal exposes the utility to none of that risk. Second, Ameren asks, in essence, that ratepayers be responsible for all possible financial risks associated with its tax position. (Warren, Ameren Ex. 27.0 at 4:75-77). Third, the only way ratepayers can benefit under Ameren's proposal is if the UTP is allowed. (Warren, June 22 Tr. at 595-596). But, even in that circumstance, Ameren keeps the benefits of the unreduced rate base it enjoyed while a resolution was pending, and ratepayers fail to realize any benefit while the UTP is pending or after a favorable resolution, and this resolution is reflected in rates. (*Id.* at 596-598).

In IIEC's view, it is premature as a matter of policy, to exclude these deferred taxes from ADIT until a final resolution is made. (Rackers, IIEC Ex. 2.0 at 8:167-168). Under Ameren's proposal, until it is determined that the deduction is not allowed and Ameren is required to pay the associated taxes and interest, Ameren continues to enjoy the benefit of an interest free loan. Over the same period and for some time afterwards, ratepayers carry the entirety of the risk and enjoy none of the reward.

One legal constraint that bears on this issue is the PUA requirement that the rate base used to set rates include "only the value of . . . investment" used to provide regulated service. (220 ILCS

5/9-211 (emphasis added)). The loan of ratepayer funds described above should not be included through a reduction to the ADIT balance offsetting rate base.

### **3. ADIT - Projected Additions**

As the Commission and the Illinois Appellate Court have held, the PUA bars Commission approval of a rate base that exceeds the value of investment prudently incurred and actually used in providing service. (*AmerenCIPS, et al.*, Dkts. 09-0305 et al., Cons., Order on Rehearing, Nov. 4, 2010 at 49; *Ameren Illinois Company v. Ill. Commerce Comm'n*, 967 N.E. 2d 298, 359 Ill. Dec. 568, (Ill. App. Ct. 4<sup>th</sup> Dist. Jan. 10, 2012)). That requires the Commission's rate base determination reflect the values for Plant, Depreciation Reserve and Accumulated Deferred Income Taxes ("ADIT") at a consistent point in time. (Rackers, IIEC Ex. 5.0 at 17:371). The Commission has recently applied this same concept, consistent treatment of rate base components, in a formula rate determination. (*ComEd Formula Rate Order* at 59). Ameren's proposal to ignore the effect of ADIT on its rate base does not yield – as Section 16-108.5 requires – a determination of Ameren's actual costs that is consistent with Commission practice and with the governing law. (220 ILCS 5/16-108.5(c)(1)). It will also produce rates that are unreasonable. (Rackers, IIEC Ex. 5.0 at 11:251-257; 220 ILCS 5/9-101, 9-201(c)).

Ameren proposes to determine its formula rates using a rate base that includes projected plant additions and the build-up in accumulated depreciation in the year following the FERC Form 1 year, but not the contemporaneous build-up in Accumulated Deferred Income Taxes. (Stafford, Ameren Ex. 13.0 at 21:422-431). Ameren argues that recognizing the effect of ADIT on its projected rate base and capital costs is (a) prohibited because ADIT is not specifically mentioned

in (and is therefore inconsistent with) Section 16-108.5 and (b) unnecessary because the neglected effect of ADIT on rate base “will be captured in the true-up calculation.” (Stafford, Ameren Ex. 23.0 at 15:318).

First, Ameren’s interpretation and application of the formula rate statute would preclude the Commission’s performance of its duty to determine the amount of Ameren’s prudently incurred, reasonable costs used to provide service -- and to use only those costs in setting its rates. (220 ILCS 5/9-201(c), 220 ILCS 5/9-211). IIEC and other parties propose that the rate base used to set rates also incorporate a projection of ADIT for the period of the Ameren plant additions. (Rackers IIEC Ex. 2.0 at 9:172-186; Smith, CUB Ex. 1.0 at 28-29:676-689). ADIT, which is the third largest component of rate base, is an offset to plant additions and reduces the rate base used to set rates. (Rackers, IIEC Ex. 5.0 at 12:255-257). Ignoring ADIT would significantly overstate Ameren’s actual cost of service and thereby produce unreasonable rates. The approach supported by IIEC and other parties satisfies the relevant PUA requirements.

Second, not updating ADIT is not “consistent with Commission practice and law,” as the formula rate statute requires. As noted above in recent decisions, the Commission and reviewing courts have recognized that such rate determinations under Article IX require the Commission to take account of the contemporaneous build-up of offsets to plant additions -- viz., accumulated depreciation and the "companion" adjustment ADIT -- to accurately measure rate base, so that PUA Section 9-211 is not violated. (*Re Central Illinois Light Co, et al.*, Dkt. 09-0306 (cons.), Order on Rehearing, Nov. 4, 2010 at 49 (re accumulated depreciation and ADIT); *Commonwealth Edison Co. v. Illinois Commerce Comm'n*, 405 Ill. App. 3d 389 at 405 (2nd Dist. 2010) (re accumulated

depreciation); *Ameren Illinois Co. V. Illinois Commerce Comm'n.*, 967 N.E. 2d 298, 359 Ill. Dec. 568 (Ill. App Ct. 4<sup>th</sup> Dist. 2012), (re accumulated depreciation and ADIT)). This "companion" adjustment is a legally required part of "Commission practice and law." (220 ILCS 5/16-108.5(c)(1)). The Commission must consider this rate base component as well as accumulated depreciation for a lawful determination under Section 16-108.5. (220 ILCS 5/16-108.5(c)(1)).

In compliance with the formula rates statute's directive for cost determinations "consistent with Commission practice," the Commission ordered an update of the ADIT balance consistent with the update of plant and depreciation reserve for test year rates in Ameren's most recent electric rate case, Dkt. 09-0306 *et al.* (consol.). Consistently, the Commission ordered recognition of ADIT in determining the rate base for formula rates in the *Commonwealth Edison Formula Rate Case*. The ADIT rate base component, if not others in addition,<sup>9</sup> must be recognized if rate base is to be accurately determined, and later reconciliation credits or charges minimized. As the Commission recently held in the *Commonwealth Edison Formula Rate Case*: "The goal should be to have rates accurately reflect costs, and reconciliation is merely a tool to correct and adjust unavoidable imbalances." (*ComEd Formula Rate Case*, Dkt. No. 11-0721, Final Order at 167).

Third, looking directly to the formula rate statute, Section 16-108.5 does not expressly bar

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<sup>9</sup> The effect of other potential offsets is unlikely to be consequential. IIEC's Mr. Rackers explained:

I am also not opposed to updating other rate base items. However, I do not believe updates to additional rate base items will result in substantially different rates. In addition, unlike the depreciation reserve and ADIT, the other rate base items are not specifically related to plant and updating these items is not required to be consistent with the update of plant.

(Rackers, IIEC Ex. 5.0 at 13:269).

the Commission's consideration of ADIT in its determination of Ameren's rate base. (See 220 ILCS 5/16-108.5(c) and (d)). At the same time the Commission is expressly charged with implementing that provision to achieve the over-arching objective of the formula rates process – rates that "[p]rovide for the recovery of the utility's actual costs of delivery services that are prudently incurred and reasonable in amount consistent with Commission practice and law." (220 ILCS 5/16-108.5(c)(1)). The Commission has effectively the same charge in any subsequent reconciliation proceedings -- to reconcile the revenue requirement based on projected rate year costs "with . . . actual cost information for the applicable calendar year . . . ." (220 ILCS 5/16-108.5(d)(1)). These tasks are expressly subject to the Commission's Article IX authority (and duty) to ensure that only prudently incurred, reasonable costs are included in approved rates. (220 ILCS 5/16-108.5(c); 220 ILCS 5/16-108.5(d); 220 ILCS 5/9-211).

There is no inherent conflict between the provisions of Section 16-108.5 and the requirements of Article IX. There is no express prohibition on the Commission's consideration of revenue requirement components not specifically mentioned in Section 16-108.5. The Commission's required Article IX review of the components of Ameren's proposed capital costs must take account of both accumulated depreciation and ADIT.

Finally, Ameren's argument that the reconciliation process makes recognizing a major cost element unnecessary is essentially meaningless. By proving too much, the argument proves nothing. Any deviations from Ameren's actual, prudently incurred, and reasonable costs of service -- no matter how unreasonable or unlawful -- will be "resolved by the reconciliation." (Stafford, Ameren Ex. 13.0 at 22:452). However, the provisions of Article IX, which is repeatedly referenced in the

formula rate statute, do not allow the Commission to approve a rate base or a rate that is not prudent, just and reasonable. (220 ILCS 5.9-211; 9-101; 9-201(c)).

In any case, the Commission cannot set unjust and unreasonable rates simply because a later reconciliation is scheduled. The PUA commands that “[a]ll rates or other charges . . . shall be just and reasonable.” Accurate cost projections and cost-based rates are not only legally required, they are particularly important under the formula rate process. Under section 16-108.5, the required reconciliation is only of revenue requirements and rates. There is no reconciliation of the amounts collected from customers through initial formula rates (Ameren’s revenues) and Ameren’s actual costs. There is no assurance that customer over-payments will be remedied through the statutory reconciliation process if initial formula rates vary from the best possible cost projections for the rate year. The over-arching imperative of the formula rate process is the recovery of all, but only, the participating utility’s actual prudently incurred costs.

Ameren’s perverse interpretation of the formula rate statute would severely undermine the required Article IX review of proposed costs. Because that course would effectively excise clear statutory mandates to the Commission -- to determine the amount of Ameren's prudently incurred, reasonable costs used to provide service and to allow only such costs in setting Ameren’s rates -- that interpretation must be rejected. (220 ILCS 5/9-201(c); 220 ILCS 5/16-108.5(c)(1); Rackers, IIEC Ex. 5.0 at 12:251-252)).

#### **8. Average Rate Base - Projected Plant/ADR/ADIT**

Whether to set and reconcile rates using an average year rate base or an end-of year rate base amount is one of the most consequential issues in this case. The Commission thoroughly reviewed

all aspects of this issue in the *ComEd Formula Rate Case*.<sup>10</sup>

By its terms, the formula rate statute is intended to assure timely recovery of a participating utility's actual costs. (Mill, June 20 Tr. at 82). Yet, as IIEC noted in its Introduction, Ameren's construction of the statute bases formula rates on data remote from and unrelated to the actual costs in the rate year, purportedly underlying the rates. Whether the elements of Ameren's proposed implementation are considered in isolation or comprehensively, the Company's proposed implementation is not sensible.

More important, the Commission's construction of the formula rate statute in the *ComEd Formula Rate Case* arose from the language of the statute itself and implicitly rejects Ameren's statutory construction. The same formula rate statute applies to both Ameren and ComEd. Disparate constructions of the same language for the two participating utilities would be unlawful and unsupported, as Ameren has identified no differences between the utilities that would support distinct implementations of formula rates for ComEd and Ameren.<sup>11</sup> Despite allusions to such differences, the only candidate Ameren has identified is its status as a combination utility which is associated with distinct investment (but not formula rate) provisions. (*See*, Nelson, Ameren Ex. 21.0R at 2:37-39).

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<sup>10</sup> A possible exception, as noted by IIEC's Introduction, is Ameren's strained construction of the formula rate statute's "rate year" concept – a construction that is not clearly articulated in this case or the ComEd proceeding.

<sup>11</sup> Ameren is a "combination" utility, but Section 16-108.6 does not distinguish between combination utilities and other participating utilities for the purposes of designing and implementing the formula rate or formula rate revenue requirements. (*See*, Section 16-108.5(c) and (d)).

Ameren proposes to use the reported end-of-year investment in its FERC Form 1 as the principal basis for calculating its rate base for setting initial formula rates and for reconciliation of revenue requirements for the rate year. (Stafford, Ameren Ex. 2.0R at 14:270-274). IIEC witness Mr. Gorman and other parties' experts, oppose Ameren's proposed use of the likely highest investment amount in a rate period, as the rate base for the entire period and the foundation of formula rates for that period. (*See*, Gorman, IIEC Ex. 1.0 at 5-6:126-130). Using the reported year-end amount as Ameren proposes would overstate the investment Ameren actually has in service during the rate period. (*Id.*). IIEC proposes the consistent use of an average year rate base, for both initial rates and reconciliation. IIEC proposes specifically that the Commission use an average year rate base (calculated using the January 1 and December 31 investment amounts shown on the relevant Ameren FERC Form 1). Other parties recognize that Ameren's actual capital costs are not determined by the size of its changing rate base on December 31 of each year, but propose its use only for the reconciliation process.

In response to other parties' objections, several Ameren witnesses make a series of arguments in defense of Ameren's decision to use its year-end investment amount as the base amount for determining its rate setting and reconciliation costs. Ameren contends that: (i) the year-end amount is required by Section 16-108.5(c)(6) (Nelson, Ameren Ex. 11.0 at 4:69-82); (ii) an average year rate base is not explicitly mentioned in Section 16-108.5 (*Id.* at 7:143-148); (iii) the initial rate and cost determinations must use the same calculation method (Nelson, Ameren Ex. 11.0 at 7:134-138); (iv) rates set using an average year rate base do not match Ameren's costs while those rates are in effect (*Id.* at 5-6:104-113). IIEC shows in this brief that each of those arguments

is without substantive or legal merit.

There appears to be a firm consensus among the parties that the Commission should seek to approximate, as closely as practicable, Ameren's actual costs for the rate period at issue. (*See, e.g.,* Gorman, IIEC Ex. 4.0 at 11:246-251 ; Brosch AG-AARP Ex. 3.0 at 9:152-154; Nelson Ameren Ex. 21.0R at 7:147-148). The issue on which application of that principle is most consequential is in the determination of ComEd's rate base. The disputed issues are whether a year-end or average year calculation accomplishes that goal and whether success should be measured against costs during the year for which costs are determined or the year in which rates are effective.

*c. Ameren's Legal Arguments Lack a Basis in Section 16-108.5*

Section 16-108.5(c) defines, as the over-arching objective of formula rates, that "the formula rate approved by the Commission shall . . . (1) provide for the recovery of the utility's actual costs of delivery services that are prudently incurred and reasonable in amount consistent with Commission practice and law." (220 ILCS 5/16-108.5(c) (emphasis added); *also* 220 ILCS 5/16-108.5(d) ("intent of the reconciliation is to ultimately reconcile the revenue requirement reflected in rates for each calendar year . . . with . . . actual cost information for the applicable calendar year . . . .") Ameren does not dispute this "actual cost" focus of the statute. (Nelson, Ameren Ex. 21.0R at 7:133-134). And though Ameren's FERC Form 1 is identified as the starting point for formula rate cost inputs, Section 16-108.5(c) is equally clear that the mere presence of a number in that form has no determinative significance. "Nothing in this Section is intended to allow costs that are not otherwise recoverable to be recoverable by virtue of inclusion in FERC Form 1." (220 ILCS 5/16-108.5(c)).

Consistently, Section 16-108.5(c) requires that a Participating Utility determine its initial formula rates (as in this proceeding) using “final data based on its most recently filed FERC Form 1,” plus cost projections for the following rate year. (*Id.*) (Emphasis added). Similarly, formula rate cost inputs in subsequent reconciliation proceedings must be “based on final historical data reflected in the utility's most recently filed annual FERC Form 1,” plus projected costs for the following rate period. (220 ILCS 5/16-108.5(d)(1)) (Emphasis added).

More important, in both initial and reconciliation formula rate proceedings, all proposed cost inputs (whether or not shown on a FERC Form 1) are expressly subject to the Commission’s Article IX authority (and duty) to ensure that only prudently incurred, reasonable costs are included in approved rates. (220 ILCS 5/16-108.5(c); 220 ILCS 5/16-108.5(d)).

Such review shall be based on the same evidentiary standards, including, but not limited to, those concerning the prudence and reasonableness of the costs incurred by the utility, the Commission applies in a hearing to review a filing for a general increase in rates under Article IX of this Act. (220 ILCS 5/16-108.5(c) (*re* required review of initial filing)).

The Commission shall apply the same evidentiary standards, including, but not limited to, those concerning the prudence and reasonableness of the costs incurred by the utility, in the hearing as it would apply in a hearing to review a filing for a general increase in rates under Article IX of this Act. (220 ILCS 5/16-108.5(d) (*re* reconciliation filings)).

In response to criticisms from other parties regarding its proposed use of year-end rate base amounts, Ameren turned to test year analogies to support its position.

Thus I concluded that formula rate setting, because it looks at historical periods, are more like a historical test year. This analogy supports the conclusion that use of year-end rate base is appropriate,

even if the formula process is not ‘traditional ratemaking’ as Mr. Gorman states. (Nelson, Ameren Ex. 21.0R at 6:126-129).

Still, Ameren agrees that the formula rate regime is not a test year process, which sets rates for an indefinite period, but a process that has at its core the determination and recovery of Ameren’s actual cost of service for a single, specific year. (Nelson, Ameren Ex. 21.0R at 7:146). As IIEC’s Mr. Gorman explained:

In significant contrast, a formula rate (including the reconciliation charge or credit) is designed to recover the utility’s actual and prudent cost within a specific rate year. While the rates may be in effect for some period beyond the rate year, that does not change the fact that the formula rate is designed to recover the cost within the rate year, and is not being used as a proxy to estimate future cost of service during the period rates are in effect. (Gorman, IIEC Ex. 4.0 at 10:213-218).

Under the governing statutory process, Ameren will recover its actual prudent and reasonable costs for each year, regardless of when collections begin, because projected investment data is used to develop an initial revenue requirement and rate, which are fully reconciled, after the fact, to a revenue requirement based on the actual cost data. And that reconciliation includes compensation for the delay in cost recovery. (220 ILCS 5/16-108.5(c)(6)).

But when Ameren tests the proposals for average or year-end rate base amounts, it does not ask whether the formula rate (projected rate plus reconciliation adjustment) recovers that specific year’s cost in full, but not excess. Instead, Ameren asks whether the rates to recover that specific year’s costs match the utility’s costs for the later year when the rates are in effect. (Nelson, Ameren Ex. 21.0R at 8:155-157 (“But given that rates recovering costs for a given rate year are in effect after that year is over, matching of revenues with costs requires a year-end rate base, not average.”)).

Because Ameren asks the wrong question, Ameren predictably gets the wrong answer.

Contrary to the argument Ameren makes in defense of its proposal to use year-end rate base amounts, it is apparent that neither average year nor year-end rate base amounts are expressly mentioned or required by Section 16-108.5. It is true, as Mr. Nelson argues, that “[n]owhere in Section 16-108.5 is the use of an average rate base specified.” (Nelson, Ameren Ex. 11.0 at 3:57). It is equally true that the statute makes no mention of “year-end” rate base in its directives for the determination of revenue requirement, for either initial or reconciliation formula rates.

Since the formula rate statute does not expressly require the use of either average-year or year-end amounts, the Commission’s determination of Ameren’s actual, prudently incurred, and reasonable investment in its Article IX review is the decisive factor. Unsurprisingly, the Commission’s deliberations should involve issues or approaches common to its Article IX reviews of test year rate case proposals. The Commission’s Article IX determinations must be based on the substantive record evidence in this case. As shown below, that evidence supports IIEC’s recommended modifications of Ameren’s proposed rate base computation.

*d. The Substantive Record Evidence Contradicts Ameren’s Arguments*

IIEC’s Mr. Gorman provided an illustration of the simple truth of average versus year-end rate base amounts as the more accurate basis for determining Ameren’s capital costs for the year. (*See* Gorman, IIEC Ex. 1.0 at 6-8:134-157). Briefly, assume an investor deposits \$100 per month in a bank account paying interest at 12% *per annum*. The incremental deposits are analogous to Ameren’s plant investments, and the interest rate to Ameren’s return or cost of capital. Our task is to determine accurately the depositor’s (Ameren’s) interest return (cost of capital) during the year.

Ameren's year-end proposal would have the interest earned calculated as though the depositor deposited all \$1200 on January 1. An average year calculation would recognize the gradual accretion of funds by calculating the interest earned using the average amount on deposit during the year. Anyone who has a simple savings account knows which calculation is more accurate -- and which is most advantageous to the investor. Also, looking back at that year's activity from some later year does not change the interest actually earned -- or Ameren's actual costs.

Regarding the rate base to be used in setting Ameren's formula rates, the record in this case establishes that an average rate base is the more accurate measure of Ameren's changing investment over the course of a year, and thus its actual costs with the rate year. The dynamic nature of Ameren's investment amount is confirmed by Ameren's own testimony and validates the average year rate base as the amount properly used in setting Ameren's formula rates.

**Q.** And when we think about Ameren's plant additions that will occur over an entire calendar year, would you agree that Ameren will not spend all of the money that is set aside for capital additions and add all of the plant on the first day of the year?

**A.** Yes.

**Q.** You'd agree, wouldn't you, that the spending will be more gradual such that new plant was added to rate base throughout the year?

**A.** That's what happens typically, yes.

**Q.** And with respect to the end-of-year plant balances, those amounts that are listed in FERC Form 1 document, are the amounts listed as the end-of-year amounts the investment that Ameren used each day of the year to provide service for that 12-month period?

**A.** The amount listed is the full expenditure of cost related to plant as of 12-31 . . . .

\* \* \*

(*clarifying*) Some of the year end amounts were not in service the entire year

.....

(Nelson, June 20 Tr. at 52-53).

Thus, the value of plant investment Ameren actually uses to provide service during the year may not reach the December 31 level until the end of the year. Setting rates using Ameren's larger year-end rate base for the entire year overstates the rate base, Ameren's costs and thus Ameren's rates, in violation of PUA Article IX requirements respecting rate base actual costs and rates. (220 ILCS 5/9-211; 220 ILCS 5/9-101).

To justify its proposal to use a year-end figure, thus yielding a larger rate base, Ameren turns to test year concepts it rejected when it chose the distinct, fundamentally different formula rate process. (Nelson, Ameren Ex. 21.0 at 6:126-131; Nelson, June 20 Tr. at 51). Ameren also adopts the error illustrated by Mr. Gorman in his savings account analogy. Ameren's Mr. Nelson argues instead for a calculation of its capital costs based on "the full expenditure of cost related to plant as of 12-31," when his own testimony confirms that Ameren adds plant only gradually throughout the year. (Nelson, June 20 Tr. at 52-53). Setting rates based on a year-end rate base exaggerates the investment Ameren actually used to provide service for 364 days of the year, overstates its actual rate year costs and produces unlawfully inflated rates.

The record shows that whether the ceiling on lawfully approved rate base investment is defined by "the value of such investment which is both prudently incurred and used and useful in providing service" (220 ILCS 5/9-211) or by "the utility's actual costs of delivery services that are

prudently incurred and reasonable in amount consistent with Commission practice and law” (220 ILCS 5/16-108.5(c)), use of the highest level of investment in a year will overstate the costs within the year, and would exceed what is lawfully allowed for inclusion in a formula rate.

### **III. OPERATING EXPENSES**

#### **A. Overview**

IIEC has not recommended any specific adjustment to Ameren’s proposed operating expenses. However, IIEC has recommended that the Commission set predetermined levels of regulatory expense, affiliate charges expense, and an incentive compensation expense, that, if exceeded, would prompt the Commission to exercise its authority to initiate a formal investigation of the annual reconciliation filing made by Ameren under Section 16-108.5(d). IIEC also recommends a distinct limit on the recovery of incentive compensation expense. IIEC addresses these issues in Section VIII.B.1. through 5 below. IIEC’s failure to specifically address the prudence or reasonableness of any particular operating expense does not imply IIEC’s agreement that the Ameren proposed expense level meets statutory requirements for recovery.

### **V. RATE OF RETURN**

#### **A. Overview**

IIEC focuses on issues relating to the prudence and reasonableness of the capital structure the Company proposes for ratemaking purposes in this case. IIEC focuses primarily on the common equity ratio of the Company’s proposed capital structure. Section 16-108.5 permits the use of Ameren’s “. . . actual capital structure for the applicable calendar year, . . . , subject to a

determination of prudence and reasonableness consistent with Commission practice and law”. (220 ILCS 5.16-108.5(c)(2)).

Ameren proposes the use of a capital structure consisting of 44.18% long-term debt, 1.5% preferred stock and 54.3% common equity. (Martin, Ameren Ex. 3.0 Rev. at 3:51-52). Staff objected to the Company’s capital structure recommending use of a capital structure consisting of 46.06% long-term debt, 2.45% preferred stock and 51.49% common equity. (Phipps, Staff Ex. 16.0, Sch. 16.01).

Neither the capital structure proposed by the Company nor the capital structure proposed by the Staff reflect formula rates. They reflect a capital structure designed to balance the traditional regulatory framework which includes a higher degree of operating risk than Ameren would face for operating under formula rates. (McNally, Staff Ex. 8.0 at 3:55-59). According to the Staff:

It is quite possible that a capital structure containing as much common equity as the capital structures presented in this proceeding would not be prudent and reasonable on a going-forward basis. (*Id.* at 4:65-67).

In addition, the Company’s equity ratio of 54.28% is unreasonable and imprudent. (Gorman, IIEC Ex. 1.0 at 14:306-311). The Company’s common equity ratio should be limited to nothing greater than 50%, unless Ameren is able to prove that a capital structure containing an equity ratio of more than 50% is prudent and reasonable. (*Id.* at 11:228-234). Ameren has not provided such proof in this case. Under Mr. Gorman’s proposal, the difference between the 50% common equity ratio he proposes as a cap, and the 54.28% equity ratio proposed by the Company, would be added to long-term debt, producing a debt ratio of 48.46% instead of the 44.18% debt ratio proposed by

Ameren. (*Id.* at 15:321-329). Ameren has not provided such proof in this case.

IIEC addresses and discusses these issues in greater detail below.

**C. Contested Issues**

**4. Subsequent Discussions/Report on Capital Structure**

Staff recommended that Ameren be ordered to work with Staff to explore a more leveraged capital structure for future years and report to the Commission on those discussions in the context of its 2013 formula rate filing. The Company does not oppose this recommendation and indicates its willingness to work with Staff on this issue. (Martin, Ameren Ex. 14.0 at 3:53-61).

The Commission adopted a similar Staff recommendation in the recent formula rate case for Commonwealth Edison Company (“ComEd”). (*ComEd Formula Rate Order* at 134). IIEC has no objection to an investigation of a more leveraged capital structure for Ameren, including the appropriate cap for the ratio of common equity to total capital. However, that investigation should provide an opportunity for all parties to participate in any discussions between Staff and the Company and should not be a substitute for insertion of the 50% common equity ratio cap into Rate MAP-P pending final resolution of this matter.

When the Commission conducts its review, it should reflect the reduced operating risk realized by Ameren, as the result of the existence of the formula rate, as well as all other factors relevant to establishing an appropriate level of common equity for the Ameren capital structure. Furthermore, any ceiling on the common equity ratio developed as a result of that investigation should apply to the pertinent rate year in future formula rate filings.

## **5. Common Equity Ratio/Cap Limit**

As noted in Section V.A. above, the Commission has the obligation under Section 16-108.5 to determine the reasonableness and prudence of the utility's actual capital structure for each applicable rate period. (220 ILCS 5/16-108.5(c)(2)). In this case, Ameren proposes to use its actual capital structure as of December 31, 2010, excluding goodwill. (Martin, Ameren Ex. 3.0 at 2:35-38). However, this capital structure is too heavily weighted with common equity and therefore overstates Ameren's reasonable cost of capital (rate of return) and are not prudent and reasonable. (Gorman, IIEC Ex. 1.0 at 11:225-228).

While the Commission must determine if Ameren's proposed capital structure is prudent and reasonable, Ameren has not presented testimony in this case that allows the Commission to make that determination. In addition, the Commission has only 45 days to review the utility's annual reconciliation filing and determine whether or not it will conduct a hearing on the filing. (220 ILCS 5/16-108.5(d)). Under such circumstances, the Commission should implement procedures to ensure that in evaluating the Company's capital structure, the capital structure does not contain an excessive amount of common equity, as the capital structure proposed by Ameren in this case does. Therefore, IIEC recommends the Commission order that the Ameren formula rate reflect a common equity ratio limit of 50% to ensure that Ameren's overall cost of capital reflects reasonable and prudent management of its capital structure.

Under IIEC's proposal, if Ameren's actual common equity ratio is greater than 50%, it would be required to prove in a hearing, that its actual capital structure is prudent and reasonable and, therefore, appropriate for use in Rate MAP-P. To the extent Ameren failed to prove that such a

capital structure was reasonable, then Rate MAP-P would be developed using a capital structure with a common equity ratio of 50%. (Gorman, IIEC Ex. 1.0 at 11:237-245). Under IIEC's proposal, the Commission would investigate an appropriate common equity ratio limit at least every three years. (*Id.* at 12:257-259).

Use of a 50% common equity ratio cap is appropriate for several reasons. First, it will help ensure that Ameren recovers only its prudent and reasonable capital costs. (Gorman, IIEC Ex. 1.0 at 12:249-151). As noted above, a capital structure too heavily weighted with common equity overstates Ameren's reasonable cost of capital and, therefore, would be imprudent and unreasonable. Furthermore, the record here establishes that the capital structures proposed in this case by the Company and the Staff contain so much common equity that they may not be prudent and reasonable on a going-forward basis. (McNally, Staff Ex. 8.0 at 4:65-67). Under such circumstances, the imposition of the 50% common equity cap would be appropriate.

Second, the 50% limit itself is reasonable since it exceeds the common equity ratio authorized for the old Ameren Illinois operating subsidiaries in Ameren's last fully litigated rate case. (AmerenCILCO - 43.61%; AmerenCIPS - 48.67%, and AmerenIP - 43.55%). (Gorman, IIEC Ex. 1.0 at 13:Table 2, reporting common equity ratios approved in ICC Dockets 09-0306-09-0311 (Cons.)). Those equity ratios were established under the old ratemaking procedures, which have been supplanted by the implementation of the formula rate process. The new formula rate process mitigates Ameren's operating risks and in turn, helps support a stronger credit rating for Ameren. In turn, this reduced operating risk allows Ameren to increase its financial risk via reducing its common equity ratio of total capital without a negative impact on its credit rating. (*Id.* at 13:272-

274). Indeed, Standard and Poor views the development of the formula rate process “. . . as potentially enhancing Ameren’s credit quality and demonstrating Ameren’s improving management of its regulatory risk.” (*See, Id.* at 13:291-293 quoting Standard and Poor’s Ratings Direct on Global Credit Portal, Ameren Illinois Co., March 16, 2012 at 2). Moody’s reached the same conclusion and increased the Ameren credit rating largely due to the formula rate law. (Martin, Ameren Ex. 24.0 at 9:192-196).

Third, obviously Ameren’s previously approved capital structures, which contained equity ratios of substantially less than 50%, supported an investment grade bond rating for Ameren. Therefore, a 50% equity ratio, which exceeds Ameren’s previous equity ratios, should more than adequately perform the same function in this case. (*Id.* at 14:297-300).

Fourth, the 50% cap is not an absolute cap on the common equity ratio for Ameren. Ameren would be free to present evidence to the Commission that an equity ratio in excess of 50% was prudent and reasonable. On the other hand, the 50% is not intended to be a guaranteed equity ratio. That is, the Commission still has the duty under Section 16-108.5 to determine whether the capital structure presented by Ameren for ratemaking purposes is prudent and reasonable regardless of the level of common equity reflected in the capital structure. The Commission would be free under Section 16-108.5 to initiate hearings involving the reasonableness and prudence of any capital structure presented by Ameren containing a common equity ratio of less than 50%. IIEC’s proposal is not intended to guarantee that a capital structure with less than 50% common equity would be considered just and reasonable by the Commission. The 50% cap here would merely operate as a trigger to require a hearing to the extent Ameren’s actual capital structure contains an equity ratio

greater than 50%.

Sixth, the Commission's rejection of IIEC's proposal for a 55% common equity ratio cap for ComEd does not support rejection of IIEC's proposal here. The Commission rejected IIEC's proposal in that case because ComEd's "current common equity ratio of 45.54% makes such a cap unnecessary in this proceeding." (*ComEd Formula Rate Order* at 131). In this case, Ameren proposes a common equity ratio of 54.28%, well in excess of the 50% cap recommended by IIEC in this case. Furthermore, Staff's common equity ratio of 51.49% exceeds the cap as well. Thus, the circumstances of this case are substantially different than those in the ComEd case and justify adoption of the 50% cap as proposed by IIEC in this case.

For the reasons stated above, IIEC's proposal should be adopted. A common equity ratio for the capital structure approved for Ameren in this case should be limited to 50%. The difference between the 50% and the 54.28% common equity ratio proposed by Ameren or the 51.49% common equity ratio proposed by Staff, should be allocated a debt component of the capital structure of whichever capital structure is ultimately approved by the Commission..

## **VIII. FORMULA RATE TARIFF**

### **B. Contested Formula/Tariff/Filing Issues**

IIEC addresses in one way or another, elements of the issues suggested by all the captions in this Section. Specifically, IIEC recommends that the Commission implement caps/triggers for formula rate hearings on the reasonableness and prudence of certain operating expenses such as regulatory expense, affiliate charges expense, and incentive compensation expense, referenced in Subsections 1, 3, and 4 below. IIEC believes the Commission is empowered to adopt these

caps/triggers and incorporate them into Ameren's formula rate under Section 16-108.5. Specifically, the Commission is empowered to approve Ameren's formula rate as modified and to make rules to administer Section 16-108.5. (220 ILCS 5/16-108.5(c)(6) and (d)(3)). The Commission is also granted authority to hold hearings on the prudence or reasonableness of the utility's proposed costs. (220 ILCS 5/16-108.5(d)(3)). There is no prohibition in Section 16-108.5 on the Commission's ability to advise the utility, in advance, of the circumstances under which it will initiate such a hearing. Therefore, because the Commission is authorized to establish procedures and relationships for the administration of Section 16-108.5 by rule or through tariff modification, the Commission is empowered to establish IIEC's proposed caps/triggers for the expenses discussed below.

In addition, IIEC discusses additional procedural limitations on Ameren's recovery of incentive compensation in subsection 2 below. Finally, it discusses the need for reducing the complexity of Rate MAP-P as filed by Ameren; makes recommendations on the type and nature of information to be provided by Ameren with each annual filing in the formula rate process; and discusses the rulemaking for the formula rate process in Subsections 5, 6, and 7 below.

#### **1. Incentive Compensation/Stated Level/Test of Reasonableness**

IIEC proposes that a procedural cap be set for incentive compensation expense included in the formula rate. The cap acts as a trigger. If Ameren proposes to include a level of incentive compensation expense in excess of the cap in its formula rate, the Commission would initiate a hearing to determine whether the level of expense requested by Ameren was prudent and reasonable. Incentive compensation expense has been one of the more heavily litigated issues in recent Ameren rate cases. (*See, e.g., Commonwealth Edison Co.*, ICC Dkt. 10-0467, Order, May 24, 2011 at 60-

65). The Commission has only 45 days in which to review the Company's annual reconciliation filing. Because of the sensitive nature of the incentive compensation expense, it is an expense that has been separately identified in Section 16-108.5 as a subject of the formula rate. (*See*, 220 ILCS 5/16-108.5(c)(4)(A)). However, recovery of this expense is still subject to the Commission's overall authority to determine whether a particular expense is prudent and reasonable. (*See*, 220 ILCS 5/16-108.5(b-5), (c)(1) and (d)(3)). Given the sensitivity of this expense, and given the fact that the Commission has only 45 days in which to consider whether it will conduct a hearing on the utility's annual rate filing, it would be important for the Commission to advise the utility in advance of the pre-determined levels of expense that would cause the Commission to conduct a hearing on the prudence and reasonableness of those expenses.

In this instance, IIEC witness Gorman recommended the Commission establish a trigger or a cap on the level of incentive compensation expense included in the Company's formula rate. (Gorman, IIEC Ex. 1.0 at 19:407-418). Specifically he recommended that Ameren's incentive compensation expense be limited to the average of the incentive compensation expense approved for Ameren in its last three fully litigated electric rate cases.

To the extent Ameren's incentive compensation expense exceeds that amount, the Commission should announce to Ameren that it will conduct a hearing on the prudence and reasonableness of that expense.

## **2. Incentive Compensation/Metrics Requirements**

IIEC proposes an additional limitation on incentive compensation expense that would be included in the formula rate. Incentive compensation would be recoverable under the formula rate

only if the reliability metrics for Ameren, as ultimately adopted by the Commission, are satisfactorily met. (Gorman, IIEC Ex. 1.0 at 20:423-428). IIEC suggests the minimum operational metric standards Ameren must meet should be the standards described in Section 16-108.5(f). These standards are the subject of a Commission proceeding in Docket 12-0089. (*Id.* at 20:425-430). Section 16-108.5 includes language which provides that Ameren’s formula rate “. . . permit and set forth protocols for recovery of incentive compensation based on the achievement of operational metrics.” (220 ILCS 5/16-108.5(c)(4)(A)).

To be included in the formula rate incentive compensation expense should be structured so that achieving or exceeding the metric thresholds (whatever metrics are ultimately approved by the Commission) is a condition of its inclusion to the extent it is otherwise recoverable. Failure to achieve the metrics would mean that no incentive compensation expense would be included in the formula rate. (Gorman, IIEC Ex. 1.0 at 21:446-451). Failure to meet the operational metrics that form the basis of incentive compensation recovery is an indicator the expenses for rewarding employees for performance are not prudent or reasonable and that inclusion of those expenses in the formula rate would result in a rate that is not just and reasonable.

In order to accomplish this goal, the Commission should require that Ameren include with its annual filing, the information necessary to allow the Commission to determine whether or not Ameren has achieved the metrics approved by the Commission.

### **3. Affiliate Service Charges/Stated Level/Test of Reasonableness**

IIEC recommends that the amount of affiliate service charges expense that Ameren proposes for inclusion in its formula rate in this case, \$124 million, be used as the cap or trigger on Ameren’s

formula rate on a going-forward basis. Under the formula rate approach, these expenses and charges will not receive regulatory scrutiny as in a traditional rate case, because they may simply be plugged into the formula rate at the recorded value contained in FERC Form 1. (Gorman, IIEC Ex. 1.0 at 18:388-390). Including a cap or trigger in the formula rate for this expense would ensure customers that they pay no more than a reasonable level of this expense. If the \$124 million is below Ameren's actual affiliate service charge expense, then Ameren would have the ability to present evidence in the context of the hearing that would be triggered to demonstrate the reasonableness of the expense level it proposed to recover. If Ameren's expense level does not exceed the \$124 million amount, the Commission would still have the authority to examine the prudence and reasonableness of the expense level proposed by Ameren, if it were inclined to do so. Including a cap will ensure that the costs recovered by Ameren in the formula rate are prudent and reasonable and encourage Ameren to actively manage that expense.

#### **4. Rate Case Expense/Stated Level/Test of Reasonableness**

IIEC proposes a cap of \$1 million for regulatory expense be inserted into Ameren's formula rate. This amount is based on the annual amortized rate case expense from Ameren Illinois' last rate case and is taken from Ameren Illinois FERC Form 1. (Gorman, IIEC Ex. 1.0 at 17:376-379). This cap will encourage Ameren to aggressively manage its regulatory expenses in the context of the new formula rate approach. Under this new approach, emphasis is placed on recovery of Ameren's actual costs. As noted above, the Commission is given only a short period of time to review Ameren's annual filings to decide whether or not it will conduct a hearing to determine the prudence and reasonableness of costs the Company proposes to recover. Absent a rule or tariff modification,

ratepayers have not been granted a right to participate promptly in the review of the filing or to conduct discovery on same. Under the circumstances, a cap would encourage aggressive management of this expense. It would also provide assurance of regulatory oversight and discipline of regulatory expense that benefits customers and help to ensure the prudence and reasonableness of the formula rate. (*Id.* at 17:361-368). Ameren has elected to recover its costs for delivery service through a formula rate approach which requires annual reviews. Thus, it will incur something equivalent to rate case expense each year on a going-forward basis. Under such circumstances, rate case expense needs to be managed aggressively. The regulatory expense proposed by IIEC is likely more than necessary to cover activities in a formula rate proceeding because activities in a formula rate matter should be much lower than a full rate case. (*Id.* at 17-18:377-382). Therefore, IIEC's proposal for a cap or a trigger associated with rate case expense should be adopted.

#### **5. Schedules to be Included in Rate MAP-P/Tariff Complexity**

Section 16-108.5 requires a formula rate tariff accomplish the following:

Specify the cost components that form the basis of the rate charge to customers with sufficient specificity (A) to operate in a standardized manner and (B) be updated annually with transparent information that reflects the utility's actual costs to be recovered during the applicable rate year. . . (220 ILCS 5/16-108.5(c) (letters added)).

The statutory tests for the formula rate contained in this provision are functional ones. Aside from the functional test set out above, the statute is silent on the level of detail necessary or appropriate for an implementing tariff. The Commission is the regulatory body charged by statute with implementing the formula rate regime, and it is the Commission – not Ameren – that is authorized to determine how much detail is required to be sufficient for those purposes.

Ameren's proposed tariff is an excessively detailed tariff and is modeled on ComEd's proposed formula rate. (Mill, Ameren Ex. 1.0 Rev. at 7:147-149). While Ameren may be familiar with, and comfortable with its tariff, to the Commission and to retail customers in Ameren's service territory, the proposed tariff is a novel mechanism warranting close examination. Ameren's preference for a workpaper level of detail in the formula rate does not make such detail either a statutory requirement or an appropriate feature under Article IX of the Public Utilities Act.

It is IIEC's view that Ameren's proposed Rate MAP-P is unduly complex and more specific than necessary in order to implement the statutory requirements described above. (Stephens, IIEC Ex. 3.0 at 2:25-29). Currently Rate MAP-P consists of 9 pages plus 2 indices, A and B, consisting of 48 pages and 26 pages respectively. In total, Rate MAP-P consists of 83 pages that reflect a detailed revenue requirement determination method, detailed formula spreadsheets, and spreadsheets for other information related to financial cost indicators and billing delivery units. (Stephens, IIEC Ex. 3.0 at 3:46-59). Simplicity and understandability are fundamental attributes of sound rate structures. (*Id.* at 4:65, Fn. 2 --noting that in one of the definitive texts on establishing public utility rates, "Principles of Public Utility Rates," James Bonbright, et al., list these features as following one of the ten attributes of a sound rate structure. However, the level of detail included in Rate MAP-P is far beyond that which is necessary ". . . to operate in a standardized matter" as required by Section 16-108.5.

The Commission has already expressed its desire to have formula rates be understandable. In the ComEd Formula Rate Order, the Commission adopted IIEC's recommendation to simplify ComEd's formula rate. There the Commission stated:

The fact that tariffs are not comprehensible to most people does not justify making tariffs more incomprehensible. IIEC's recommendation is well-taken regarding simplification of ComEd's tariffs pursuant to Section 16-108.5 of the Public Utilities Act, and is hereby adopted. (*ComEd Formula Rate Order* at 153).

The Commission's decision in the ComEd Formula Rate Case is consistent with prior Commission decisions on the importance of the understandability of utility tariffs. For instance, in reviewing ratemaking standards in past cases, the Commission has stated:

Since implementation of these ratemaking standards does not imply a mechanical or perfect rate design procedure, the Commission reserves the right to exercise its judgment in these matters to ensure such standards as to continuity, administration of rates, customer understandability and any other considerations which it deems appropriate and reasonable. (*Commonwealth Edison Company*, ICC Dkt. 80-0546, Order, July 1, 1981, 1981 Ill. PUC Lexis 19\*168; *see also*, *Commonwealth Edison Company*, ICC Dkt. 79-0214, Order, February 6, 1980, 1980 Ill. PUC Lexis 36\*128).

Ameren proposes to incorporate in its tariffs the type of computation detail that is usually the center of the Commission's regulatory review of proposed revenue and cost bases for proposed rates. The form of the tariff that Ameren proposes could hinder or needlessly complicate the Commission's exercise of its ratemaking authority and obligation for Article IX review under the Public Utilities Act. For example, the Commission would likely have to make numerous tedious tariff revisions for every determination of prudent and reasonable costs or capital structure, on a different record, that varies from previous cost inputs or calculations on FERC Form 1 data. (*See*, Mill, Ameren Ex. 12.1).

In addition, there might be limitations on the Commission's ability to modify cost inputs if the tariff is interpreted as a constraint on how the Commission determines whether a cost is prudent,

or just and reasonable, and how to reflect that in the formula rate calculations. (See, e.g., the statute's limitation on the Commission's ability to order modifications of the formula rate in future reconciliation proceedings. (220 ILCS 5/16-108.5(d)).

Furthermore, Section 16-108.5 explicitly directs the Commission to continue its scrutiny of proposed costs and rates in accordance with existing Article IX of the Public Utilities Act, relevant law, and the Commission's customary practices, with very limited exceptions.

The Commission shall initiate and conduct an investigation of the tariff in a manner consistent with the provisions of this subsection (c) and the provisions of Article IX of this Act to the extent they do not conflict with this Subsection (c) (explanation added).

\* \* \* \*

Such review (of proposed rates and tariffs) shall be based on the same evidentiary standards, including, but not limited to, those concerning the prudence and reasonableness of the costs incurred by the utility, the Commission applies in a hearing to review a filing for a general increase in rates under Article IX of this Act. (220 ILCS 5/16-108.5(c)) (explanation added).

These tasks will be significantly more difficult if the Commission's modifications of proposed cost inputs require the Commission to search for, change, and verify all tariff spreadsheet entries associated with each Commission determination or modification.

Customers participating in formula rate proceedings face equally daunting requirements for objections to proposed costs and revenue requirement computations. (220 ILCS 5/16-108.5(d)).

Approval of Ameren's proposal to include new schedules and appendices of workpaper details in Rate MAP-P sets the stage for utility arguments to try to immunize tariff cost inputs from meaningful examination, because particularly described cost elements or computations are

incorporated in detailed spreadsheets of the tariff. Ameren's proposed tariff is impossibly complicated, thus, it is not understandable to or accessible by Ameren customers who are directly affected by it. Under such circumstances, it does not achieve the transparency required by the new statutory provisions.

However, even with the detail and complexity of Rate MAP-P as proposed by Ameren, the tariff still lacks the link between the source data in Ameren's FERC Form 1 and the revenue requirement formula that comprise the formula rates. Ameren's Rate MAP-P requires extensive, (nearly 190 pages) workpapers to define the tariff formula rate cost inputs. (*See*, Stafford, Ameren Ex. 2.2). Indeed, the record establishes that proposed Rate MAP-P does not allow computation of Ameren's revenue requirement directly from FERC Form 1, without using spreadsheets, forms and other computational devices, as well as additional data that are not included in the tariff itself. (*See*, IIEC Cross Ex. 1, Ameren Resp. to IIEC DR 7.01). Thus, the tariff cannot be "updated with transparent (cost) information" any more than a less complicated, more comprehensible tariff, recommended by IIEC.

In summary, a more understandable tariff that shows the formula revenue requirement determination using the major elements of the formula rate, at a level of detail that satisfies the Statute, is possible. IIEC has proposed that the Commission exclude Appendices A and B from the tariff and adopt the nine tariff pages that Ameren currently lists for Rate MAP-P itself.

The pages that IIEC's recommends be included in the tariff will meet the statutory

requirements and better serve the customary purposes of tariffs.<sup>12</sup> In addition, the simplified tariff can be supplemented by Commission rules that would govern the formula rate process. The rules could incorporate the remaining Ameren schedules and/or workpapers, as part of standard filing requirements for formula rates. Ameren's proposed tariff, Appendices and supporting workpapers, would retain the function documents have in the Commission's customary Article IX reviews of proposed rates. However, the Commission would not be unnecessarily limited in its proper and decisive role in reviewing the prudence and reasonableness of formula rate cost inputs. Because non-tariffed spreadsheets and data are required, even with Ameren's proposed more detailed and complex tariff, standardization would not be significantly diminished. However, transparency and understandability of the tariff would be significantly enhanced.

#### **6. Filing of Final Approved Formula Template/Schedules with the ICC**

IIEC recommends that what are now Appendices A and B to Rate MAP-P be filed with the Commission for review. The Commission should consider the information contained in these two appendices to be part of the standard filing requirements for Ameren's formula rate, similar to the standard filing requirements described in Parts 285 and 286 of the Commission's rules. Parts 285 and 286 filings are not made a part of the utility's tariff, even though information from those filings may be reflected in the rates or charges approved by the Commission. Likewise, in the case at bar, there may be a need to make the information contained in Appendices A and B a part of the utility's

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<sup>12</sup> IIEC acknowledges that conforming changes to Rate MAP-P will be necessary in the compliance filing to reflect the removal of the appendices from the tariff, much like other changes approved in this case.

standard formula rate filing, on a going-forward basis, there is no need to make them a part of the tariff itself.

Furthermore, because the appendices do not contain or reflect all of the information needed to calculate the utility's revenue requirement, there is no need to consider them a part of the "formula" approved for the Ameren formula rate adopted in this proceeding. That formula is adequately described and identified in the first nine pages of Rate MAP-P, which IIEC recommends be adopted as the formula rate tariff in this case in Section VIII.B.5. above.

#### **7. Rulemaking - Formula Rate Process**

IIEC recommended in the ComEd formula rate case, that the Commission initiate a rulemaking on the formula rate process. Section 16-108.5 contemplates such a rulemaking. It discusses specifically "rules adopted by the Commission to implement this section". (220 ILCS 5/16-108.5(d)(3)). The Commission adopted IIEC's recommendation in the ComEd case. (*ComEd Formula Rate Order* at 153).

IIEC continues to support the implementation of such a rulemaking. The record in this case provides no information which would justify reconsideration of the Commission's determination in the ComEd Formula Rate Order that such a rulemaking would be implemented.

#### **8. Other**

(i) The Commission made certain modifications to the ComEd formula rate which should also be made in the context of the Ameren formula rate. As noted above, Ameren's formula rate is patterned after ComEd's. (Mill, Ameren Ex. 1.0 at 7:147-149). In fact, Ameren witnesses have suggested it would be good ratemaking policy to have the rates structured in a similar manner.

(Mill, Ameren Ex. 12.0 Rev. at 11:215-216). The ComEd modifications included a directive from the Commission that ComEd identify separately on its Schedule FRA-1 of its formula rate the effects of the earnings collar described in Section 16-108.5. (220 ILCS 5/16-108.5(c)(5)). That earnings collar permits Ameren to vary by 50 basis points above or 50 basis points below the return on common equity established pursuant to the formula described in the statute. Currently Ameren's proposed Rate MAP-P includes its earnings collar adjustment on its Schedule FRA-1 REC line 23. IIEC believes the earnings collar adjustment should be stated on Ameren's revenue requirement schedule or Schedule FRA-1 in an additional line below the proposed line 23, "Reconciliation of Prior Year".

Therefore, IIEC recommends that, as it did in the ComEd Formula Rate Case, that the Commission should order Ameren to separately state the earnings collar calculation and the results of the collar allocation in Rate MAP-P. (*ComEd Formula Rate Order* at 149).

(ii) In addition, under Section 16-108.5(g), Ameren is required to report to the Commission by July 31, 2014, its average annual rate increases for residential customers (on a per kWh basis) over the previous three years. (220 ILCS 5.16-108.5(g)). An annual rate increase of 2.5% per year would disqualify Ameren from use of the formula rate mechanism. (*Id.*). Ameren has signaled its preference for formula rates by filing this case. The required determination and report of a rate increase in per kWh charges can be directly affected by the starting point for the year-to-year comparisons. However, Ameren has not advised the Commission of the starting point it plans to use in computing that performance benchmark. IIEC proposes, consistent with the decision in the ComEd Formula Rate Case, that the Commission determine and advise all parties of the starting

point for that three year assessment. Specifically, the starting point should be the rates ordered by the Commission in Ameren’s last electric rate case order in Docket 09-0306, adjusted for the cost of equity, as determined by current statutory formula. (220 ILCS 5/16-108.5(c)(3)). The Commission adopted IIEC’s recommendation in the ComEd Formula Rate Case. (*ComEd Formula Rate Order* at 150). To ensure consistency between the formula rate approach adopted for ComEd and the formula rate approach for Ameren, the Commission should impose the same requirement on Ameren here.

(iii) Ameren should be directed, as ComEd has been, to provide relevant Parts 285 and 286 information with its formula rate filings. (*ComEd Formula Rate Order* at 155).

**C. Contested Reconciliation Issues**

**1. Year End or Average Rate Base**

IIEC proposes the consistent use of an average rate base – both for setting initial rates and for later reconciliation of those rates to the revenue requirement they were meant to recover. For that reason, IIEC addressed this reconciliation issue as part of IIEC’s earlier discussion of the accurate determination of rate base that is necessary to achieve the formula rates statute’s prime objective – recovery of Ameren’s “actual costs of delivery services that are prudently incurred and reasonable in amount consistent with Commission practice and law.” (220 ILCS 5/16-108.5(c) (emphasis added)). Ameren’s proposed use of a year-end rate base fails twice to accurately reflect its costs of the actual investment “both prudently incurred and used and useful in providing service to public utility customers” during the rate year. (220 ILCS 5/9-211).

## 2. Interest Rate on Under/Over Collections

IIEC supports the essence of the positions of Staff and AG/AARP that the interest rates on any annual reconciliation adjustments under the formula rate should reflect the short term nature of that ratemaking variance. Accordingly, the appropriate interest rates to be applied to reconciliation balances should reflect (exclusively or predominantly) short term borrowing costs.

### CONCLUSION

For the reasons stated herein, IIEC respectfully requests the Commission adopt the positions taken and recommendations made by IIEC herein.

DATED this 10<sup>th</sup> day of July, 2012.

Respectfully submitted,

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