

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

Ameren Illinois Company)	
d/b/a Ameren Illinois)	
)	12-0001
Rate MAP-P Modernization)	
Action Plan - Pricing Filing.)	

BRIEF ON EXCEPTIONS OF THE CITIZENS UTILITY BOARD

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Now comes the Citizens Utility Board (“CUB”), pursuant to Rules of Practice of the Illinois Commerce Commission (“ICC” or “the Commission”), 83 Ill. Admin. Code Part 200.830, and pursuant to the briefing schedule established by the Administrative Law Judges (“ALJs”) in their Proposed Order served on August 23, 2012, to hereby file this Brief on Exceptions in the above-captioned proceeding. This proceeding is the initial rate-setting docket for the Ameren Illinois Company, d/b/a Ameren Illinois (“Ameren,” “AIC” or the “Company”) under new Section 16-108.5 of the Public Utilities Act (“PUA” or the “Act”).

I. INTRODUCTION

The ALJ’s Proposed Order (“Proposed Order” or “PO”) renders thorough and well-reasoned analyses and conclusions in its determination of Ameren’s first formula rate, which in large part follows the directives of the Act and evidence presented. However, with regard to several issues, the most prominent of which is the interest rate to be applied to reconciliation balances, the Proposed Order’s conclusions are inconsistent with the Commission’s Order in Docket No. 11-0721 on this issue. In its May 29, 2012 Final Order in Docket No. 11-10721, the Commission found that a hybrid debt-based interest rate should apply as the carrying cost rate

for ComEd’s formula rate plan reconciling balances.¹ CUB, in particular, takes exception to requiring Ameren’s ratepayers to pay a carrying cost rate based on Ameren’s weighted average cost of capital (WACC) on under-collected reconciling balances.² The new Section 16-108.5, titled the Energy Infrastructure Modernization Act (“EIMA”), (Public Act 97-0616, as modified by Public Act 97-0646), does not diminish the Commission’s authority—and duty—to set rates that are just and reasonable and are based on prudently-incurred costs. Although EIMA represents a significant change in the way electric utility rates are set, the Commission is still required to ensure that delivery service rates for electricity are just and reasonable, and that utility investments are prudently made. 220 ILCS 5/16-108.5(c)(6). The EIMA does not change the ICC’s role in “effectively and comprehensively” requiring Ameren to provide “adequate, efficient, reliable, environmentally safe and least-cost public utility services.” 220 ILCS 5/102. The new parts of the Act reinforce the existing evaluation lodestars of “prudence” and “reasonableness.” The Proposed Order’s conclusion regarding the interest rate to apply to future reconciliation balance, however, errs as a matter of law and must be reversed by the Commission. Additionally, CUB takes exception to the Proposed Order’s conclusions regarding Revenue Collections Lag, Income Tax Lead and Lag, Account 190 – Step-Up Basis Metro, and CWIP as not supportable by the evidence presented.

¹ This issue in Docket No. 11-0721 is currently before the Commission on rehearing.

² CUB does not object to applying the utility’s WACC to over-collected reconciling balances, and, indeed, believes that is necessary in order to protect ratepayers and to encourage accurate forecasts and projections from the utility.

II. EXCEPTIONS

A. REVENUE COLLECTIONS LAG

The Proposed Order's conclusion on this important issue, adopting Ameren's calculation of the revenue collection lag, ignores the fact that AIC failed to meet its burden of proof and has assumed, rather than proven, dates when customers, on average, actually remit payments of their utility bills. PO at 24; *see* AG/AARP Ex. 1.0 at 22. This "shortcut method" of estimating the revenue collection lag does not accurately quantify this value, which is the single most important value in the lead lag study. The Proposed Order's brief analysis of this issue does not adequately address the serious concerns raised by the parties.

Rather than actually measuring how long it takes to collect revenues from Ameren customers, the Company used crude assumptions and broad "aged" categories of month-end accounts receivable balances, assigning assumed revenue collection dates to groupings of aged receivable balances. AG/AARP Ex. 1.0 at 24. That methodology will result in a misstatement of the Company's cash working capital requirement. *Id.* at 23. The mere fact that this flawed methodology was used in a previous Ameren docket does not indicate that the revenue collection lag has been appropriately calculated here, or that AIC has adequately considered the issues presented. *See* PO at 24. CUB supports the AG/AARP recommendations to revise the collection lag and require the Company to take steps to create a more accurate lead lag study in the future. Accordingly, CUB respectfully requests the Commission modify its Conclusion on pages 23-24 of the Proposed Order as follows:

EXCEPTION # 1:

The Commission notes that AIC has proposed a revenue collection lag of 30.67 days, indicating that it calculated the collection lag using an analysis of actual aged receivables data, which was then adjusted to reflect potentially uncollectible receivables. AIC

contends that the method it used in this docket is the same method approved by the Commission in Docket Nos. 09-0306 et al. (Cons.). AIC objects to the methodology proposed by AG/AARP, noting that the record in this proceeding provides no evidence that the adjustment proposed by ComEd in its docket has any applicability to AIC or its customers' payment patterns. AIC also recommends that the Commission not accept AG/AARP's recommendation for future proceedings, contending that the analysis would be biased toward customers that pay on time and either ignores or penalizes AIC for customers that have outstanding balances. AIC also suggests that this proposal would entail additional costs, without any showing that it would produce a materially better result. The Commission recognizes that Staff supports AIC's calculation on this issue, and urges the rejections of IIEC's suggested 21-day revenue collection lag, which is based on Section 280.90 of the Commission's rules.

As noted, IIEC recommends the Commission set a revenue collection lag based on the provisions of Section 280.90, which gives residential customers 21 days to pay their utility bills before late fees may apply while commercial, industrial, and government agencies have only 14 days. IIEC suggests that its proposed 21-day collection lag reflects an average period of time, with some customers paying before and others after 21 days.

AG/AARP complain that AIC is assuming, rather than proving, the dates on which customers actually paid their bills, therefore AG/AARP suggest that AIC's calculation is lacking. AG/AARP propose that AIC's lead lag study be modified to incorporate revision of AIC's estimated revenue collection lag to insert reasonable grace period assumptions, as were used in ComEd's calculations approved by the Commission in Docket No. 10-0467. AG/AARP contend that the impact of revising AIC's collection lag and overall revenue lag for the effects of billing grace periods, using ComEd's methodology, is significant. AG/AARP state that the collection lag of 30.67 days in AIC's study would be reduced from 30.67 to 22.04 using the ComEd assumptions. AG/AARP contend this would result in a revised overall revenue lag of 41.12 days, as compared to AIC's proposed 49.75 day revenue lag. AG/AARP also recommend that the Commission order AIC to either conduct a daily accounts receivable turnover analysis or use

a statistically valid sample of customers' actual remittances in future filings. CUB supports AG/AARP's recommendation.

~~The Commission believes that the evidence presented shows that AIC has not appropriately calculated the revenue collection lag; therefore it will be adopted for this proceeding. The Commission agrees with AIC that it has adequately considered the issues presented in calculating the collection lag, and the method used is the same as that~~ Although the method employed by AIC was accepted by the Commission in Docket Nos. 09-0306 et al. (Cons.), the Commission finds that the midpoint methodology of calculating the lead lag study results in a misstatement of AIC's cash working capital requirement. Such a method relies heavily on assumptions for which there is little support aside from previous practice. The Commission therefore adopts the revenue collection lag proposed by AG/AARP, and requires AIC to present a more accurate lead lag study in the future using one of the methods proposed by AG/AARP. The Commission will also decline to accept the recommendation of AG/AARP for AIC in ~~Therefore, in future proceedings AIC shall to either conduct a daily accounts receivable turnover analysis or use a statistically valid sample of customers' actual remittances in future filings. The Commission agrees with AIC that the proposed method could be biased toward certain customers and unduly penalize AIC, without any evidence that the additional cost would produce a better result for the Commission's consideration.~~

B. INCOME TAX LEAD AND LAG

The Proposed Order's conclusion on this issue is notably different from that of the Commission in the ComEd initial formula rate docket, Docket No. 11-0721. The PO acknowledges this, but excuses the different treatment by claiming that "ComEd and AIC calculate income taxes using different methodologies." PO at 29. The Proposed Order errs in concluding that a different result is appropriate because the methodologies are in fact similar in other respects. Ameren's methodology is similar to ComEd's in that each utility deferred all income tax liability due to bonus depreciation and other favorable tax deductions each was able

to claim. AG/AARP Ex. 1.0 at 35. Ameren is in the same position here as ComEd; for 2010, more than 100 percent of its income taxes are “deferred” taxes. *Id.* at 33. Whether or not Ameren distinguishes between current and deferred tax expense, the Commission should not allow Ameren to collect from ratepayers for taxes it did not actually pay. Consequently, CUB respectfully requests the Commission replace the Conclusion on pages 28-29 of the Proposed Order with the following:

EXCEPTION # 2:

The Commission notes that on the issue of income tax lead and lag, AIC states that it utilized statutory income tax rates and payment dates when determining CWC. AIC believes that this is consistent with Commission practice of not considering current and deferred income taxes separately when calculating CWC. AIC notes that AG/AARP suggest setting the revenue lag and expense lead days be set at zero for income taxes because AIC's current income taxes are substantially negative, and more than 100% of AIC's 2010 income taxes are actually non-cash deferred income taxes. AIC believes AG/AARP's method is not only inconsistent with Commission practice, but it also disrupts the balance between the ratemaking cost of service and the inputs to the CWC calculation. The Commission also notes that Staff recommends the Commission adopt AIC's position on this issue, as it is consistent with past Commission practice.

AG/AARP, however, recommend that the Commission set the revenue lag days and the expense lead days at zero, since AIC's adjusted income taxes currently payable are negative. AG/AARP contend that since more than 100% of AIC's test year income taxes are actually non-cash deferred income taxes, there is no current period cash flow that could contribute to CWC. AG/AARP note that the approach it recommends was the method adopted by ComEd in Docket No. 11-0721. CUB also recommends that the Commission set the revenue lag and expense lead values to zero due to AIC's 2010 adjusted income taxes being substantially negative, asserting that this is consistent with Docket No. 11-0721.

In response, AIC argues that in contrast to ComEd, AIC calculates income tax expenses based on statutory rates, while ComEd calculates its income tax expense based on actual rates. AIC asserts that as the two methodologies are not aligned, it would be inappropriate to impose the method in the ComEd docket on AIC.

~~The Commission finds that AIC, as supported by Staff, has proposed the appropriate method in this docket for determining the appropriate income tax lead and lag. The Commission agrees that it has a long-standing practice of not considering current and deferred income taxes separately. The Commission finds no evidence present in this docket to cause it to vary from this treatment. The Commission recognizes that a different result was adopted in the ComEd docket, Docket No. 11-071; however, the Commission recognizes that ComEd and AIC calculate income taxes using different methodologies. Should those methodologies align in the future, or new evidence be presented, the Commission will certainly re-visit this issue in future proceedings. The Commission agrees with AG/AARP, as supported by CUB, that revenue lag and expense lead values should be set to zero. AIC's 2010 adjusted income taxes were substantially negative, thus there is no current period cash flow to contribute to the Company's cash working capital requirement. This is consistent with our decision in the ComEd docket, Docket No. 11-0721. Although Ameren uses a different methodology than ComEd by considering current and deferred income taxes separately when calculating CWC, AIC's 2010 income taxes, like those of ComEd's, were deferred. In order to avoid allowing AIC to collect from ratepayers for taxes it did not actually pay, the Commission adopts the AG/AARP adjustment.~~

C. ACCOUNT 190 – STEP-UP BASIS METRO

The Proposed Order fails to recognize the ADIT balance that was created as a result of the 2005 transfer of UE tax depreciable assets to CIPS. The Proposed Order instead agrees with the Company and Staff, who argued that the net effect to ADIT of the transaction is zero. PO at 69. The testimony of AG/AARP witness Mr. Effron demonstrated the contrary. As Mr. Effron explained, at the time of the transfer, there were related ADIT on the books of Union Electric.

AG/AARP Ex. 4.0 at 3, *citing* Ameren Ex. 13.0 at 26. No taxes were paid at the time of the transfer, and no increase to the net value of those assets was included in the Company's rate base. AG/AARP Ex. 2.0 at 6-7. For ratemaking purposes, the ADIT associated with the assets at the time of the transfer should follow the assets, without any offset. AG/AARP Ex. 2.0 at 7. Absent an entry to Account 190 to offset the credit balance of ADIT, the net rate base value of the assets is higher in the hands of CIPS than the net rate base value of the assets in the hands of the affiliate from whom the assets were purchased. AG/AARP Ex. 4.0 at 3. CUB therefore supports the AG/AARP adjustment of \$7.057 million for this issue. CUB respectfully requests the Commission modify the Proposed Order's conclusion at pages 68-69 as follows:

EXCEPTION # 3:

The Commission recognizes that AG/AARP recommend an additional rate-base reduction related to Account 190. According to Mr. Effron, in 2005 AmerenUE transferred certain tax depreciable assets to AmerenCIPS, which transfer occurred at the book value of the assets, which was higher than the tax basis at that time. AG/AARP claim that AmerenCIPS "stepped up" the tax basis of the assets to their book value at the time of the transfer. AG/AARP aver that with the book basis equal to the tax basis, there would be no net deferred taxes, and AmerenCIPS recorded a deferred tax asset that offset the related accumulated deferred taxes at the time of the asset transfer. AG/AARP argue, however, that the balance of ADIT related to "tax depreciation step-up basis Metro" should not be includable in AIC's rate base.

AIC suggests that the error in Mr. Effron's recommendation is that it assumes that the transfer would, in fact, result in any return of additional funds to AIC. AIC asserts, however, that the transfer had zero effect on rate base, and notes that Staff agrees that the evidence showed that the ADIT included in rate base from this purchase is zero, and since the net effect is zero, no adjustment is necessary. In confirmation, AIC notes that Staff witness Hathhorn testified that during the original transfer case the credit entry to

Account 190 of \$17,664,689 was offset by a debit entry to Account 282 of \$17,664,689.

Staff recommends the Commission reject the AG/AARP adjustment, as Staff believes that AIC has demonstrated that the adjustment is improper since net ADIT included in rate base from this asset purchase is zero. Since the net effect to ADIT of the transaction is zero, Staff opines that no adjustment is necessary.

CUB supports the adjustment proposed by Mr. Effron related to “tax depreciation step-up basis Metro.” This ADIT balance is the result of the 2005 transfer of AmerenUE tax depreciable assets to AmerenCIPS; a transfer that did not result in any payment of taxes at the time of the transfer, and which did not result in any increase to the net value of those assets included in AIC’s rate base.

The Commission disagrees that the net effect of this transfer is zero. The assets had an ADIT balance at the time of the transfer, and that has not yet been accounted for. The Commission finds that AIC has not properly accounted for these items, and ~~as recommended by Staff, no adjustment is necessary in this proceeding.~~ The Commission therefore will reject ~~adopt~~ the proposed adjustment of AG/AARP and CUB, ~~and find that no further adjustment is necessary~~ to the Account 190 asset.

D. CWIP

Both Staff and AG/AARP proposed adjustments to remove vendor funded CWIP investments from Ameren’s rate base. The Commission found that “it would not be appropriate to impose AG/AARP’s adjustment on AIC,” and that Ameren “adequately explained the reason for adopting Staff’s proposed adjustment.” PO at 72. The Proposed Order does not explain, however, why any projects that were more than 100 percent financed by accounts payable balances should be included in Ameren’s rate base. AG/AARP witness Brosch demonstrated that, even after adopting Staff’s proposed adjustment, Accounts Payable still remain for several of the CWIP investments funded by vendors rather than shareholders. AG/AARP Ex. 1.0 at 45; AG/AARP Ex. 3.0 at 33.

Indeed, the Commission's recent determination in Docket 10-0467 indicates that adjusting rate base for the effect of accrual accounting on payments for CWIP-related investments is essential to complying with the Act and the utility's burdens there under. *See* ICC Docket No. 10-0467, Final Order at 30-31 (May 24, 2011). Because vendors, rather than Ameren's shareholders, have funded the quantified amount of Ameren's CWIP investments, CUB continues to support AG/AARP witness Brosch's proposed adjustment and respectfully offers alternative language to replace the Proposed Order's conclusion at page 72:

EXCEPTION # 4:

The Commission agrees with ~~Staff and AIC~~ AG/AARP and CUB as to the more appropriate adjustment on this issue, therefore ~~Staff's~~ AG/AARP's proposed adjustment will be adopted. The Commission finds that AIC has not adequately explained the reason for adopting Staff's proposed adjustment, and it appears from the evidence presented that it would ~~not be appropriate~~ insufficient to impose ~~AG/AARP's~~ only Staff's adjustment on AIC.

E. THE PROPOSED ORDER ERRS IN APPROVING THE COMPANY'S WACC AS THE INTEREST RATE TO APPLY TO OVER-COLLECTED RECONCILIATION BALANCES

The Proposed Order errs in concluding that "To the extent AIC's rates are not high enough to recover costs, the Commission believes it should be allowed to earn its WACC on the short-fall." PO at 185. The "short fall" refers to an under-collected reconciling balance. This determination is directly contrary to the Commission's recent decision in the initial formula rate proceeding for Commonwealth Edison Company ("ComEd"), Docket No. 11-0721, entered on May 29, 2012 ("May 29 Order"), which rejected applying a utility's weighted average cost of capital ("WACC") to the formula rate reconciliation balance. While this issue is currently being reheard, CUB, Staff, IIEC, and AG-AARP all agree that it is inappropriate to apply the Company's WACC to an under-collected reconciliation balance as this misrepresents the

carrying costs associated with the short-term nature of the reconciliation balance. See CUB Init. Br. at 35; IIEC Rev. Init. Br. at 70; AG-AARP Init. Br. at 82; Staff Init. Br. at 58.³

The Proposed Order’s determination that WACC should be applied to reconciliation balances is contrary to the plain language of EIMA. The General Assembly rationally provided only for “interest” on the reconciliation balance: “Any over-collection or under-collection indicated by such reconciliation shall be reflected as a credit against, or recovered as an additional charge to, respectively, with *interest*, the charges for the applicable rate year.” 220 ILCS 5/16-108.5(d)(1) (emphasis supplied). If the General Assembly intended for the term “interest” to mean an “investment return,” it would have explicitly stated such. *Belleville v. Gregory*, 15 Ill. 20, 26 (1853) (“the law alone can speak the legislative will”). In fact, EIMA explicitly uses the term “investment return” with regard to pension assets in Section 108.5(c)(4)(D) of the PUA. If the General Assembly had intended to provide utilities with an investment on the reconciliation balance, it would have presumably used the term “investment return” as it did in that section. The plain language of EIMA, therefore, indicates that the General Assembly never intended for utilities to receive an *equity return* on any under-recovered balance – only *interest*.

1. The WACC Should Not Apply to Under-Collected Reconciliation Balances

The notion that Ameren should be rewarded with an equity return on any under-recovery is based on the false premise that Ameren is entitled to much more than simply the cost of money

³ CUB’s position on the carrying cost that is applied to over-collected reconciling balances differs from these other parties in that CUB supports use of the utility’s WACC on over-collected balances, whereas these other parties advocate a hybrid debt-only based carrying cost rate for both under- and over-collected reconciliation balances. CUB’s position for applying the higher WACC to over-collected balances was explained in its filed testimony and briefs, and, for convenience is briefly stated herein supra.

on the difference between the projected and actual costs from one 12-month period. The potential reconciliation amount will not be known until the review of the actual data for the revenue requirement is presented, and will be set for recovery for the next annual rate year. This represents a short-term obligation. Thus, awarding Ameren with an equity return on such temporary, incremental balance that it could reasonably finance with low-cost debt sources, would result in an excessive interest rate that does not represent the actual cost of incremental new capital needed for the short period of time that the reconciliation amount will be outstanding before its guaranteed recovery under the formula.

Furthermore, an under-collected reconciliation balance is not a rate base item and should not be treated as such. As Staff witness Hatthorn testified, “using the weighted average cost of capital as AIC proposes would treat the reconciliation amount like a rate base investment rather than a reconciling item.” Staff Ex. 1.0 at 17. The Commission agreed with this premise in its Order in Docket No. 11-0721, entered on May 29, 2012 (“May 29 Order”), the initial formula rate proceeding for Commonwealth Edison Company (“ComEd”). There, the Commission concluded that it “shares the concern raised by Staff that using the WACC as ComEd proposes would treat the reconciliation amount like a rate base investment rather than a reconciling item.” May 29 Order at 168. By applying the Company’s WACC to an under-collected reconciliation balance, the Proposed Order incorrectly treats the reconciliation balance, which represents a one- to two-year revenue lag at most, in the same way as a long-term asset that requires permanent long-term financing sources, when, in fact, an under-collected balance represents an incremental item that requires only one- to two-year incremental financing. Thus, the financing cost for such an item should be based on the cost of incremental debt financing.

CUB recommends use of an “asymmetrical” approach, where a debt based short-term (one to two year) “hybrid” interest rate is applied to under-collected reconciliation balances and the WACC is applied to over-collected reconciliation balances. Using a different interest rate for over- and under-collections is appropriate because related income tax savings and incremental low-cost debt could be used as the financing sources for under-collections, not investors. In contrast, an over-collected positive reconciliation balance will exist if Ameren over -projects its costs for the relevant revenue requirement. In that case, Ameren will have collected from ratepayers excess amounts, including amounts that produce an excess return. Consequently, the over-collection should be returned to ratepayers with interest based on the same WACC that was used to produce the over-collection that Ameren received from ratepayers. If Ameren accurately projects its costs, there would be no reconciliation balance to recover. However, if Ameren over-projects its cost, such as for plant additions, this could produce an over-collection. Or, if Ameren projects plant additions and then makes management decisions to incur a lower level of spending, such a situation could also lead to an over-collected reconciling balance.

It is necessary to use the interest rate/carrying cost proposed by Mr. Smith to protect ratepayers from manipulation of the projected plant addition amounts by Ameren. CUB Ex. 1.0 at 41. Mr. Smith explained that his recommendation is based on the sound regulatory principle of protecting ratepayers from utility over-projections of plant growth and utility omissions of offsetting factors, such as tax savings benefits. *Id.* CUB’s proposal protects ratepayers from manipulation of projected plant addition amounts by Ameren, and from intentional over-collections that result from Ameren ignoring substantial known impacts that should be subject to reasonable estimation. Ameren can produce over-collections simply by over-projecting its plant additions or not including offsetting factors. Requiring a higher interest rate for over-collections

will thus provide an appropriate and necessary deterrent to Ameren from making over-projections of plant additions. Additionally, allowing interest on under-collections based a short-term debt rate such as the customer deposit rate will also encourage the Company to make accurate projections of plant additions, because its earnings on under-collected balances resulting from mis-projecting plant additions would be at the lower of those rates.

The regulatory policy of applying the utility's WACC to over-collected utility surcharge balances and applying a debt-based interest rate to under-collected balances is the most reasonable approach, and has been used by the Florida Public Service Commission for several years. The following discussion is from Florida Public Service Commission Order No. PSC-10-0153-FOF-EI (March 17, 2010), a Florida Power and Light Company rate case, Florida PSC Docket Nos. 080677-EI, 090130-EI, at pages 94-95, sheds further light on the issue:

According to FPL witness Ousdahl, our current practice for clause over- and under-recoveries is not equitable. She testified that:

The Commission has not permitted FPL to remove the liability from working capital even though FPL compensates customers by paying interest on the over-recovery through the cost recovery clauses. This is inconsistent with the treatment of underrecoveries, where the Commission has previously required FPL to remove the asset from working capital.

Witness Ousdahl argued that this Commission should acknowledge that base rates should never include the cost of capital associated with clause over- or under-recoveries, as such costs are already provided for in the clause rate itself. She further argued that the regulatory liability associated with projected over-recoveries should be removed from working capital.

OPC stated that over-recoveries represent funds the Company owes customers and if they excluded from working capital, customers would be providing interest the company returned in the clause. OPC further stated that the under-recoveries are collected

from the customers at the commercial paper rate. In addition, if a clause under-recovery is included in base rates, the company will receive a double return on the under-recovery.

OPC argued that the Commission's practice has been to exclude fuel under-recoveries, which are assets, from Working Capital, and to include over-recoveries, which are liabilities. Furthermore, the rationale for including over-recoveries as a reduction to working capital is to provide the Company with an incentive to make its projections for the cost recovery clause as accurate as possible and avoid large over-recoveries.⁴

We agree with the assessment of OPC as to how we have handled fuel over-recoveries in calculating the working capital allowance in prior rate case proceedings. In the Company's last rate proceeding, its fuel over-recovery was included in the calculation of the working capital allowance. There is no compelling evidence in the record that indicates our policy should be changed. Utilities should strive to reasonably project expenses so as to avoid over-collecting from customers. Therefore, the over-recovery that shall be included in the calculation of the working capital allowance for 2010 is \$101,971,000.

As can be seen from this discussion, the rationale for including over-recoveries as a reduction to utility rate base is to provide the utility with an incentive to make its projections for the cost recovery clause as accurate as possible and avoid large over-recoveries. Deducting the over-collected balances from utility rate base has the result of effectively applying the utility's WACC to the over-collected balances. In contrast, the Florida regulatory practice described above also excludes under-collected cost recovery clause balances from utility rate base. As

⁴ Order No. 12663, issued November 7, 1983, in Docket No. 830012-EU, In re: Petition of Tampa Electric Company for an increase in rates and charges and approval of a fair and reasonable rate of return, pp. 14-15; and Order No. PSC-93-0165-FOF-EI, issued March 29, 1993, in Docket No. 920324-EI, In re: Application for a rate increase by Tampa Electric Company, p. 38.

described above, that exclusion effectively results in the utility charging customers for carrying costs on the under-collected balances at a short-term debt cost rate, i.e., at the commercial paper rate. The Florida Public Service Commission has found this practice to be fair and reasonable in a series of cases, notwithstanding opposition from utilities. CUB recommends that this Commission adopt a similar approach and provide for ratepayer projection by applying a WACC-based carrying cost rate to reconciliation balance over-collections.

2. A Hybrid Debt Rate, Such As the Commission Adopted In Its Final Order In Docket No. 11-0721, Is Appropriate for Reconciliation Balance Under-Collections

In its May 29 Order, the Commission determined that applying the WACC on under-collected reconciliation balances is inappropriate and instead applied a “blended” or “hybrid” interest rate to ComEd’s reconciliation balances:

The Commission believes there is value in setting an interest rate based upon debt that is relevant to the Company for the time duration of the reconciliation. In order to capture the unique aspects of the relevant period we find that a hybrid approach should be utilized to determine the appropriate interest rate. Such a hybrid calculation would take the weighted costs of short-term debt and long-term debt and exclude the weighted cost of common equity as the methodology in calculating the interest rate. This results in an interest rate of 3.42%. The Commission concludes that this hybrid interest rate of 3.42% is reasonable and appropriate to be utilized for the reconciliation period and is hereby adopted.

May 29 Order at 168. The issue of the appropriate interest rate to apply to the reconciliation balance is currently being reheard in that docket. In that rehearing, CUB generally supported the Commission’s hybrid approach as reasonable. ICC Docket No. 11-0721, CUB Init. Br. on Rhrq. at 20-21, Reply Br. on Rhrq. at 9-10. Given the certainty of recovery of the reconciliation amount and the short period of time that it will be outstanding, there is no reason to believe that the actual cost of financing the reconciliation balance will be more than the short-term debt cost.

However, the Commission's determination in the May 29 Order is a fair and reasonable compromise, considering the reconciliation balance represents a one- to two-year lag in cost recovery. While a decision on rehearing in Docket No. 11-0721 has not yet been issued, it would be unreasonable for the Ameren formula rate, which is based upon the same statute as ComEd's, to contain a different conclusion on the same issue as ruled upon in Docket No. 11-0721 regarding the carrying cost rate for under-collections. Use of short-term debt rate, or even a hybrid approach like the Commission ordered in its May 29 Order, is reasonable and should be adopted as the interest rate to be applied to under-collected reconciliation balances instead of the Company's WACC.

The short-term nature of the undercollected reconciliation balance is critical to recognize, because the balance is temporary, and thus could be addressed with incremental and temporary short-term debt. This additional short-term debt is not currently reflected in ComEd's capital structure, and would not be reflected in ComEd's capital structure, since it would be dedicated to financing incremental under-collected reconciliation balances, similar to how some of a utility's short-term debt is dedicated to financing construction work in progress (CWIP). The portion of short-term debt used to finance CWIP, for example, is excluded from the utility's capital structure for revenue requirement purposes.

The Proposed Order's pontifications about the fungibility of cash are inapposite. PO at 185. Under the accounting and ratemaking policies employed by the Illinois Commission, short-term debt is identified as the first source of financing for construction projects. Where the amount of AFUDC qualifying CWIP exceeds the utility's amount of short term debt, all of the short term debt is deemed to finance that construction (and the remainder, under the AFUDC formula in the FERC Uniform System of Accounts) is then deemed to be financed with

permanent sources of capital (i.e., a proportional mix of long term debt and equity). To the extent that the utility has short term debt in excess of the amounts being used to finance construction, such short term debt is reflected in the capital structure. Clearly, this shows that amounts of short term debt that are being used for a particular purpose can be identified and an appropriate regulatory treatment (e.g., such as inclusion in an AFUDC calculation and exclusion from the utility's capital structure) can be applied. Similarly, if a utility such as Ameren has a temporary under-collected reconciliation balance, a portion of that would be financed with income tax savings. The remaining portion could be financed with one- to two-year debt. The incremental debt that relates to financing the under-collected reconciling balance could be identified (just as short term debt that is financing construction can be identified), and the debt that is deemed to be financing the under-collected balance can be excluded from the capital structure (just as how the short term debt that is deemed to be financing construction projects is excluded from the utility's capital structure).

For these reasons and those articulated in CUB's Initial and Reply Briefs, CUB respectfully requests the Commission modify the Commission Conclusion at the bottom of page 184 and page 185 of the Proposed Order as follows:

EXCEPTION # 5:

e. Commission Conclusion

AIC believes the WACC is the only proposed interest rate that complies with the statute. Staff believes the interest rate for the AIC formula rate should be consistent with what the Commission concludes in Docket No. 11-0721 for ComEd. CUB recommends that carrying costs on over-collections by AIC should be computed at AIC's weighted average overall cost of capital because the WACC reflects the rate at which the utility would have over-charged ratepayers on over-projections of rate base, and is reasonable to use, similar to the Florida Public Service Commission's ratemaking practice, to incent the utility to make

accurate projections. CUB recommends that carrying costs on under-collections by AIC should be computed at a debt-only based cost rate that recognizes the relatively short, one- to two-year time frame for collecting from ratepayers an under-collected reconciliation balance, and that the utility could temporarily finance the portion of the under-collected balance that is not effectively financed with income tax savings, by using a combination of short-term and intermediate debt. AG/AARP recommends that a short-term debt interest rate should be used for purposes of reconciliation credits and charges, recognizing AIC's ability to access credit markets at favorable cost rates to finance short-term asset investments. AG/AARP state that the average cost of short-term debt to Ameren was only 2.3% in 2011. AG/AARP suggest an alternative cost rate for consideration is the interest rate AIC currently pays on customer deposit balances, which is presently 0%.

Based upon the extensive arguments of the parties, this is viewed as an important issue. The Commission appreciates that thought and effort that the parties have expended in this proceeding on this issue. Despite the disagreements, there seems to be general consensus that the interest rate approved on reconciliation balance are intended to compensate for the time value of money.

~~Some argue that AIC will finance under-recovery balances with short-term debt. It appears to the Commission that this argument is based on the assumption that it is possible to trace capital from source to use. In the context of utility rate cases, this is an assumption that the Commission typically rejects because cash is fungible. One exception is the assumption that Just as short-term debt is the first source of capital used to finance CWIP, an under-collected reconciliation balance is a discrete regulatory asset that will exist only for a period of 12-24 months and can be financed using a combination of short-term debt of one- to two-year duration, such as commercial paper, bank line of credit borrowings or notes. This assumption; however, is a regulatory prescription not an economic one. It is simply a regulatory determination made in calculating the interest rate accrued on AFUDC associated with CWIP.~~

~~From an economic perspective, the Commission continues to generally believe that cash is fungible and can not be traced from~~

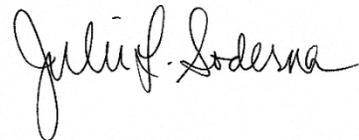
~~source to use. In the case of an under-recovery balance, it is not clear to the Commission that AIC would rely exclusively on short-term debt, or debt, to fund the under-recovery. The Commission would not expect AIC to totally change the way it manage its capital structure. As AIC suggests, credit ratings are a key consideration in managing a utility's capital structure. Increasing the proportion of debt in the capital structure is not something the Commission would expect AIC to do without careful consideration. The Commission does not believe the record supports a finding that AIC will or should finance reconciliation under-recoveries with only debt or short-term debt. The record supports a finding that reconciliation under-recoveries will likely be typical utility investments and expenses, some which may be capitalized, and will be financed with AIC's capital just like other investments and expenses.~~

As for reconciliation over-recoveries, CUB suggests that they should be treated differently than reconciliation under-recoveries. The Commission, however, disagrees. If Ameren has over-collected from ratepayers as a result of rate base over-projections, then it has charged ratepayers for a return on the over-projected rate base at its WACC (grossed up for income taxes), and ratepayers should be refunded at the same interest rate that Ameren earned on the over-collected amount. Likewise, if Ameren has under-collected from ratepayers, Ameren should recover only what that under-recovery actually cost the Company if it had to get short-term financing elsewhere to cover the shortfall. Ameren will be responsible for developing the amount of its projected plant additions for each year and could thus produce over-collections simply by over-projecting such plant additions. Requiring a higher interest rate for over-collections will thus provide an appropriate and necessary deterrent to Ameren from making over-projections of plant additions. Additionally, allowing interest on under-collections based on a debt rate will also encourage the Company to make accurate projections of plant additions, because its earnings on under-collected balances resulting from mis-projecting plant additions would be at a debt rate that corresponds with the period during which Ameren would be collecting from ratepayers an under-collected reconciliation balance. The carrying cost rates proposed by Mr. Smith have been simplified by CUB to simply use the utility's WACC for over-collected balances and to use a debt-

only based interest rate, similar to the “hybrid” debt concept articulated in the Commission’s May 29 Order in Docket No. 11-0721 for reconciliation balance under-collections. The use of these carrying cost rates will protect ratepayers from utility-generated over-collections and will provide appropriate compensation to ratepayers from Ameren’s use of their money in the formula rate plan over-collections. Similarly, the use of a debt based carrying cost for reconciliation balance under-collections will appropriately compensate Ameren for incremental debt issued to temporarily finance an under-collected balance during the one- to two-year period it is being collected. To the extent AIC's rates are not high enough to recover costs, the Commission believes it should be allowed to earn its WACC on the short fall. The WACC is by definition AIC's time value of money.

III. CONCLUSION

CUB respectfully requests that the Commission amend its Proposed Order as modified by the exceptions enumerated herein.



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