

ILLINOIS COMMERCE COMMISSION

DOCKET No. 12-0293

SURREBUTTAL TESTIMONY

OF

CRAIG D. NELSON

Submitted on Behalf

Of

**AMEREN ILLINOIS COMPANY
d/b/a Ameren Illinois**

September 5, 2012

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7 **I. INTRODUCTION**

8 **A. Witness Identification**

9 **Q. Please state your name and business address.**

10 A. My name is Craig D. Nelson. My business address is 300 Liberty Street, Peoria, Illinois
11 61602.

12 **Q. By whom are you employed and in what capacity?**

13 A. I am employed by Ameren Illinois Company d/b/a Ameren Illinois (AIC or the
14 Company) as Senior Vice President, Regulatory Affairs and Financial Services.

15 **Q. Are you the same Craig D. Nelson who previously sponsored testimony in this
16 proceeding?**

17 A. Yes, I sponsored rebuttal testimony in this proceeding on behalf of AIC.

18 **B. Purpose, Scope and Identification of Exhibits**

19 **Q. What is the purpose of your surrebuttal testimony?**

20 A. The purpose of my testimony is to comment on and respond to certain Illinois Commerce
21 Commission (Commission) Staff (Staff) and Intervenor witnesses' rebuttal testimony.

22 Specifically, I respond to Staff witness, Ms. Ebrey on regulatory Commission expense; Staff
23 witness, Ms. Everson on an Allowance for Funds Used During Construction (AFUDC) matter;
24 Citizens Utility Board (CUB) witness, Mr. Smith and Illinois Attorney General (AG)/AARP
25 witnesses, Mr. Effron and Mr. Brosch on reconciliation rate base; Staff witness Ms. Rochelle M.
26 Phipps on capital structure; and AG/AARP witness, Mr. Brosch on reconciliation interest.

27 **Q. Are you sponsoring any exhibits in support of your testimony?**

28 A. Yes. I am attaching Ameren Exhibit 18.1, a copy of House Resolution (HR) 1157.

29 **II. AVERAGE RATE BASE**

30 **Q. What is the rebuttal position of the Intervenor parties regarding the appropriate**
31 **reconciliation rate base?**

32 A. Mr. Smith, Mr. Effron and Mr. Brosch continue to recommend use of an average rate
33 base for reconciliation.

34 **Q. What is your response?**

35 A. I continue to recommend that a year-end rate base be used for reconciliation.

36 **Q. What arguments do the Intervenors advance in support of this position?**

37 A. Generally, their arguments may be summarized as follows:

- 38
- Section 16-108.5's language supports use of an average rate base.
 - 39 • Average rate base is necessary for proper matching and accurately reflects the
40 actual cost of delivery over the applicable calendar year.
 - 41 • The Final Order in Docket No. 11-0721 required use of an average rate base for
42 reconciliation.

- 43 • The reconciliation true up, with interest, puts AIC in the same position as if all the
44 costs in the year being reconciled were recovered contemporaneously.

45 **Q. What is your response to arguments that the language of Section 16-108.5 requires**
46 **use of an average rate base for reconciliation?**

47 A. As I explained in my rebuttal testimony, Subsection (d)(1) provides the specifics for an
48 annual filing of updated cost inputs and a reconciliation. 220 ILCS 5/16-108.5(d)(1). The
49 reconciliation is between a revenue requirement set using “cost inputs for the prior rate year” and
50 an actual revenue requirement using “the actual costs for the prior rate year.” Id. The cost inputs
51 are “final” data: “The inputs to the performance-based formula rate for the applicable year shall
52 be based on final historical data reflected in the utility’s most recently filed annual FERC Form 1
53 ” Id. (emphasis added). Although Intervenors contend an average rate base can be
54 developed using “final” information, only the year-end rate base amount is a “final” amount.
55 Moreover, an average reconciliation rate base is not “actual cost information,” 220 ILCS 5/16-
56 108.5(d)(1), because the “average” rate base number is itself nowhere to be found in the FERC
57 Form 1. FERC Form 1 does not report an “average” rate base, or for that matter, any aggregate
58 “rate base” figure at all.

59 **Q. Has there been recent action by the legislature regarding the intent of the language**
60 **of the Energy Infrastructure Modernization Act?**

61 A. Yes. The fact that a year-end rate base was intended to be used as the reconciliation rate
62 base was recently confirmed by the Illinois House of Representatives when, on August 17, 2012,
63 it passed House Resolution (HR) 1157 by a vote of 86 to 23. (I mentioned that resolution, which
64 at the time had only passed the House Public Utilities Committee, in my rebuttal.) HR 1157
65 provides in pertinent part:

66 WHEREAS, The Energy Infrastructure Modernization Act also provides that the
67 final year-end cost data filed in FERC Form 1 should generally be used to
68 determine rates; and

69 WHEREAS, No statutory authority was given to the Illinois Commerce
70 Commission to set rate base and capital structure using average numbers that do
71 not represent final year-end values reflected in the FERC Form 1, and the Illinois
72 Commerce Commission's use of such average is contrary to the statute;

73 * * *

74 Resolved, by the House Of Representatives of the Ninety-Seventh General
75 Assembly of the State of Illinois, that we express serious concerns that the Illinois
76 Commerce Commission Order, entered on May 29, 2012 in Commission Docket
77 No. 11-0721, fails to reflect the statutory directives and the intent of the Illinois
78 General Assembly by: ... (3) determining rate base and capital structure using an
79 average, rather than the year-end amounts as reflected in FERC Form 1.

80 (The entire resolution is provided as Ameren Exhibit 18.1.) Although I am not an attorney, I
81 believe this resolution represents a clear legislative directive to the Commission that the
82 Commission should consider. The language of HR 1157 makes clear that it was the intent of the
83 legislature to use year-end amounts for both initial or inception rate base and reconciliation rate
84 base.

85 **Q. Mr. Smith testifies that HR 1157 is not binding. Please respond.**

86 A. While it may be correct as a legal matter that HR 1157 is not a binding legal authority, I
87 believe, as I stated above, that it represents a very clear directive from the legislature regarding
88 the appropriate interpretation of the Energy Infrastructure Modernization Act (EIMA) on the
89 issue of average rate base.

90 **Q. Please respond to Mr. Smith's argument that Subsection (c)(6)'s "applicable**
91 **calendar year" terminology and that FERC Form 1 includes both beginning and end-of-**
92 **year information support use of an average rate base.**

93 A. End-of-year information for the current year and previous year are both found in FERC
94 Form 1. However, as explained above, the EIMA requires the use of “final historical data
95 reflected in the utility’s most recently filed annual FERC Form 1” The fact that the end-of-
96 year information for the previous year can be found in the current year’s FERC Form 1 has
97 absolutely no bearing on the EIMA’s requirement to use “final historical data reflected in the
98 most recently filed annual FERC Form 1”

99 **Q. What is your response to the argument that average rate base is necessary for**
100 **proper matching and accurately reflects the actual cost of delivery over the applicable**
101 **calendar year?**

102 A. It is still important to consider the timing of the effective dates of new rates under the
103 EIMA’s annual process. As I explained in rebuttal, using the example of the reconciliation filed
104 on or before May 1, 2013, the reconciliation will be for the historical year 2012. Following
105 reconciliation, new rates would go into effect in January 2014. Thus, at the time the new rates
106 go into effect reflecting the reconciliation, 2012 plant will be have been fully in service for over
107 a year. Rates should be set so that customers are paying for the full cost of this plant which is
108 fully used and useful in serving them. Use of an average reconciliation rate base would create a
109 situation in which ratepayers are not paying for the full amount of utility plant providing them
110 service. The best matching of cost of service and rates is accomplished by using a year-end rate
111 base.

112 **Q. Mr. Brosch suggests that the only matching required is within the reconciliation**
113 **year. Do you agree?**

114 A. No. As explained above and in my rebuttal testimony, it is important to match rates
115 customers pay to the cost of plant providing them service. I believe that this policy principle
116 remains an important consideration. Likewise, I view the principles of traditional ratemaking as
117 a source of guidance in determining the appropriate treatment of the reconciliation rate base.

118 **Q. What is your response to the argument that the Final Order in Docket No. 11-0721**
119 **required use of an average rate base for reconciliation?**

120 A. Commonwealth Edison Company (ComEd) sought, and the Commission granted,
121 rehearing on this issue. That rehearing is pending. Thus, I do not think it is appropriate to rely
122 on the Final Order in that docket in this proceeding until rehearing has been completed. The
123 evidence in the instant proceeding also includes the unambiguous statement of legislative intent
124 for the reconciliation rate base as set forth in HR 1157. The facts on this issue, therefore, are
125 clearly different in this filing.

126 **Q. What is your response to the argument that the reconciliation true up, with interest,**
127 **puts AIC in the same position as if all the costs in the year being reconciled were recovered**
128 **contemporaneously?**

129 A. The argument is wrong and makes no sense. The Company is not restored to the same
130 position, even with interest. Rates established based on half a year's plant additions can never
131 equal rates established on a full year's plant additions. As explained in my rebuttal testimony
132 (lines 195-213), the use of an average rate base results in an understated revenue requirement,
133 which occurs year after year, resulting in a permanent deferral of revenue. This occurs
134 irrespective of whether interest is calculated on reconciliation amounts.

135 **Q. Mr. Brosch agrees cash recovery of expense increases will lag the incurrence of**
136 **higher expenses, but contends reconciliation interest ensures the real cost of any expense**
137 **increases are fully recovered. What is your response?**

138 A. Mr. Brosch is correct that reconciliation interest does help recover the real cost for
139 expense items. However, as explained in the answer above and in my rebuttal testimony,
140 reconciliation interest does not make the Company whole for its capital expenditures when an
141 average rate base is used.

142 **Q. Mr. Brosch also states AIC should not be allowed to overstate its reconciliation**
143 **balance through the use of a year-end computation in the interest of reduced reconciliation**
144 **balances. Is his understanding of the impact of using a year-end computation correct?**

145 A. No. Use of a year-end to year-end rate base reconciliation does not overstate the
146 reconciliation balance—rather, it results in a lower reconciliation balance associated with
147 reconciling rate base than using an average rate base for reconciliation. Mr. Brosch contends,
148 “Because [the EIMA] rules do not prescribe the use of projections of costs beyond certain
149 specified elements of rate base, there is no realistic expectation of a perfect match of historical
150 expense and rate base with the comparable actual amounts later calculated in the reconciliation.”
151 But the EIMA does require use of projected rate base when setting inception rates, so there is a
152 “realistic expectation” of a match of rate base with the comparable actual amounts later
153 calculated in the reconciliation, if a year-end rate base is used for reconciliation. There is no
154 such “realistic expectation” with an average reconciliation rate base.

155 **Q. Mr. Brosch also testifies that he believes it is “absurd and inconsistent” that AIC**
156 **proposes that both inception rates and reconciliation amounts be calculated using a year-**
157 **end rate base just to avoid potentially larger reconciliation balances. Do you agree?**

158 A. No, I do not. What seems very logical and consistent to me is the use of year-end rate
159 base to calculate both the “rate year revenue requirement” and the “reconciliation revenue
160 requirement.” It does, however, seem rather absurd and inconsistent to believe the legislature
161 intended to use one method for the initial rate setting for a calendar year and an entirely different
162 method for the reconciliation of that year.

163 **Q. Please address Mr. Effron’s claims that you did not explain why using rate of return**
164 **times the average rate base does not equal the dollar cost to AIC of carrying its net capital**
165 **investment for the year.**

166 A. Mr. Effron’s request for a mathematical calculation is simply irrelevant to the issue at
167 hand. The relevant and important concern is: what does the law require? The EIMA requires a
168 year-end rate base, as explained above, and not an average rate base.

169 **III. RECONCILIATION INTEREST**

170 **Q. What is the rebuttal position of the Intervenor parties regarding the appropriate**
171 **interest rate for reconciliation?**

172 A. Mr. Brosch continues to recommend that either a short-term debt cost rate or an equally
173 weighted short-term and long-term debt cost rate be applied to over-/under-recovery
174 reconciliation balances. Mr. Smith continues to recommend the interest rate for over-collections
175 be based on weighted average cost of capital (WACC), but be a hybrid debt cost rate for under-
176 collections, similar to the approach in Docket 11-0721.

177 **Q. What is your response?**

178 A. I continue to recommend that the WACC be used for reconciliation, for the reasons
179 discussed in my rebuttal testimony. In particular, it is not appropriate to both assign some
180 amount of short-term debt exclusively to reconciliation amounts and also reflect it in the capital
181 structure as though it were also supporting rate base generally. It cannot be in two places at
182 once. I would note that the Administrative Law Judge Proposed Order in Docket 12-0001,
183 which Mr. Smith in particular seeks to rely on in support of his positions, has approved use of
184 AIC's WACC as the reconciliation interest rate. This also is consistent with the directives from
185 the legislature in HR 1157.

186 **Q. Do you have any comments on Mr. Smith's dual rate approach for over- and under-**
187 **collections?**

188 A. As I stated in my rebuttal testimony, Mr. Smith's asymmetrical treatment is unfair and
189 unsound. There is no basis in the EIMA or regulatory policy for treating the Company
190 differently from customers on surcharges or credits coming out of reconciliation proceedings.

191 **Q. Mr. Brosch argues AIC's proposed use of the WACC is backward-looking;**
192 **contending the Commission should consider only a forward-looking marginal interest rate.**
193 **How do you respond?**

194 A. The use of a marginal interest rate would not compensate the Company for its actual
195 costs of accessing capital in the markets to fund investments required under the statute and its
196 costs to provide reliable service to its customers. Further, even if one were to accept Mr.
197 Brosch's characterization of the WACC as "backward-looking," the reconciliation process is also

198 “backward-looking,” so use of the WACC would still be appropriate. His proposal should be
199 rejected.

200 **Q. Mr. Brosch and Mr. Smith both also recommend reducing the approved interest**
201 **rate to a “net of income tax equivalent rate.” Do you agree?**

202 A. No. Their recommendation that interest be applied net of tax for over- or under-recovery
203 does not comply with the EIMA.

204 **IV. CAPITAL STRUCTURE**

205 **Q. What is Ms. Phipps’ rebuttal position on average capital structure?**

206 A. Ms. Phipps responds to AIC’s argument that an average capital structure is no less
207 sensitive to manipulation than a year-end capital structure and does not produce a more accurate
208 calculation of the earned return on equity for a calendar year by attaching her rebuttal testimony
209 in Docket 12-0001. I therefore respond to certain of her points made in that testimony as
210 follows. AIC witness Mr. Ryan J. Martin also addresses her testimony from Docket 12-0001 on
211 this issue.

212 **Q. Ms. Phipps claims that the Commission’s rules and past practice show that an**
213 **average capital structure is an appropriate measure of an actual capital structure and the**
214 **Illinois Public Utilities Act does not specify a measurement methodology. Please respond.**

215 A. Again, I am not a lawyer, but Section 16-108.5(c)(2) of the Illinois Public Utilities Act
216 (the Act) requires that the formula rate “[r]eflect the utility’s actual capital structure for the
217 applicable calendar year, excluding goodwill.” 220 ILCS 5/16-108.5(c)(2). AIC makes that
218 showing, under that section, based on data in its most recently filed FERC Form 1/ ILCC Form

219 21, in which the capital structure is shown in historical end-of-year amounts. Thus, Ms. Phipps'
220 reliance on whatever the Commission may have done in the past is a plain rejection of the clear
221 language of the statute. Moreover, I believe that use of a year-end capital structure is more
222 consistent with Commission practice and accurately measures a utility's earned rate of return on
223 common equity.

224 **Q. Ms. Phipps also asserts that an average capital structure more accurately measures**
225 **return on equity for reconciliation purposes because it properly states the amount of**
226 **common equity that AIC invested over the 12 months producing the related net income.**
227 **Do you agree?**

228 A. Again, this assertion ignores the language of the statute, which is not vague. I do not
229 believe that Staff can simply substitute its judgment for that of the General Assembly. Using the
230 actual capital structure as reported is a reasonable means of implementing the formula rate, and
231 one that is entirely consistent with the General Assembly's express terms and intent.

232 **Q. Did HR 1157 also address the legislative intent regarding use of average versus**
233 **year-end capital structure for the EIMA?**

234 A. Yes. HR 1175 unequivocally states that "No statutory authority was given to the Illinois
235 Commerce Commission to set rate base and capital structure using average numbers that do not
236 represent final year-end values reflected in the FERC Form 1, and the Illinois Commerce
237 Commission's use of such average is contrary to the statute" The evidence in this
238 proceeding clearly demonstrates that the only appropriate capital structure for purposes of
239 formula ratemaking under the EIMA is one that represents final year-end values.

240 **V. REGULATORY COMMISSION EXPENSE**

241 **Q. What is Ms. Ebrey's position regarding regulatory commission expense and the**
242 **costs AIC incurred related to its Docket No. 11-0279 electric rate case?**

243 A. Ms. Ebrey continues to recommend disallowance of the expense. She continues to
244 advocate the adjustment because she believes (1) the EIMA does not require recovery of the
245 Docket 11-0279 rate case costs; (2) the EIMA does not provide guidance regarding their
246 treatment; and (3) AIC's withdrawal of Docket No. 11-0279 was discretionary. Alternatively,
247 she proposes that if the Commission does allow recovery of the Docket No. 11-0279 regulatory
248 expense, recovery should be limited to \$2.293 million, a reduction of about \$226,000 from the
249 amount shown on FERC Form 1, because she believes certain of the costs are not reasonable.
250 Mr. Stafford also addresses certain points she makes on this issue.

251 **Q. Do you agree that the EIMA provides that the presence of a cost on FERC Form 1**
252 **does not automatically mean the cost can be recovered?**

253 A. Although I am not an attorney, yes. The EIMA provides that costs otherwise not
254 recoverable are not made recoverable by inclusion in FERC Form 1. However, rate case expense
255 is considered a normal operating expenses of a utility and is thus a recoverable expense. My
256 understanding of the purpose of the EIMA is to allow for the recovery of AIC's actual costs as
257 shown on FERC Form 1. For an otherwise recoverable cost on FERC Form 1 to not be
258 recovered, some showing must be made that the cost is imprudent or unreasonable. See 220
259 ILCS 5/16-108.5(d). Staff has not alleged that the entire expense associated with prosecuting
260 Docket No. 11-0279 was imprudent or unreasonable. In fact, Staff has conducted an analysis of
261 the expenses associated with the Docket 11-0279 electric rate case, and proposed that, if the

262 Commission allows the expense, recovery of \$2,293,000 should be allowed. In so doing, Staff
263 has confirmed that this amount is reasonable and prudent, and so the Commission should allow
264 its recovery.

265 **Q. Does it matter that the EIMA does not specifically address the costs of “abandoned”**
266 **rate cases?**

267 A. No, it does not matter. The EIMA cannot, of course, address every possible eventuality.
268 What does matter is that prudent and reasonable costs incurred to prepare and litigate a rate case
269 are recoverable, since the Company exercised a “standard of care which a reasonable person
270 would be expected to exercise under the same circumstances encountered by utility management
271 at the time decisions had to be made.” Illinois Commerce Comm’n on Its Own Mtn., Docket 07-
272 0572, Order (Jan. 5, 2012), p. 2 (quotations omitted). In this situation, the following took place:

- 273 • The Company filed and litigated an electric rate case over a period of more than 10
274 months.
- 275 • During the course of the rate case, the legislature passed and the governor signed the
276 EIMA—clearly establishing state policy on desired infrastructure investment, job
277 creation, regulatory reform, etc.
- 278 • The Company chose to become a participating utility under the EIMA, in an expeditious
279 manner, thus helping to promote state policy.
- 280 • The Company withdrew its electric rate case as mandated by the EIMA.

281 Clearly, costs which were prudent and reasonable during the course of a rate case should not be
282 declared imprudent after the Company simply chose to do what the legislature desired. The
283 Company should not be penalized for electing to carry out state policy.

284 What about Ms. Ebrey’s claim that the decision to become a participating utility was voluntary?

285 The decision to become a participating utility may have been voluntary, but the requirement that
286 the electric rate case be withdrawn was mandated by the statute.

287 **Q. What is your response to her alternative adjustment?**

288 A. AIC accepts the consultant meal component of the proposed adjustments to the Docket
289 11-0279 expense. However, the remainder of her proposed adjustment is unwarranted.

290 **Q. Were the costs Ms. Ebrey now proposes to disallow previously reviewed by Staff?**

291 A. Yes. They were reviewed in Docket No. 11-0279. No disallowances were proposed in
292 that case.

293 **Q. How does Ms. Ebrey reconcile her adjustment to the fact that in consolidated gas
294 and electric Docket Nos. 11-0279/0282, Staff reviewed and agreed to the total requested
295 rate case expense of \$6.126 million, 50% of which was approved by the Commission in the
296 gas rate case order?**

297 A. She doesn't. Rather, she states the Commission's approval of AIC's rate case expense
298 for the gas rate case "does not dictate the level of costs that should be recovered from electric
299 utility ratepayers through a formula rate structure under the EIMA." In other words, she claims
300 the EIMA allows Staff to now recommend the Company not recover the electric portion of
301 specific expenses Staff just recently evaluated and the Commission found just, reasonable and
302 recoverable.

303 **Q. Is this appropriate?**

304 A. No. Staff is contending, without basis, that the same expense components that were
305 approved as reasonable in the gas rate case are somehow not reasonable now because they are

306 associated with the electric case. However, I will nevertheless address Ms. Ebrey's concerns
307 below.

308 **Q. Do you agree with Ms. Ebrey's recommended disallowance of SFIO Consulting's**
309 **fee?**

310 A. No. Ms. Ebrey questions what value SFIO Consulting's (SFIO) added to the rate case
311 given that it did not provide testimony. But I am not aware of any requirement that an outside
312 consultant's fee can only be allowed if the consultant is a testifying witness, and Section 9-229
313 of the Act certainly does not provide as much. Moreover, SFIO did provide value. SFIO
314 provided valuable insight into AIC's case preparation and prosecution. SFIO's principal
315 consultant has over 30 years of regulatory experience in Illinois.

316 Ms. Ebrey also believes SFIO's services were duplicative of Company management and
317 legal counsel's responsibilities. That is not the case. SFIO provided different services than those
318 individuals and its extensive utility experience compliments that of those individuals. Unlike
319 legal counsel and management, SFIO provided strategic advice from a global perspective. SFIO
320 has broad institutional knowledge of the Commission and its past practices that benefit Company
321 management and outside counsel. With this background, SFIO analyzed and provided strategic
322 advice regarding certain issues that arose in the case.

323 Finally, Ms. Ebrey's contention here seems to overlook that AIC carries the burden of
324 proof in its rate case filings. Therefore, it is incumbent upon the Company to determine the
325 resources necessary to successfully prosecute the case. I also note Staff found SFIO's fee
326 reasonable and appropriate in Dockets 11-0279/0282 (Cons.), and it did not contest the
327 reasonableness of the level of the expense.

328 **Q. Do you agree with Ms. Ebrey's disallowance of legal expenses incurred related to**
329 **the withdrawal of Docket No. 11-0279?**

330 A. No. Ms. Ebrey believes both the cost to litigate Docket No. 11-0279 and to withdraw it
331 should not be recoverable. This ignores that the legal expenses related to withdrawal of that case
332 would not have been incurred but for AIC's compliance with the EIMA which, as I explained in
333 my rebuttal testimony, required the Company to withdraw the case. Thus, Ms. Ebrey seeks to
334 disallow an expense incurred pursuant to a legal duty. That is not reasonable. Further, AIC filed
335 a motion to withdraw the case on November 10, 2011, before the enactment of the EIMA. Had
336 that motion been granted, subsequent legal fees could have been avoided. Thus, certain fees
337 incurred related to the efforts to withdraw the case were actually incurred in part in an effort to
338 limit costs. AIC should not be penalized because the motion to withdraw was not acted on.

339 **Q. Do you agree with Ms. Ebrey's disallowance of Accenture's charges?**

340 A. No. Ms. Ebrey recommends disallowance of Accenture's charges because she believes
341 the invoices supporting those charges are not specific enough. First, I would again point out that
342 Staff already evaluated and recommended recovery of this charge as just and reasonable in
343 Docket Nos. 11-0279/0282 (Cons.). Ms. Ebrey claims the witness for whose services the
344 charges were incurred is unknown, but that is not the case. As Ms. Ebrey acknowledges in a data
345 request response (Response to AIC-Staff 11.01, 11.02), review of the record in that docket shows
346 the witness (and the only witness) for Accenture was Mr. James M. Mazurek. His testimony and
347 participation in the case are evidence of the reasonableness of the charges.

348 **Q. Do you agree with Ms. Ebrey's disallowance of CCA's charges?**

349 A. No. The apparent basis for Ms. Ebrey's disallowance of this cost is her belief the cost
350 was for training expert witnesses who have already testified on multiple occasions before the
351 Commission. Again, Ms. Ebrey ignores the record in Docket No. 11-0279 (of which Staff was
352 undoubtedly aware when it evaluated and sanctioned this expense as well). A review of that
353 record indicates a number of AIC's witnesses did not, in fact, have extensive experience
354 testifying before the Commission or any other body, but were Ameren Services Company (AMS)
355 employees with job responsibilities other than testifying in rate cases. (See, e.g., Docket No. 11-
356 0279, Ameren Exs. 4.0E (Martin Dir.), 6.0E (Pate Dir.), 9.0E (Getz Dir.), 10.0E (Menke Dir.).)
357 Therefore, Ms. Ebrey's disallowance of CCA's cost is unfounded. Moreover, simply because a
358 witness has experience testifying does not mean he or she cannot benefit from additional
359 testimony preparation and training.

360 **Q. Does AIC contest Ms. Ebrey's disallowance of certain charges she identifies in**
361 **Concentric Energy Advisors' invoices?**

362 A. No.

363 **Q. Do you agree with Ms. Ebrey's partial disallowance of AIC witness Jim Warren's**
364 **charges?**

365 A. No. I disagree with Ms. Ebrey's assessment of Mr. Warren's hourly rate. First, I note
366 Ms. Ebrey is not an attorney or a tax consultant and she has not otherwise demonstrated she is
367 qualified to assess the reasonableness of an expert tax attorney's hourly rate, let alone one with
368 Mr. James I. Warren's experience, expertise and credentials. Rather than evaluating Mr.
369 Warren's experience, skill, knowledge, expertise, credentials, the hourly rate for other senior

370 attorneys in his practice area and locale, the total dollar amount of the adjustments regarding
371 which he testified in Docket 11-0279, or the expediency or efficiency with which he addressed
372 those issues, she arbitrarily substitutes an hourly rate based on another consultant engaged by
373 another utility in another matter. She also states that Mr. Warren's education, expertise and
374 experience is "similar" to that of CUB witness Mr. Smith. But this is not the case. Mr. Warren is
375 a nationally recognized tax attorney and tax expert specializing and practicing exclusively in the
376 area of tax; whereas, Mr. Smith is a regulatory consultant and is not a tax expert specializing and
377 practicing in taxes. Moreover, she bases this conclusion on a statement made by Staff in its Brief
378 on Exceptions in Docket No. 11-0767. (Response to AIC-Staff 11.04.) Ms. Ebrey admits that
379 she herself has not performed a comparison of Mr. Warren's and Mr. Smith's education,
380 expertise and experience. (Response to AIC-Staff 11.05.) Ms. Ebrey also does not discuss the
381 hours expended by Mr. Smith to work on Docket No. 11-0279, and thus his total cost, which
382 may not be comparable to the very few hours expended by Mr. Warren. The Commission should
383 not disallow costs related to a consultant's reasonable hourly rate based on unfounded, arbitrary
384 comparisons, as is the case here.

385 **Q. Ms. Ebrey believes the Commission should look again at rate case expense for**
386 **Docket 11-0279 because its position regarding rate case expense has evolved since Docket**
387 **11-0282 and it has initiated a rulemaking regarding rate case expense. How do you**
388 **respond?**

389 A. I am not an attorney. That said, nothing in the Public Utilities Act or in Section 9-229,
390 specifically, or in the Commission's Initiating Order in Docket No. 11-0711 or any other
391 applicable authority of which I am aware would allow the Commission to retroactively assess the

392 components of rate case expense actually incurred in a prior docket and actually approved by the
393 Commission as just and reasonable. But this is what Ms. Ebrey is effectively doing for expenses
394 approved in Docket No. 11-0282. Further, Section 9-229 was in effect during the pendency of
395 Docket 11-0279. And the Docket No. 11-0711 rulemaking remains pending now. So, it is
396 unclear what has changed since late 2011.

397 **VI. RESTATEMENT OF PLANT BALANCES FOR REVISED AFUDC RATES**

398 **Q. Does Ms. Everson have a recommendation regarding AFUDC rates?**

399 A. Yes. Ms. Everson recommends: (1) that the ICC order AIC to recalculate its AFUDC rate
400 for all periods inappropriately impacted by the inclusion of acquisition adjustments and/or
401 goodwill included in the equity balance and to make appropriate adjustments to its utility plant
402 accounts and all related accounts impacted for the application of a recalculated AFUDC rate; (2)
403 that the restated plant account balances and all related accounts impacted should be used in
404 AIC's next rate filing; and (3) that AIC provide monthly status reports and a final report upon
405 completion of AFUDC recalculation.

406 **Q. What is the basis for her recommendation?**

407 A. Ms. Everson bases her opinion on a FERC decision (FERC Order in Ameren
408 Corporation, Docket No. AC11-46-000 140 FERC para. 61,034 (issued July 19, 2012)) that
409 requires a recalculation of AIC's AFUDC rate for periods the AFUDC rate calculation was
410 allegedly improperly impacted by the inclusion of goodwill related to acquisition premiums in
411 the capital structure.

412 **Q. What is the status of the FERC determination?**

413 A. Pursuant to section 313 of the Federal Power Act (“FPA”), 16 U.S.C. § 8251, and Rule
414 713 of the FERC’s regulations, 18 C.F.R. § 385.713, Ameren Corporation, on behalf of AIC,
415 submitted on August 20, 2012 a request for rehearing in response to the FERC’s July 19, 2012
416 order in this proceeding. In that order, the FERC incorrectly found that AIC had improperly
417 reflected certain costs associated with “goodwill” in the equity component of the Annual
418 Transmission Revenue Requirement (“ATRR”) applicable to the rates for transmission service
419 across AIC’s transmission facilities. However, inclusion of these costs in the equity component
420 is required by the applicable tariff and the FERC’s regulations that direct the method for
421 developing the AFUDC rate. Thus, the FERC’s actions are contrary to the filed rate doctrine,
422 FERC and court precedent and the FERC’s regulations. In addition, to the extent the FERC
423 determines that the applicable tariff provisions are no longer just, reasonable, and not unduly
424 discriminatory, the FERC can only impose refunds and rates that it deems just and reasonable on
425 a prospective basis pursuant to FPA section 206, 16 U.S.C. § 824e. Ameren Corporation must
426 also be provided with a fair opportunity to be heard, which the FERC did not provide, and
427 demonstrate that the benefits associated with the underlying transaction exceed the costs of
428 reflecting goodwill in the equity component of AIC’s ATRR. Accordingly, FERC should grant
429 rehearing of the July 19 Order. Ameren Corporation also requested that if the FERC does not
430 grant rehearing, then it should exercise its equitable discretion to determine that any refunds
431 should be prospective only from the date of the July 19 Order.

432 **Q. What is your response to her recommendation?**

433 A. Ms. Everson recommends that the Commission “order AIC to recalculate its AFUDC rate
434 for all periods inappropriately impacted by the inclusion of acquisition adjustments and/or

435 goodwill included in the equity balance.” (ICC Staff Ex. 10.0, p.8.) This assumes that in fact the
436 AFUDC rate has been improperly calculated, that a recalculation is required, and that periods
437 have been inappropriately impacted. Further, it assumes that such a recalculation of the AFUDC
438 rate is legally permissible or is required for purposes of setting Illinois jurisdictional distribution
439 rates. As indicated above, Ameren Corp. has sought rehearing of the FERC decision on which
440 Mr. Everson relies. Because the FERC order is fundamentally flawed and since Ameren Corp.,
441 on AIC’s behalf, has sought rehearing, there is no current basis for her proposal.

442 **VII. CONCLUSION**

443 **Q. Does conclude your surrebuttal testimony?**

444 **A.** Yes, it does.