

**STATE OF ILLINOIS  
ILLINOIS COMMERCE COMMISSION**

<b>AMEREN ILLINOIS COMPANY</b>	)	
<b>d/b/a Ameren Illinois</b>	)	
<b>Petitioner</b>	)	
	)	<b>Docket No. 12-0089</b>
<b>Approval of Multi-Year Performance Metrics</b>	)	
<b>pursuant to Section 16-108.5(f) and (f-5) of the</b>	)	<b>(Reopening)</b>
<b>Public Utilities Act</b>	)	

**REPLY BRIEF ON REOPENING OF THE CITIZENS UTILITY BOARD**

Now comes the Citizens Utility Board (“CUB”), pursuant to the Rules of Practice of the Illinois Commerce Commission (“ICC” or “the Commission”), particularly 83 Ill. Admin. Code 200.800, and hereby submits its Reply Brief on Reopening in the above referenced docket in accordance with the direction of the Administrative Law Judges (“ALJs”). *See* Notice of Admin. L. Judges’ Ruling, ICC Docket No. 12-0089 (Oct. 26, 2012).

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

**A. Procedural History**

The Energy Infrastructure Modernization Act (“EIMA”) allows a combination utility, such as Ameren Illinois Company (“AIC” or “the Company”), to participate in a performance-based formula rate tariff in return for making certain incremental capital investments over a 10-year period. 220 ILCS 5/16-108.5(b), (c). Such a participating utility must develop and file with the Commission multi-year performance metrics to ratably achieve certain goals over a *10-year period* and a tariff mechanism to impose financial penalties for non-performance of those goals. 220 ILCS 5/16-108.5(f), (f-5).

AIC has chosen to participate in this EIMA performance-based framework and has filed with the Commission a Multi-Year Performance Metrics Plan and a Rider Modernization Action

Plan-Metrics tariff (“Rider MAP-M”). *See* AIC Init. Br. on Reopening at 3. Those metrics include certain Advanced Metering Infrastructure (“AMI”) related metrics, such as a reduction in estimated electric bills, a reduction in consumption on inactive electric meters, and a reduction in uncollectible electric expense. 220 ILCS 5/16-108.5(f)(5), (6), (8). For these metrics in particular, AIC must choose to start the *10-year performance measurement period* on a date no later than 14 months following the Commission’s approval of AIC’s AMI Plan. 220 ILCS 5/16-108.5(f). The Commission approved the baselines and goals of AIC’s Metrics Plan and approved a start date of January 1, 2013 for the performance measurement period. Final Order at 6-10, ICC Docket No. 12-0089 (May 29, 2012).

The Company also filed an AMI Plan with the Commission, which the Commission determined it could not approve. Final Order at 59, ICC Docket No. 12-0244 (May 29, 2012). As a result, and on its own motion, the Commission reopened this proceeding to determine the effect of that non-approval on the Company’s Metrics Plan. Notice of Commission Action, ICC Docket No. 12-0089 (July 12, 2012).

Staff of the Commission (“Staff”), AIC, and the People of the State of Illinois by and through the Attorney General’s Office (“AG”) jointly with AARP filed initial briefs on reopening in this proceeding. CUB adopts, in full, the legal arguments and recommendations to the Commission made by AG/AARP in its initial brief. *See* AG/AARP Init. Br. on Reh’g (Oct. 25, 2012).

**B. Legal Framework and Standards**

CUB adopts, in full, the description of the legal framework and standards made by AG/AARP in its initial brief. *See* AG/AARP Init. Br. on Reh’g at 6-11 (Oct. 25, 2012).

## **II. AIC'S PROPOSED START DATE FOR THE 10-YEAR PERFORMANCE PERIOD FOR AMI-RELATED METRICS**

CUB does not object to the Company's proposed start date of January 1, 2014 for the *10 year performance period* on the condition that the tariff changes recommended by AG/AARP are made to Rider MAP-M. *See* AG/AARP Init. Br. on Reh'g at 15 (Oct. 25, 2012).

## **III. APPLICATION OF FINANCIAL PENALTIES FOR THE AMI-RELATED METRICS BASED ON AIC'S PROPOSED START DATE**

### **A. The Application of Financial Penalties is Within the Scope of Reopening**

AIC argues that the scope of this reopening is determined by its application for rehearing, even though the Company's application for rehearing was explicitly denied by the Commission. *See* AIC Init. Br. on Reopening at 11; Notice of Commission Action, ICC Docket No. 12-0089 (July 12, 2012). The Company also claims that because its right to elect a start date is conditioned on the Commission's approval of an AMI Plan, the start date of the *10 year performance metrics period* should be the only issue considered by the Commission on reopening.

However, the Illinois Administrative Code permits the Commission to reopen proceedings if "it has reason to believe that conditions of fact or law have so changed as to require, or that the public interest requires, such reopening." 83 Ill. Admin. Code 200.900. The only condition of fact that changed between the Commission's final order in this proceeding and the Commission's reopening of this proceeding that would require reopening is the failure of the Company to present an AMI Plan to the Commission that the ICC could approve. The Company's failure to provide an AMI Plan that would deliver more benefits than costs to Illinois ratepayers cannot be the reason to ignore the effects of delaying the start date of AIC's

performance metric period. Certainly, “the public interest” does not require such a narrow scope on reopening, especially if the 10-year performance period envisioned by the EIMA may actually become only nine years if the Company’s proposal is adopted without modification. As both Staff and AG/AARP have argued, delaying the start date without modifying Rider MAP-M deprives ratepayers of the full benefit of the regulatory compact that the EIMA envisioned. *See* Init. Br. on Reopening of Staff at 17-18; AG/AARP Init. Br. on Reh’g at 12. The scope of reopening in this proceeding must include examination of the impact of the Company’s proposal on its ratepayers – those who will fund the investments with which the Company will or will not reach their performance metric goals.

**B. The Application of Financial Penalties is Ripe for Consideration**

The Company argues that the application of financial penalties for future non-performance is not ripe for adjudication by the Commission because AIC has not failed any performance metric yet and because subsequent proceedings can be used to determine financial penalties in the event that the Company so fails. AIC Init. Br. on Reopening at 12-13. Yet, AIC does not explain how the Commission can impose financial penalties in subsequent proceedings if the formula rate through which those penalties are applied is no longer operative. *See* AG/AARP Init. Br. on Reh’g at 12-13 (especially in “Year 11”).

Moreover, the authority upon which the Company relies does not apply to the legal framework of the EIMA. The Company argues that the Commission’s decision in *Rhythms Links Incorporated* establishes that it is administratively inefficient to maintain a position based only on a theoretical issue. AIC Init. Br. on Reopening at 12. In *Rhythms Links Incorporated*, the Commission found that it was a waste of its resources to resolve issues about an interconnection agreement because the parties to that agreement were *still negotiating* certain

terms. Final Order at 28-29, ICC Docket No. 99-0465 (Dec. 2, 1999). Here, unlike in *Rhythms*, the regulatory compact that is implemented through EIMA is no longer subject to any pending negotiations – it is currently effective through Public Acts of the Illinois General Assembly. See Public Acts 97-0616, 97-0646. That certain triggers in the EIMA may or may not realize does not change the fact that the Company’s proposal to push back the start date affects the *existing* framework of the EIMA. Instead of receiving ten years of performance metric measurement and commensurate penalties under the law as it is written *today*, the Company’s proposal to ignore the end date of performance metric measurement means that ratepayers may only receive nine. As noted by Staff, this absurd result is exacerbated by the fact that the EIMA contains greater penalties for non-performance in later years of the regulatory compact. Init. Br. on Reopening of Staff at 16. The effect of the Company’s proposal on ratepayers is ripe for the Commission to adjudicate, and the Commission must act to restore the imbalance in the regulatory compact created by that proposal.

#### **IV. CONCLUSION**

No party in this proceeding contests the Company’s ability to change the start date of its performance metric period to January 1, 2014. Only the Company argues that corresponding changes to its Rider MAP-M tariff should not also be made. In order to deliver the full benefit of the regulatory compact envisioned by the General Assembly and in order to avoid an absurd result, CUB respectfully requests that the Commission require AIC to modify its Rider MAP-M tariff in the manner recommended by the AG/AARP in its initial brief.

Dated: November 1, 2012

A handwritten signature in black ink, appearing to read "Kristin Munsch", is written over a horizontal line.

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