

**UNITED STATES OF AMERICA  
BEFORE THE  
FEDERAL ENERGY REGULATORY COMMISSION**

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Ameren Services Company

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EL10-80-000

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**NOTICE OF INTERVENTION  
AND COMMENTS OF  
THE ILLINOIS COMMERCE COMMISSION**

Pursuant to Rules 211 and 214(a)(2) of the Federal Energy Regulatory Commission's ("Commission") Rules of Practice and Procedure, 18 C.F.R. §385.211 and §385.214(a)(2) and the notice issued by the Commission's Deputy Secretary on August 5, 2010, setting August 31, 2010, as the deadline for interventions and comments, the Illinois Commerce Commission ("ICC") hereby submits this Notice of Intervention and Comments in response to the Petition for Declaratory Order on Incentive Rate Treatments ("Petition") filed by Ameren Services Company ("Ameren Services") on August 2, 2010 in the above-captioned docket.

**I. NOTICE OF INTERVENTION**

The ICC is a State Commission as defined in Section 1.101(k) of the Commission's Rules of General Applicability, 18 C.F.R. §1.101(k). The principal place of business of the ICC is 527 East Capitol Avenue, Springfield, IL 62701. As the state regulator of public utilities in Illinois, the ICC has an interest that may be directly affected by the outcome of the proceeding. Its participation is also in the public interest.

The names, titles and business addresses of the persons designated for service pursuant to Rule 2010 (c) (1) of the Commission's Rules of Practice and Procedure, 18 C.F.R.

§385.2010(c)(1), are as follows:

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WHEREFORE, the ICC respectfully requests intervention in the above-captioned proceeding, and any and all other appropriate relief.

## II. SUMMARY OF AMEREN SERVICES' PETITION

Ameren Services is petitioning the Commission to be granted certain rate incentives applicable to the first phase of four transmission projects that are briefly described in the Petition. Ameren Services refers to these four projects collectively as the "Grand Rivers" projects ("Projects"). These proposed projects are:

- The Illinois Rivers Project which is a 345 kV line traveling 331 miles from Palmyra, Missouri to Pawnee, Illinois then continuing to Sugar Creek, Indiana. The cost of the Illinois Rivers project is estimated to be \$739 million.<sup>1</sup>
- The Big Muddy River Project, which is 185 miles of 345 kV line with a hub at Grand Tower, Illinois and segments extending to Baldwin, Joppa, and West Frankfort East in Illinois and a segment to NW Cape Girardeau, Missouri plus a segment from Norris City, Illinois to Albion, Illinois. The cost of the Big Muddy River Project is estimated to be \$383 million.<sup>2</sup>
- The Spoon River project which is 70 miles of 345 kV line extending from Fargo, Illinois to Oak Grove, Illinois. The Spoon River Project is estimated to cost \$146 million.<sup>3</sup>
- The Wabash River Project which is 52 miles of 345 kV line extending from Newton, Illinois to Hutsonville, Illinois and then to Merom, Indiana. The Wabash River Project is estimated to cost \$110 million.<sup>4</sup>

Ameren Services indicates that the estimated costs of the four Grand Rivers facilities proposed for Illinois is approximately \$1.378 billion.<sup>5</sup> Ameren Services states that the Grand Rivers portfolio, including facilities that may be constructed in Missouri, is estimated to cost

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<sup>1</sup> Petition at 5.

<sup>2</sup> Petition at 5.

<sup>3</sup> Petition at 5.

<sup>4</sup> Petition at 6.

<sup>5</sup> Petition at 5-6.

approximately \$3 billion.<sup>6</sup> Ameren Services states that these figures do not include the so-called “underbuild,” i.e. improvements to lower voltage lines and equipment that must be completed to ensure the Grand Rivers Projects can be operated reliably.<sup>7</sup> Ameren Services is also asking authorization for incentives with regard to the underbuild.<sup>8</sup>

Ameren Services states that the projects will be developed and constructed by an entity called Ameren Transmission (“ATX”) which will directly or indirectly own the projects.<sup>9</sup> ATX is a newly formed, wholly owned subsidiary of Ameren Corporation. Ameren Corporation is also the corporate parent of four public utility operating companies, AmerenCILCO, AmerenCIPS, AmerenIP, and AmerenUE (“Ameren Operating Companies”), the first three of which operate in Illinois.<sup>10</sup> The operating companies are transmission owning members of the Midwest ISO. Ameren Corporation is also the corporate parent of AITC, a company that assists in financing and construction of transmission projects in Illinois.<sup>11</sup> Ameren Services is the centralized service company for Ameren Corporation and all of the Ameren subsidiaries described above.<sup>12</sup>

Ameren Services is seeking several types of incentive rate treatment for the proposed projects, including (1) approval of Construction Work in Progress (“CWIP”), (2) the use of a specific hypothetical capital structure, (3) recovery of abandonment costs, and (4) the current

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<sup>6</sup> Petition at 5. It appears that, by use of the term “first phase”, Ameren Services is asking at this time for transmission rate incentives for the Illinois portion of the Grand Rivers portfolio and not for the total portfolio.

<sup>7</sup> Petition at 6.

<sup>8</sup> Petition at 6.

<sup>9</sup> Petition at 4. However, the Ameren Services filing is not entirely consistent on this point. For example, the filing states that Ameren Services “has not determined exactly what combination of ATX, ATX subsidiaries, AITC and the Ameren Operating Companies will be working on each of the Projects.” (Petition at 38). In addition, Ameren Services states that the “underbuild will be considered as part of the projects and that the Ameren Companies, which is a broader category than ATX, will be “developing and constructing” the necessary underbuild. (Petition at 6). Therefore, the role of the individual Ameren operating companies with respect to the projects is not clear.

<sup>10</sup> Petition at 3.

<sup>11</sup> Petition at 4.

<sup>12</sup> Petition at 3.

recovery of pre-commercial operations expenses.<sup>13</sup> Ameren Services also requests that the Commission authorize the use of a formula rate based on projected test year costs with a true-up mechanism within Attachment O of the Midwest ISO's tariff.<sup>14</sup> Finally, Ameren Services requests authorization to assign the incentives to any Ameren affiliate.<sup>15</sup>

### III. ICC POSITION AND RECOMMENDATION

The ICC believes that Ameren Services' petition is premature and recommends that it not be approved at this time. Ameren Services has not satisfied the rebuttable presumptions established by the Commission in Order 679<sup>16</sup> and has not provided sufficient information to enable the Commission to make an independent determination that the proposed projects meet the conditions specified in Section 219 of the Federal Power Act ("FPA") for incentives.

The ICC recommends that the Commission reject the argument of Ameren Services that the possible acceptance in the future of Projects into Appendix A of the Midwest ISO's Transmission Expansion Plan ("MTEP") satisfies the rebuttable presumptions.<sup>17</sup> The Commission should not grant Ameren Services' petition conditioned on acceptance of the Projects into Appendix A of the MTEP because not all projects included in Appendix A will be included on the basis of relieving congestion or increasing reliability, the elements identified in Section 219 for eligibility for incentive rate making treatment.

While Ameren Services states in testimony that it expects the Projects to qualify as Multi-Value Projects ("MVP"), the criteria for MVP projects are sketched out in the Midwest ISO's pending MVP filing and are subject to the outcome of that filing. Even if the criteria for MVP

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<sup>13</sup> Petition at 1, 16-17.

<sup>14</sup> Petition at 36.

<sup>15</sup> Petition at 37.

<sup>16</sup> *Promoting Transmission Investment Through Pricing Reform*, Order No. 679, FERC Stats. & Regs. ¶ 31,222 (2006), *order on reh'g*, Order No. 679-A, FERC Stats. & Regs. ¶ 31,236, *order on reh'g*, Order No. 679-B, 119 FERC ¶ 61,062 (2007).

<sup>17</sup> July 15, 2010 Midwest Independent Transmission System Operator, Inc. and the Midwest ISO Transmission Owners Filing, Docket No. ER10-1791-000. ("MVP Filing").

projects were not subject to change, inclusion of the Projects in Appendix A under Criterion 1 of the proposed MVP definition would not satisfy the rebuttable presumptions. **Because Ameren Services' incentive rate filing and the Midwest ISO's MVP cost allocation filing are closely related, and the former is dependent on the outcome of the latter, the ICC requests that if the Commission desires to consider the status of the Projects as MVP projects, the Commission not act on the Ameren Services Petition until it acts on the Midwest ISO's MVP cost allocation filing.**

The ICC has the following recommendations if the Commission does approve the Petition in some manner.

First, the ICC recommends that the Commission deny Ameren Services' request for current recovery of pre-commercial expenses. The request is not sufficiently supported with evidence and fails the Commission's nexus standard. Additional clarification of Ameren Services' request to recover project abandonment costs is required and the ICC recommends that the Commission not approve that incentive rate request until such clarification is provided and deemed acceptable by the Commission.

Second, Ameren Services' request for recovery of costs due to project abandonment is overly broad and unnecessarily shifts risk to ratepayers that should rightfully be borne by the applicant. Unless some limitations or framework is provided on the expansiveness of the requested abandoned cost recovery incentive, the ICC recommends that the request for this incentive not be granted.

Third, because prudence of costs is critical for rate recovery and because the Midwest ISO's Attachment O, under which Ameren Services proposes to recover the project costs at issue in this case, does not provide customers and other interested parties with a right and opportunity

to review and challenge costs, the ICC recommends that the Commission not approve Ameren Services' requested rate incentives unless such approval is conditioned on the development of meaningful revisions to Attachment O through which the prudence of project costs can be assessed before costs are recovered under Attachment O.

Finally, the ICC urges the Commission to consider the fact that the Midwest ISO Transmission Owners Agreement requires a transmission owner designated by the Midwest ISO to make a good faith effort to get certification approval and construct a facility determined to be needed through the Midwest ISO planning process. The Commission needs to weigh this factor when it considers the necessity of any or all of the transmission incentive rates requested by Ameren Services.

#### **IV. COMMENTS**

##### **A. Ameren Services' Filing is Premature.**

##### **1. The Rebuttable Presumptions in Order 679 Have Not Been Satisfied.**

The Energy Policy Act of 2005 modified Section 219 of the FPA by imposing a requirement upon the Commission "to establish by rule, incentive based (including performance-based) rate treatments for the transmission of electric energy in interstate commerce by public utilities for the purpose of benefitting consumers by ensuring reliability and reducing the costs of delivered power by reducing transmission congestion."<sup>18</sup> In response, the Commission conducted a rulemaking which culminated in the issuance of Order 679. Order 679 provides that:

Thus the Commission will rebuttably presume that transmission projects that result from a fair and open regional planning process that considers and evaluates projects for reliability and/or congestion and is found to be acceptable to the Commission satisfy the requirements of this Rule. In addition, the Commission will adopt the other rebuttable presumptions. We also attach a rebuttable

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<sup>18</sup> Energy Policy Act of 2005, Section 1241; 16 U.S.C. § 824s (2010).

presumption if a proposed project is located in a National Interest Transmission Corridor or where a project has received construction approval from an appropriate state commission or state siting authority.<sup>19</sup>

If an applicant has met one of the qualifications for application of a rebuttable presumption, the Commission presumes that the proposed project will either “ensure reliability or reduce congestion” and therefore is eligible for consideration for incentives.

There are three ways a transmission project can qualify for presumed eligibility for rate incentives under Order 679: (1) development and approval through a regional transmission planning process that specifically makes the necessary findings on reliability and/or congestion; (2) approval by a state commission or siting authority that specifically makes the necessary findings on reliability and/or congestion; or (3) by being located in a National Interest Electric Transmission Corridor (“NIETC”).<sup>20</sup> Ameren Services’ plan does not qualify for application of a rebuttable presumption at this time.

Ameren Services admits that its proposed projects do not meet the criteria for the rebuttable presumption at this time.<sup>21</sup> None of the four proposed Projects have been approved by the Midwest ISO Board to be in Appendix A of the Midwest ISO’s MTEP.<sup>22</sup> None of the projects has received a Certificate of Public Convenience and Necessity (“CPCN”) from the

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<sup>19</sup> Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 58.

<sup>20</sup> 18 C.F.R. §35.35(i) & (j).

<sup>21</sup> Petition at 19.

<sup>22</sup> Ameren Services states the Projects are presently in Appendices B and C of the MTEP. (Petition at 10). Appendices B and C consist of projects which are being studied and may be in the MTEP at some point in the future. Appendix C projects are projects proposed by transmission owners, stakeholders, or Midwest ISO staff which may meet a potential need or provide a possible desirable benefit. (Petition, Affidavit of Dennis D. Kramer, Attachment C at 11-12) (“Kramer Affidavit”). These projects are in the early stages of planning. (Kramer Affidavit at 12). Appendix B projects are projects that have been identified as being potential solutions for identified reliability, policy or other needs, and/or as providing potential costs savings. (Kramer Affidavit at 12). Once a need or potential benefit has been identified, possible solutions are examined for effectiveness in meeting the needs. (Kramer Affidavit at 12). Appendix B projects are projects that have been verified as meeting the needs or providing the benefits identified. Finally, a project is placed in Appendix A if it has been determined to be the preferred solution to an identified need or benefit. (Kramer Affidavit at 12) For a project to be included in Appendix A, it must be approved by the Midwest ISO Board of Directors. (Kramer Affidavit at 12) Upon approval, a project that has been placed into Appendix A of the MTEP may be eligible for regional cost sharing pursuant to the Midwest ISO OATT. (Petition at 10).

State of Illinois or the State of Missouri. Indeed, to the ICC's knowledge, Ameren Services has yet to file any such applications. Finally, the facilities are not proposed to be in an NIETC. Accordingly, Ameren Services' filing is premature.

The ICC is aware that the Commission has, in some cases, granted incentive rate treatment for proposed transmission projects that had not yet satisfied any of the rebuttable presumptions. In those cases the Commission has chosen to either (1) conditionally grant the incentive request based on an applicants' subsequent satisfaction of a rebuttable presumption, or (2) forgo the rebuttable presumption approach and conduct its own analysis on whether the projects requested by the applicant would benefit consumers by ensuring reliability and reducing the costs of delivered power by reducing transmission congestion. However, in the case of transmission projects such as those proposed by Ameren Services in the instant case, the Commission should not take either of these steps, but rather, hold action on Ameren Services' request in abeyance until Ameren Services is able to demonstrate satisfaction of one of the rebuttable presumptions.

As noted in Order 679-A, the Commission created the rebuttable presumptions because it did not want to duplicate the work of state siting authorities, regional planning processes, or the DOE.<sup>23</sup> A grant of approval by the Commission at this time would require precisely this kind of duplication. Because Ameren Services has not satisfied any of the Order 679 presumptions, the Commission would need to make an independent finding that each of Ameren Services' proposed projects will either "ensure reliability or reduce congestion" for it to be able to grant the requested incentives. If the Commission were to undertake that analysis at this time, it would duplicate the analysis on those points that the Midwest ISO will make in determining whether to move the Ameren Services projects into Appendix A of the MTEP. It would also duplicate the

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<sup>23</sup> Order No. 679-A, FERC Stats. & Regs ¶ 31,236 at P 5.

future work of state siting authorities, including the ICC. Indeed, the Midwest ISO and the state siting authorities will still conduct their independent evaluations of whether each of the projects proposed by Ameren Services will “ensure reliability or reduce congestion” even if the Commission were to conduct its own evaluation of these questions at this time. In Order 679-A, the Commission correctly expressed a reticence to duplicate the work of the state siting authorities and regional planning authorities.

Further, if the Commission were to make findings at this time about whether each of the projects proposed by Ameren Services will “ensure reliability or reduce congestion”, such findings might unduly influence the considerations of these questions by the Midwest ISO in its role as the regional planning authority or by state officials in their role as siting authorities. The Commission should neither waste its resources nor risk influencing subsequent evaluations by independent parties by conducting such an evaluation or making a finding as to whether each of the projects proposed by Ameren Services will “ensure reliability or reduce congestion” at this time.

Moreover, Ameren Services has not provided the Commission any convincing reason why it should undertake such an evaluation at this time or sufficient information to make a finding that each of the projects proposed by Ameren Services will “ensure reliability or reduce congestion”. Ameren Services’ request for transmission rate incentives, conditioned on the projects’ inclusion into Appendix A of the Midwest ISO’s MTEP, does not provide sufficient information for the Commission to conduct its own independent analysis or make its own independent finding on whether the proposed projects will satisfy the Section 219 criteria for incentives eligibility. For instance, Ameren Services’ filing does not provide complete information on the projects and how they fit into a larger regional plan. The petition lacks detail

on critical items such as the extent of the underbuild, how the projects are expected to interconnect and operate with facilities in adjacent states and how the projects will be coordinated with PJM.

For all these reasons, the Commission should not undertake its own analysis of whether the projects proposed by Ameren Services are eligible for incentives by ensuring reliability and reducing the costs of delivered power by reducing transmission congestion.

Similarly, it would not be reasonable for the Commission to grant the incentives requested by Ameren Services conditioned on the subsequent acceptance of the projects into Appendix A of the Midwest ISO MTEP. While acknowledging that the conditions for the rebuttable presumption have not been satisfied, Ameren Services appears to be requesting authorization of incentives conditioned on the Midwest ISO's subsequent acceptance of the projects into Appendix A of the Midwest ISO MTEP.<sup>24</sup> Ameren Services argues, in essence, that its request for a *current* authorization by the Commission, if conditioned upon a *subsequent* acceptance of the projects into Appendix A, permits the Commission to rebuttably presume that these projects *currently* satisfy the rule even though no analysis has yet been made through the regional planning process. In short, Ameren Services is arguing that its request, conditioned as it is on subsequent acceptance through the regional planning process, is equivalent to a request for a *current* authorization by the Commission of projects then *currently* accepted into Appendix A.

The ICC does not agree. Ameren Services' approach deprives the Commission of reviewing the regional planning process in any meaningful way. While the Commission correctly seeks to avoid duplication of properly conducted consideration and evaluation of projects for reliability and/or congestion, it should nevertheless seek to avoid deferring to a process that has not yet been undertaken or found to be acceptable to the Commission unless the

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<sup>24</sup> Petition, Affidavit of Maureen A. Borkowski, Attachment B at 14-16. ("Borkowski Affidavit").

applicant has provided the Commission with substantial reasons for the Commission to take this step. Ameren Services has not provided such reasons.

Ameren Services' witness, Ms. Borkowski, states that if the projects proposed by Ameren Services are processed through the Midwest ISO planning process and accepted by the Midwest ISO Board for inclusion in Appendix A, then by definition such projects must at that time qualify for the rebuttal presumption as ensuring reliability or reducing the costs of delivered power by reducing transmission congestion.<sup>25</sup> This statement goes too far.

Ms. Borkowski's conclusion relies on the assumption that any project accepted by the Midwest ISO Board for inclusion in Appendix A must, by definition of having been processed through the Midwest ISO planning process, either ensure reliability or reduce the costs of delivered power by reducing transmission congestion. However, while the criteria for MVP projects are sketched out in the Midwest ISO's pending MVP filing, as discussed more fully later in these Comments, the MVP criteria are subject to the outcome of that filing. Further, even if the criteria for MVP projects were not subject to change, inclusion of the Projects in Appendix A under Criterion 1 of the proposed MVP definition would not necessarily satisfy the rebuttable presumptions. Ms. Borkowski's assumption is not necessarily true for an MVP that qualifies under proposed Criterion 1 of the Midwest ISO's MVP description. To be eligible under proposed Criterion 1, the project must enable the transmission system "to deliver energy reliably and economically support documented energy policy mandates or laws" and it must do so in a manner that is "more reliable and/or more economic than it otherwise would be without the transmission upgrade".<sup>26</sup> This Criterion does not require that the project ensure reliability or

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<sup>25</sup> Borkowski Affidavit at 14-16.

<sup>26</sup> See e.g., MVP Filing at 21.

reduce the costs of delivered power by reducing transmission congestion as required by Section 219 of the Federal Power Act to be eligible for transmission rate incentives.

Finally, even if the language in proposed Criterion 1 was construed to effectively require that the project ensure reliability or reduce the costs of delivered power by reducing transmission congestion, there are no metrics included in Criterion 1 to measure or determine that such a requirement has been met.

Consequently, for all of these reasons, it would be inappropriate for the Commission to approve the transmission rate incentives requested by Ameren Services in this case conditioned on subsequent inclusion of the proposed projects into Appendix A of the Midwest ISO's MTEP as an MVP.

**2. Because Ameren Services' Incentive Rate Filing and the Midwest ISO's Pending MVP Cost Allocation Filing Are Closely Related, the Commission Should Not Act on the Ameren Services Filing Until it Acts on the Midwest ISO's MVP Cost Allocation Filing.**

On July 15, 2010, the Midwest ISO submitted proposed revisions to the Midwest ISO Open Access Transmission, Energy and Operating Reserve Market Tariff ("Tariff") in Docket No. ER10-1791-000.<sup>27</sup> That filing proposes to identify a new category of transmission projects called Multi Value Projects ("MVPs") and includes a proposed postage stamp cost allocation for those types of projects.<sup>28</sup> Ameren Services states that one of its proposed projects--the Illinois Rivers Project--is included in the so-called "starter set" of projects that may eventually qualify as a MVP.<sup>29</sup> Ameren Services' witness, Ms. Borkowski, testifies that she expects that all of the

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<sup>27</sup> Petition at 13.

<sup>28</sup> Petition at 13.

<sup>29</sup> Petition at 14. As part of the Midwest ISO's July 15, 2010 filing, Mr. Clair Moeller testified that the business case work is just beginning for the set of so-called "starter projects." (Prepared Direct Testimony of Clair J. Moeller at 12).

projects proposed for incentive rate treatment in this case will be classified as MVPs.<sup>30</sup> Ameren Services' witness, Mr. Kramer, echoes this expectation.<sup>31</sup>

Since Ameren Services relies upon this prediction of the Projects' future classification as MVPs to support its argument of the eligibility of the Projects for incentive rate treatment, it has tied the Midwest ISO's July 15 MVP filing with its petition in the instant docket. **That being the case, the ICC believes the Commission should forbear action on Ameren Services' Petition in this case until action is completed on the Midwest ISO's July 15 MVP filing.** Many of Ameren Services' assertions about eligibility of its proposed projects for incentive rate treatment are contingent upon designation by the Midwest ISO Board as MVPs.<sup>32</sup> But at this point, MVP's are only a concept contained in a proposed tariff filing to the Commission **that has yet to be approved.** Also, it is possible that the Commission may order significant changes to the Midwest ISO's proposal based upon comments and protests from parties in the case. Those changes may include such items as how projects are incorporated into Appendix A, stakeholder review of Appendix A changes, cost allocation and other important issues. Since Ameren is basing its Petition in part on its assumption of how the MVP approval process will unfold, its Petition should not be acted on until the Commission rules on the Midwest ISO's MVP filing.

**Ameren Services requests that the Commission act on its petition for incentive rate treatment within 60 days, i.e. by October 1.** The ICC notes that comments on the Midwest ISO's MVP filing are not due until September 10, 2010 and it is unknown when a Commission Order on the Midwest ISO's filing may be issued. However, it is unlikely that the Commission would act on the Midwest ISO's MVP filing prior to the close of the sixty day period that Ameren

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<sup>30</sup> Borkowski Affidavit at 15.

<sup>31</sup> Kramer Affidavit at 13.

<sup>32</sup> See e.g., Kramer Affidavit at 13.

Services proposes for a Commission decision in the instant case.<sup>33</sup> Because the Commission's decision in the Midwest ISO's MVP filing would materially affect the current proceeding, if the Commission desires to consider the status of the Projects as MVP projects, the ICC recommends that Commission action in the current proceeding be held in abeyance until resolution of the Midwest ISO MVP filing.

Moreover, the ICC would note that the justification provided by Ameren for proceeding under its proposed 60 day timetable, i.e. "so that Ameren may move forward with the projects as quickly as possible," is not well supported.<sup>34</sup> As noted, the Commission has not yet acted on the Midwest ISO's MVP proposal, the Ameren Services projects are not yet included in Appendix A of the MTEP and the Ameren Services projects have not been filed in any state CPCN proceeding, all necessary prerequisites for Ameren Services to proceed with its projects. Therefore, it is not apparent how granting the requested transmission rate incentives at this time would enable Ameren Services to move forward with the projects more quickly than waiting until a rebuttable presumption is satisfied.

For this reason as well, the Ameren Services filing is premature. Ameren Services has not demonstrated that Commission action is needed on its petition for incentive rate treatment within 60 days, i.e. by October 1.

#### **B. Ameren Services' Requested Incentives Do Not Meet the Nexus Standard.**

Order 679 requires that incentive rate applicants demonstrate that there is a nexus between the incentive sought and the investment being made, i.e., to demonstrate that the incentives are rationally tailored to the risks and challenges of the investments being proposed.<sup>35</sup>

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<sup>33</sup> Petition at 2.

<sup>34</sup> Petition at 3.

<sup>35</sup> Order No. 679, FERC Stats. & Regs. ¶ 31,222, at P 26.

**1. Ameren Services' Request for Current Recovery of Pre-Commercial Operations Expenses is Overly Broad and is Not Necessary Based on Other Requested Incentives.**

Ameren Services requests that the Commission grant it authorization to expense and recover on a current basis all prudently incurred costs of AITC, AIX, and any future AIX subsidiaries for planning, regulatory and related approvals during the projects' pre-commercial operations period.<sup>36</sup> These would include costs of legal, engineering, environmental and consulting services and other development expenses that are not captured in CWIP accounts.<sup>37</sup> Ameren Services' witness, Mr. Martin, states that, "absent grant of the incentive, these expenses would not be recoverable until the projects are placed in service."<sup>38</sup> Ameren Services' witness, Mr. Martin, states that the expenses associated with the requested incentive "will be significant".<sup>39</sup>

Ameren Services' request for current recovery of pre-commercial expenses is broad, sweeping and open-ended. Ameren Services provides no estimate of the potential amount of pre-commercial expenses which ratepayers would be required to pay other than to indicate that they will be "significant".<sup>40</sup> There is no information whatsoever on Ameren Services' or its affiliates' proposed accounting treatment other than an oblique reference to the approach used by

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<sup>36</sup> Petition at 31-32. With respect to the assigning issue, the Petition is unclear and somewhat contradictory. For example, in the section of the Petition devoted to incentives assignment, Ameren Services appears to request permission to assign any authorized incentive to any affiliate that is involved in the development and construction of the projects, including potentially the Ameren Illinois utilities. However, at 31-32, Ameren Services asks for authorization to assign the pre-commercial operating expense recovery incentive only for AITC, ATX, and "any future ATX subsidiaries." Before granting any approval, the Commission should require Ameren Services to clarify the ambiguities in the Petition regarding its request for assignment authority.

<sup>37</sup> Petition at 31-32.

<sup>38</sup> Petition, Affidavit of Ryan J. Martin, Attachment D at 15. ("Martin Affidavit"). Mr. Martin implies by this statement that these expenses will be recoverable after the projects are placed in service. However, Mr. Martin seems to contradict this subsequent recovery suggesting that, if the Commission does not grant the requested incentive, ATX and AITC would not be able to recover these costs later. (Martin Affidavit at 15, lines 23-26).

<sup>39</sup> Martin Affidavit at 16.

<sup>40</sup> Martin Affidavit at 16.

the Commission in Allegheny Energy.<sup>41</sup> Because Ameren Services' request has not identified the particular company or company on whose behalf it is seeking this incentive, it is not even clear what set of ratepayers may have to pay the expenses at issue if the incentive were to be granted by the Commission.

In addition, it is unclear when Ameren Services intends to collect the pre-commercial operations expenses other than repeated references to the term "current".<sup>42</sup> Mr. Martin states that ATX and AITC do not have transmission rates that allow them to recover expenses now.<sup>43</sup> He then states that granting the pre-commercial expenses incentive will allow AITC and ATX to recover costs on a current basis.<sup>44</sup> It is unclear what is meant by the term "current". Specifically, it is unclear whether "current" means immediately upon approval by the Commission; once the company has an authorized Attachment O rate in place under the Midwest ISO tariff; or once the facility or facilities goes into service. Due to the uncertainty of the term "current", it is also unclear whether Ameren Services intends to recover expenses incurred prior to the date that is determined to be "current"--such as expenses associated with the filing in the instant docket.

Ameren Services' request with respect to current recovery of pre-commercial expenses is not adequately explained or supported. It is not clear when Ameren Services intends to start assigning and recovering costs for these expenses, which customers they intend to collect the costs from over what time period, and whether they intend to be granted the authority to assign the incentives to other Ameren affiliates. The Commission should deny Ameren Services' request for this incentive on the basis of insufficient support.

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<sup>41</sup> Martin Affidavit at 16.

<sup>42</sup> Martin Affidavit at 15, 16.

<sup>43</sup> Martin Affidavit at 15.

<sup>44</sup> Martin Affidavit at 16.

In addition, Ameren Services has not satisfied the Commission's nexus standard with regard to its incentive request to recover pre-commercial operating expenses on a current basis. Ameren Services' witness, Mr. Martin, states that the purpose for making this incentive rate request is to "generate cash flow."<sup>45</sup> However, the purpose underlying Ameren Services' request for 100% CWIP recovery is also to generate cash flow.<sup>46</sup> Under the Commission's nexus standard, the Commission examines whether the set of incentives requested has a reasonable connection to the risks faced by the applicant<sup>47</sup>. In Order No. 679-A, the Commission clarified that the nexus test is met when an applicant demonstrates that the total package of incentives requested is 'tailored to address the demonstrable risks or challenges faced by the applicant'.<sup>48</sup> The Commission may deny incentive requests that are redundant or where multiple incentives are sought to ameliorate the same risk category.

Consequently, the ICC recommends that if the Commission does not deny Ameren Services' incentive request to recover pre-commercial operating expenses on a current basis because of insufficient evidence, the Commission should deny that request on the basis of failure to satisfy the nexus standard because this incentive is unnecessary.

## 2. Abandonment

Ameren Services requests a rate incentive to allow it to recover 100 percent of prudently-incurred costs if the proposed projects must be abandoned due to forces outside of the Ameren Companies' control.<sup>49</sup> The ICC recognizes that this rate incentive has been granted in other situations, but this rate incentive, if not properly limited, exposes ratepayers to risks that

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<sup>45</sup> Martin Affidavit at 16.

<sup>46</sup> Martin Affidavit at 11.

<sup>47</sup> Order No. 679-A, FERC Stats. & Regs. ¶ 31,236 at P 6.

<sup>48</sup> *Pepco Holdings Inc.*, 125 FERC ¶ 61,130 at 52 (2008) (citing Order 679-A at P 40).

<sup>49</sup> Petition at 26-29.

rightfully reside with the applicant. An after the fact prudency review of expenses incurred does not adequately protect ratepayers.

For example, the ICC does not believe it would be prudent for Ameren Services to procure right-of-way prior to inclusion of the Ameren Services projects into Appendix A of the Midwest ISO's MTEP or prior to a ICC decision on facility siting. The ICC believes the Commission should not grant the requested abandonment request until boundaries are established on what types of costs are judged to be prudently incurred or what events are judged to be outside of the Ameren Companies' control. Additionally, some abandonment risks may well be insurable and while the event itself might be outside of the company's control, insuring or hedging against the risk may well be possible and might be more protective of ratepayers. .

In the ICC's view, it would not be sufficiently protective of ratepayers, who would be called on to pay for abandonment costs, for the Commission to defer establishing limits on this rate incentive until a subsequent Section 205 abandoned cost recovery filing. Ratepayers should not be exposed to risks that rightfully reside with the applicant. Moreover, Ameren Services has provided no limitations on this broad incentive other than an after the event analysis of the prudency of costs incurred by Ameren Services and assessment of lack of control over the event. Ameren Services should provide more clarity on these issues and it would not be just and reasonable for the Commission to approve Ameren Services' incentive rate request for abandoned cost recovery until that clarity is provided.

**C. Attachment O Must Be Revised To Provide a Formula Rate Review and Challenge Process.**

Ameren Services requests that the Commission approve its plan to use a forward-looking rate based on projected test years in Attachment O of the Midwest ISO's tariff.<sup>50</sup> Ameren

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<sup>50</sup> Petition at 36.

Services states that the details will be fleshed out in later Section 205 filings.<sup>51</sup> Ameren Services states that the process would include a customer meeting and information sharing protocols similar to those used by Michigan Electric Transmission Company and International Transmission Company.<sup>52</sup>

The ICC has reviewed the Attachment O tariff provisions of those companies. Those tariffs do provide for a customer meeting and the ability to make inquiries on the inputs.<sup>53</sup> But those tariff sheets do not provide customers an opportunity to challenge the inputs and calculations. The ability of customers to challenge inputs is critical in insuring that expenditures that flow through the formula rate result in just and reasonable rates. The ICC recommends that the Commission not grant Ameren Services' request to use forward-looking rates in Attachment O unless there is the opportunity for ratepayers to review and challenge the inputs to the formula rate. Additionally, the ICC believes ratepayers should have the opportunity to review and challenge inputs to the formula rate even if ATX elected not to use forward-looking rates in its Attachment O. While Attachment O was approved by the Commission eleven years ago without these safeguards, Ameren's proposed plan is a significant expansion of its use, justifying a review of its efficacy.

It might be argued a formula rate largely conforming to those of both Michigan Electric and International Transmission has been found to be just and reasonable and such a model should suffice for ATX. However, effective regulation is an evolutionary process. Commission practices with respect to formula rates have changed over time. A review of some recent Commission decisions shows an increased awareness by the Commission of the need to include effective customer safeguards in formula rate protocols.

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<sup>51</sup> Petition at 36.

<sup>52</sup> Petition at 37.

<sup>53</sup> Midwest ISO FERC Electric Tariff, Fourth Revised Volume No. 1, Original Sheet 2724 and Original Sheet 2737.

In *Idaho Power*, the Commission determined that customers should be provided with the ability to review and challenge the inputs to a formula rate and the Commission did not restrict such review to only instances involving rates built on projected cost data. The Commission found that:

Idaho Power's formula rate methodology does not include procedures for an informational filing that would provide supporting documentation for the charges resulting from its formula rate. The Commission finds that customer safeguards should be specified in the form of an informational filing by Idaho Power in its OATT. This requirement should detail protocols for information exchange and provide Idaho Power's customers with the ability to review and challenge the inputs to the formula. We summarily dispose of this issue and require that Idaho Power file revised tariff sheets, within 30 days of the date of this order, providing tariff requirements for an informational filing with the Commission detailing protocols for information exchange and the inputs to the formula, along with supporting work papers.<sup>54</sup>

Likewise, the Commission noted in *Public Service Electric and Gas Company* that the protocols followed in the PJM region were essentially the same regardless of whether the formula rate relied exclusively upon empirical data found in FERC Form 1 or if the formula used projected cost data.<sup>55</sup>

Certain PJM protocols provide affected customers and interested stakeholders with the ability to review the prudence of costs associated with new investments made by the utility during the year that is used as an input into a formula rate.<sup>56</sup> These PJM protocols allow customers and stakeholders to question the prudence of the use of certain costs as formula rate inputs. Merely complying with the Commission's accounting practices does not ensure that expenditures are prudent as demonstrated below.

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<sup>54</sup> *Idaho Power Company*, 115 FERC ¶ 61,281 at 29 (2006). (underlining added).

<sup>55</sup> *Public Service Electric and Gas Company*, 124 FERC ¶ 61,303 at 11 (2008).

<sup>56</sup> PJM Interconnection, L.L.C, FERC Electric Tariff, Sixth Revised Vol. No. 1, Substitute Original Sheet No. 314C.01, Second Substitute Original Sheet No. 314I.26, Sub. Original Sheet No. 314H.23.

In *Commonwealth Edison*, the Commission allowed ComEd to adopt a formula rate that used ComEd's Form 1 data as inputs, but required associated rate update protocols as part of its conversion from stated rates to formula rates.<sup>57</sup> The value of the customer safeguards adopted in the ComEd case soon became evident, as a challenge by a customer to an input under the ComEd process resulted in the cost of service being reduced by \$467,785.<sup>58</sup> In addition, a review by Commission staff of the FERC Form 1 data used by ComEd resulted in additional cost of service reductions of \$60,674.<sup>59</sup>

The Commission has adopted these practices within PJM and for proposed transmission projects such as Green Power Express that span multiple ISO/RTOs. Similar protocols should be developed and included in any Attachment O used by ATX.

Ameren Services states it plans to invest significant amounts in new and upgraded transmission facilities over the next 10-15 years.<sup>60</sup> Since the investments and any incentives associated with them will be ongoing, it is critical that review of those expenditures be ongoing as well to ensure that ratepayers are protected. The Commission should not approve Ameren Services' request to charge rates under the Midwest ISO's Attachment O, or to implement forward-looking rates, unless it includes protocols that allow customer and other stakeholder review similar to those used by Commonwealth Edison and other transmission owners in PJM. Further, if any incentives are assigned to any existing Ameren Corporation transmission owner which then modifies its existing transmission formula rate to accommodate recovery of the incentives, those formula rates should be modified to adopt protocols similar to Commonwealth Edison and other PJM transmission owners.

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<sup>57</sup> *Commonwealth Edison Company and Commonwealth Edison Company of Indiana, Inc.*, 122 FERC ¶ 61,030 (2008).

<sup>58</sup> *Informational Filing of Commonwealth Edison Company and Commonwealth Edison of Indiana, Inc.*, 2009 *Formula Rate Annual Update*, Transmittal Letter at 5.

<sup>59</sup> *Id.*

<sup>60</sup> Petition at 5.

#### **D. Incentives May Not Be Needed for Ameren Services' Proposed Projects to Get Built.**

The Petition states that the Ameren Companies “would not undertake financing, development and construction of the Projects as proposed without the assurance of incentives that will alleviate some of these risks and challenges.”<sup>61</sup> The ICC notes, however, that there are circumstances in which Ameren Companies would have to make a good faith effort to build the Projects even if they were not granted the incentives. While an obligation to build does not preclude eligibility for incentives, under Order No. 679-A, a prior contractual commitment has bearing on the Commission’s nexus evaluation of individual applications and whether the incentives are necessary at all.<sup>62</sup> Appendix B of Agreement of Transmission Facilities Owners to Organize the Midwest Independent Transmission Operator (“Transmission Owners Agreement”) imposes obligations on transmission owners, including the Ameren companies, with respect to construction and ownership of facilities found to be needed through the Midwest ISO transmission expansion process.<sup>63</sup> Appendix B of the Transmission Owners Agreement states that the transmission owner(s) designated by the Midwest ISO “shall make a good faith effort to design, certify, and build the designated facilities to fulfill the approved Midwest ISO Plan.”<sup>64</sup>

Therefore, if an Ameren Company is designated by the Midwest ISO to construct any of the Grand Rivers projects described in the Petition, that company must make a good faith effort to do so. Contrary to what is stated in the Petition, there would be little discretion in this regard. While the Transmission Owners Agreement contains some exceptions for a company’s financial hardship, the Petition does not indicate that the Ameren Companies would be in that condition should the Commission deny the requested incentives.

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<sup>61</sup> Petition at 23.

<sup>62</sup> Order No. 679-A, FERC Stats. & Regs ¶ 31,236 at P 122; *The United Illuminating Co.*, 126 FERC ¶ 61,043 at 30 (2009).

<sup>63</sup> See, e.g., Section VI of the Transmission Owners Agreement.

<sup>64</sup> Appendix B, Section VI of the Transmission Owners Agreement.

Accordingly, under these circumstances Ameren Services has not demonstrated that development and construction of the projects are dependent on the Commission grant of incentive authority. Under the terms of the Transmission Owners Agreement, if the projects are determined to be needed through the transmission planning process, the designated transmission owner must exert good faith efforts to put the facilities in place regardless of the presence or absence of transmission rate incentives.

## V. CONCLUSION

For all of the above reasons, the ICC argues that the Ameren Services' petition is premature and consequently the ICC recommends that the petition not be approved at this time.

Ameren Services has not satisfied the rebuttable presumptions and has not provided sufficient information to enable the Commission to make an independent determination that the proposed projects meet the conditions specified in Section 219 of the FPA for incentives. The ICC recommends that the Commission not accept Ameren Services' proposal to grant the requested incentives conditioned on subsequent acceptance of the projects into Appendix A of the Midwest ISO's MTEP. As explained above, inclusion of the projects in Appendix A under Criterion 1 of the proposed MVP definition would not necessarily satisfy the rebuttable presumptions.

The ICC recommends that the Commission reject the argument of Ameren Services that the possible acceptance in the future of the Projects into Appendix A of the Midwest ISO's MTEP satisfies the rebuttable presumptions. While Ameren Services states in testimony that it expects the Projects to qualify as MVP projects, the criteria for MVP projects are subject to the outcome of the pending MVP filing. Even if the criteria for MVP projects were not subject to change, inclusion of the Projects in Appendix A under Criterion 1 of the proposed MVP definition would not necessarily satisfy the rebuttable presumptions. Because Ameren Services'

incentive rate filing and the Midwest ISO's MVP cost allocation filing are closely related, and the former is dependent on the outcome of the latter, the ICC also requests that the Commission not act on the Ameren Services Petition until the Commission acts on the Midwest ISO's MVP cost allocation filing.

The ICC has the following recommendations if the Commission does approve the Petition in some manner.

First, the ICC recommends that the Commission deny Ameren Services' request for current recovery of pre-commercial expenses. The request is not sufficiently supported and fails the Commission's nexus standard. Additional clarification of Ameren Services' request to recover pre-commercial expenses is required and the ICC recommends that the Commission not approve that incentive rate request until such clarification is provided and deemed acceptable.

Second, Ameren Services' request for recovery of costs due to project abandonment is overly broad and unnecessarily shifts risk to ratepayers that should rightfully be borne by the applicant. Unless some limitations or framework is provided on the expansiveness of the requested abandoned cost recovery incentive, the ICC recommends that the request for this incentive not be granted.

Third, because prudence of costs is critical for rate recovery and because the Midwest ISO's Attachment O, under which Ameren Services proposes to recover the project costs at issue in this case, does not provide customers and other interested parties with a right and opportunity to review and challenge costs, the ICC recommends that the Commission not approve Ameren Services' requested rate incentives unless such approval is conditioned on the development of meaningful revisions to Attachment O through which the prudence of project costs can be assessed before costs are recovered under Attachment O.

Finally, the ICC urges the Commission to consider the fact that the Midwest ISO Transmission Owners Agreement requires a transmission owner designated by the Midwest ISO to make a good faith effort to get certification approval and construct a facility determined to be needed through the Midwest ISO planning process. The Commission needs to weigh this factor when it considers the necessity of any or all of the transmission incentive rates requested by Ameren Services.

For all these reasons, the ICC requests that the Commission give consideration to the Comments herein.

Respectfully submitted,

*/s/ John L. Sagone*

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ILLINOIS COMMERCE COMMISSION

Dated: August 30, 2010

CERTIFICATE OF SERVICE

I hereby certify that I caused copies of the foregoing document of the Illinois Commerce Commission to be served this day upon each person designated on the official service list compiled by the Secretary in this proceeding in accordance with the requirements of Rule 2010 of the Commission's Rules of Practice and Procedure.

Dated at Chicago, Illinois, this 31<sup>st</sup> day of August, 2010.

*/s/ John L. Sagone*

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