

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

THE PEOPLE OF THE STATE OF ILLINOIS,)
ex rel. LISA MADIGAN, Attorney General of the)
State of Illinois)
) Docket No. 13-
Complaint to suspend tariff changes submitted by)
Ameren Illinois and to investigate Ameren Illinois Rate)
MAPP pursuant to Sections 9-201, 9-250 and 16-108.5)
of the Public Utilities Act.)

**COMPLAINT BY THE PEOPLE OF THE STATE OF ILLINOIS
TO SUSPEND TARIFF CHANGES SUBMITTED BY AMEREN ILLINOIS
AND TO INVESTIGATE AMEREN ILLINOIS RATE MAPP PURSUANT TO
SECTIONS 9-201, 9-250 and 16-108.5(c) OF THE PUBLIC UTILITIES ACT**

The People of the State of Illinois, by Attorney General Lisa Madigan (“the People”), pursuant to Section 9-201(b) and Section 16-108.5(c) of the Public Utilities Act (the “Act” or “PUA”), 220 ILCS 5/9-201(b), request that the Commission suspend and investigate the tariff filing made by Ameren Illinois Company (“Ameren”) on August 19, 2013 which requested multiple changes to Ameren Illinois’s Modernization Action Plan Pricing formula rate tariff (Rate MAPP), filed pursuant to the Energy Infrastructure Modernization Act (“EIMA”). 220 ILCS 5/16-108.5. The People further request that the Commission investigate Ameren’s Rate MAPP under Section 9-250 and Section 16-108.5(c) of the Act to correct a recent change to the Section 16-108.5(c)(5) return on equity (“ROE”) collar computation under EIMA that was not authorized by law, and to expressly reflect the appropriate tax treatment in calculating interest on the reconciliation balance in the formula tariff.

In support of this Complaint, the People state as follows:

Jurisdiction

1. Section 9-201(b) of the Act provides that the Commission may suspend and hold a hearing on any tariff filing upon its own motion or upon a complaint. The relevant text of Section 9-201(b) is as follows:

Whenever there shall be filed with the Commission any schedule stating an individual or joint rate or other charge, classification, contract, practice, rule or regulation, **the Commission shall have power**, and it is hereby given authority, either **upon complaint** or upon its own initiative without complaint, at once, and if it so orders, **without answer or other formal pleadings by the interested public utility or utilities, but upon reasonable notice, to enter upon a hearing** concerning the propriety of such rate or other charge, classification, contract, practice, rule or regulation, and pending the hearing and decision thereon, such rate or other charge, classification, contract, practice, rule or regulation shall not go into effect.

220 ILCS 5/9-201(b) (emphasis added).

2. Section 16-108.5(c) authorizes the Commission to approve a formula rate tariff, and provides that subsequent changes can be made under Section 9-201 of the Act.

Specifically, the relevant portion of Section 16-108.5(c)(6) provides:

Subsequent changes to the performance-based formula rate structure or protocols shall be made as set forth in Section 9-201 of this Act, but nothing in this subsection (c) is intended to limit the Commission's authority under Article IX and other provisions of this Act to initiate an investigation of a participating utility's performance-based formula rate tariff, provided that any such changes shall be consistent with paragraphs (1) through (6)¹ of this subsection (c). Any change ordered by the Commission shall be made at the same time new rates take effect following the Commission's next order pursuant to subsection (d) of this Section, **provided that the new rates take effect no less than 30 days after the date on which the Commission issues an order adopting the change.**

220 ILCS 5/16-108.5(c)(6) (emphasis added).

¹ Paragraphs (1) through (6) of subsection (c) established the ratemaking protocols for the annual revenue requirement established by the Commission annually. 220 ILCS 5/16-108.5(c).

Parties

3. Ameren is a corporation organized and existing under the laws of the State of Illinois, with its principal office in St. Louis, Missouri. Ameren provides electric delivery services and, in some cases, electric power and energy, to approximately 1.2 million electric service customers in the central and southern portions of Illinois. Ameren is a public utility within the meaning of Section 3-105 of the Act, 220 ILCS 5/3-105, is an electric utility within the meaning of Section 16-102 of the Act, 220 ILCS 5/16-102, and is currently regulated pursuant to Section 16-108.5 of the Act.
4. Section 6.5(c) of the Attorney General Act authorizes the Attorney General to be a party as a matter of right and “to intervene in, initiate, enforce, and defend all legal proceedings” related to the “provision, marketing, and sale” of electric service “whenever the Attorney General determines that such action is necessary to promote or protect the rights and interests of all Illinois citizens, classes of customers, and users” of electric services. 15 ILCS 205/6.5(c) & (d).

Regulatory Background

5. On April 19, 2013, Ameren filed a petition presenting its annual formula rate update and revenue requirement reconciliation tariffs under Section 16-108.5(d), initiating ICC Docket 13-0301, Annual Update Filing under Section 16-108.5(d) and Rate MAPP. That docket will result in changes to Ameren’s electric rates which, pursuant to Section 16-108.5(d), must take effect by January 1, 2014.
6. In pre-filed testimony in Docket 13-0301, Ameren Illinois witnesses asserted that the Company may be “faced with the inability to reflect” certain adjustments due to the structure of the current Rate MAPP formula rate tariff. See, e.g., Docket 13-0301,

Ameren Exhibit 17.0 at 7. Ameren witnesses also alleged that two adjustments proposed by the witnesses for the People of the State of Illinois may also be precluded without changes to the current MAPP formula rate tariff. *Id.* at 13.

7. On or about August 19, 2013, Ameren Illinois filed tariff pages that contained 34 itemized changes to its Rate MAPP tariff, Rate MAPP.
8. On May 30, 2013, Ameren filed revisions to Rate MAPP tariffs in response to P.A. 98-0015. The ICC approved that tariff filing on June 5, 2013 in Docket 13-0385.
9. Public Act 98-0015 (“P.A. 98-0015”), also known as “SB 9,” was enacted by the General Assembly on or about May 22, 2013. P.A. 98-0015 amended Section 16-108.5 by making specific formula rate tariff changes in subsections (c) and (d) of Section 16-108.5. These amendments related to the Commission’s calculation of the formula rate revenue requirement, including the annual reconciliation of revenues with actual costs incurred over the applicable rate year and included the following:

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| 16-108.5(c)(2) | The formula shall reflect the utility’s actual <u>year-end</u> capital structure for the applicable calendar year, excluding goodwill, subject to a determination of prudence and reasonableness consistent with Commission practice and law. |
| 16-108.5(c)(4)(D) | Investment return on pension assets described. |
| 16-108.5(d)(1) | Actual revenue requirement for the prior rate year <u>determined using a year-end rate base;</u> |
| 16-108.5(d)(1) | Interest on actual revenue requirement for the prior rate year <u>calculated at a rate equal to the utility’s weighted average cost of capital approved by the Commission for the prior rate year;</u> |
| 16-108.5(k) | Subsection (k) specifies that the tariff changes resulting from the P.A. 98-0015 amendments “shall relate only to, and be consistent with ...paragraph (2) of subsection (c) regarding year-end capital structure, subparagraph (D) of |

paragraph (4) of section (c) regarding pension assets, and subsection (d) regarding the reconciliation components related to year-end rate base and interest calculated at a rate equal to the utility's weighted average cost of capital." 220 ILCS 5/16-108.5(k).

10. Changes to the Rate MAPP formula rate tariff must comply with Section 16-108.5 as amended, reflect actual costs, and result in just and reasonable rates. 220 ILCS 5/16-108.5(c) and (d).

**COUNT I – Request to Suspend and Investigate
August 19, 2013 Rate MAPP Tariff Changes**

11. The People incorporate by reference as though expressly set out each and every allegation contained in paragraphs 1 through and including 10 above.
12. The People request that the Commission suspend the changes to the Rate MAPP formula template filed on August 19, 2013 and hold a hearing into the many changes requested to assure that they are consistent with the law and will result in just and reasonable rates that fairly reflect Ameren Illinois's actual costs as required by Section 16-108.5(c) and (d).

Wherefore, the People request that the Commission open an investigation and hold a hearing on the changes to the MAPP formula rate tariff requested in the August 19, 2013 Ameren Illinois tariff filing, and assure that the Formula Rate Tariff complies with the law and results in just and reasonable rates.

**COUNT II – Request to Investigate Unauthorized Change
in the ROE Collar Calculation in Rate MAPP**

13. The People incorporate by reference as though expressly set out each and every allegation contained in paragraphs 1 through and including 10 above.

14. The current Rate MAPP formula template as changed on June 5, 2013 in Docket 13-0385 does not comply with the revisions to Section 16-108.5(c) and (d) made in P.A. 98-0015, does not result in just and reasonable rates, and should be investigated pursuant to Section 9-201(b), Section 9-250 and Section 16-108.5(c) of the Act.
15. P.A. 98-0015 authorized, among other provisions, two changes to the actual revenue requirement for the prior rate year specified in Section 16-108.5(d): a change from average rate base to year-end rate base for calculating the actual revenue requirement for the prior rate year and a change of interest rate on the over- or under-collection of the actual revenue requirement for the prior rate year.
16. When Ameren made changes in its Rate MAPP formula rate tariff in response to P.A. 98-0015 in Docket 13-0385, it included the change to year-end rate base for the actual revenue requirement for the prior rate year. The revised tariff also changed the terms of the formula relative to the calculation of the ROE collar calculation described in Section 16-108.5(c)(5) due to the reference in the ROE collar schedule (FR A-3, Line 1) to the reconciliation revenue requirement schedule (FR A-1 REC, Line 11). While P.A. 98-0015 amended Section 16-108.5(c)(2) to require use of the year-end capital structure in the formula, it did not authorize the use of year-end rate base in the ROE collar provisions.
17. The Rate MAPP formula rate tariff should be changed to restore the calculation of the ROE collar under Section 16-108.5(c)(5) to the terms established by the Commission in ICC Docket 12-0001, where the formula rate tariff was initially approved, subject to the change to year-end capital structure in Section 16-108.5(c)(2).

18. In order to correct the collar calculation, Ameren's formula rate tariff page FR A-3, Line 1 should describe the calculation and use of average rate base in the ROE collar calculation under Section 16-108.5(c)(5). Schedule FR A-3 should not refer to the Schedule FR A-1 REC, Line 11 wherein year-end rate base is used for determining the actual revenue requirement for the prior rate year pursuant to P.A. 98-0015.
19. The People request the Commission to change Ameren Illinois's formula rate tariff page FR A-3, Line 1 to eliminate the reference to FR A-1 REC, Line 11, and instead to insert the following at FR A-3, Line 1: $(\text{Sch FR B-1, Ln 36} + \text{Prior Year Sch FR B-1, Ln 36})/2$. This proposed modification is identical to the language used to calculate the ROE collar in Ameren Illinois's formula rate tariff as approved by the Commission in Docket 12-0001. The proposed changes are shown on Exhibit 1 to this Complaint.
20. The change proposed in paragraph 19 above removes the unauthorized change that resulted when the reference in the ROE collar schedule to Ameren's "DS Rate Base" (FR A-3, Line 1 referring to FR A-1 REC, Line 11) was changed to "year-end" rate base at the time the P.A. 98-0015 changes to Section 16-108.5(d) were made. This proposed change is required to base the ROE collar calculation on the appropriate, actual rate base in the prior year and to eliminate the Rate MAPP formula tariff changes that were not authorized by P.A. 98-0015. Without this change to Ameren's formula rate tariff, delivery service revenues collected by Ameren pursuant to the formula rate tariff will be inaccurate, excessive, unjust and unreasonable.

Wherefore, the People request that the Commission open an investigation and hold a hearing on the change to Schedule FR A-3 recommended herein, and assure that the Rate MAPP complies with the law and results in just and reasonable rates.

**Count III -- Request to Modify Rate MAPP to Apply Interest
on the Net of Tax Reconciliation Balance**

21. The People incorporate by reference as though expressly set out each and every allegation contained in paragraphs 1 through and including 10 above.
22. Section 16-108.5 provides that the formula rate tariff must “[p]rovide for an annual reconciliation, as described in subsection (d) of this Section, with interest, of the revenue requirement reflected in rates for each calendar year, ...with what the revenue requirement would have been had the actual cost information for the applicable calendar year been available at the filing date.” 220 ILCS 5/16-108.5(c)(6).
23. In order to apply interest to the unrecovered (or over-recovered) revenue requirement in the prior year based on actual cost information, the Commission needs to reflect the tax effect of the under- (or over-) collection of the actual revenue requirement for the prior year. Because the utility pays income taxes based on revenues actually received in the tax year, the tax savings in the prior year from receiving lower revenues than necessary to cover actual costs is a tangible cost savings that should be reflected in assessing interest on the reconciliation balance. Similarly, if the utility received higher revenues than justified by actual costs in the prior year, the utility will have a higher tax bill, and that effect should be reflected in assessing interest on the refund amount.
24. In Dockets 12-0001 and 12-0293, the Commission applied the short term interest rate on the reconciliation balance, which was less than 1%. While the Commission did not address whether interest should be applied to the net-of-tax reconciliation balance, due to the low interest rate, the effect on the revenue requirement and rates was minimal.
25. With the application of the weighted average cost of capital as the interest rate on the annual reconciliation, as directed by P.A. 98-0015, the effect of applying the interest rate

on the gross reconciliation balance, irrespective of tax savings or payments, is unjust and unreasonable and will result in the utility receiving more than its actual costs for the prior year in years when the company received less revenue than necessary to cover actual costs, contrary to Sections 9-101 and 16-108.5(c) and (d) of the Act.

26. While the application of interest to the net of income tax reconciliation balance is necessary to reflect actual costs to the utility and should not need to be specifically provided for in the formula rate tariff, Ameren Illinois has argued that the absence of this provision in the formula rate tariff precludes an adjustment to apply interest on the net-of-tax reconciliation balance. See Docket 13-0301, Ameren Exhibit 17.0 at 12-14.
27. The People request that the Commission include a consideration of whether the formula rate tariff should include a calculation of the net-of-tax reconciliation balance to which interest applies in reviewing Ameren's August 19, 2013 tariff filing and considering the People's request to investigate the Rate MAPP provisions relating to the ROE collar under Section 16-108.5(c)(5).
28. If the Commission concludes that a calculation to address the tax effect on the reconciliation balance should be part of the Formula Rate Tariff, it can provide that interest be applied to the net-of-tax reconciliation balance by the following Formula Rate Tariff change:

Schedule FR A-4, Reconciliation Computation, should be amended so that Line 3, Variance with Collar, becomes new line 3a and new lines 3b and 3c are inserted above the existing line 4. The Variance with Collar at existing line 3 (the new line 3a) would be reduced by associated incremental accumulated deferred income taxes (ADIT) arising from the reconciliation balance. New Line 3b would multiply the Company's composite Effective Income Tax Rate, which is found on Sch. FR C-4 at line 4, times minus one (-1), times the Variance with Collar (on the new line 3a) to quantify the offsetting "Accumulated Deferred Tax at Tax Rate" to be shown on new line 3b. Summing the Variance with Collar

amount on the new line 3a with the calculated offsetting Accumulated Deferred Tax at Tax Rate on new line 3b yields the Net of Income Tax Variance with Collar at new line 3c, to which the Monthly Interest Rate at Line 4 would apply, as set forth in the monthly amounts in Column C under a revised "Net Variance" column heading. The calculation of interest on the reconciliation variance balance for the reconciliation year shown at Lines 5 through 16 should use the Net of Income Tax Variance with Collar value from Line 3c. Finally, it is necessary to insert new line 32a to Restore Deferred Income Taxes to the principal amount to be carried forward as the "Reconciliation with Interest" on line 33.

The proposed changes are shown on Exhibit 2 to this Complaint.

Wherefore, the People request that the Commission open an investigation and hold a hearing on whether a change to Schedule FR A-4 recommended herein is necessary to allow the Commission to correctly apply interest on the reconciliation balance and assure that the Rate MAPP formula rate tariff complies with the law and results in just and reasonable rates.

Relief Requested

Pursuant to Sections 9-201(b), 9-250 and 16-108.5(c)(6) of the Act, the People of the State of Illinois request the following relief:

- a) Suspend Ameren's August 19, 2013 tariff and hold a hearing to investigate Ameren's requested changes and determine the appropriate formula, rates and charges for Ameren Illinois Company;
- b) Consolidate this matter with ICC Docket No. 13-0301, pursuant to motion;
- c) Modify Rate MAPP to reflect the changes listed in Counts I through III above;
- d) Direct Ameren to set delivery service rates to reflect the just and reasonable rates that result from the changes to the formula rate protocols sought in this Complaint 30 days after the changes approved by the Commission;

e) Order such relief as the Commission deems just and reasonable.

Respectfully submitted,

The People of the State of Illinois

By LISA MADIGAN, Attorney General



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VERIFICATION

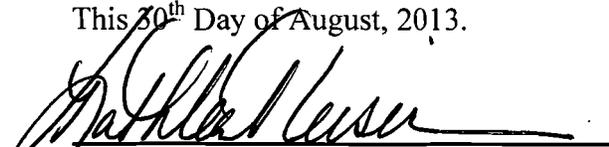
STATE OF ILLINOIS)
)
COUNTY OF COOK)

Susan L. Satter states that she is a Senior Assistant Attorney General in the Public Utilities Division in the Illinois Attorney General’s Office, that she has read the foregoing *COMPLAINT BY THE PEOPLE OF THE STATE OF ILLINOIS TO SUSPEND TARIFF CHANGES SUBMITTED BY AMEREN ILLINOIS AND TO INVESTIGATE AMEREN ILLINOIS RATE MAPP PURSUANT TO SECTIONS 9-201, 9-250 and 16-108.5(c) OF THE PUBLIC UTILITIES ACT*, that she knows the contents thereof, and that to the best of her knowledge, information and belief, based upon reasonable inquiry, the contents are true and correct.



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Signed and sworn to before me
This 30th Day of August, 2013.



Notary Public