

**STATE OF ILLINOIS  
ILLINOIS COMMERCE COMMISSION**

People of the State of Illinois	)	
	)	
	)	
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.	)	
	)	Docket Nos. 13-0501, 13-0517 (Cons.)
Ameren Illinois Company	)	
d/b/a Ameren Illinois	)	
	)	
Revisions to its formula rate structure	)	
and protocols.	)	

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**REPLY BRIEF OF THE STAFF OF THE  
ILLINOIS COMMERCE COMMISSION**

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The Staff (“Staff”) of the Illinois Commerce Commission (“Commission” or “ICC”), by and through its counsel, and pursuant to Section 200.800 of the Commission’s Rules of Practice (83 Ill. Adm. Code 200.800), respectfully submits this Reply Brief in the above-captioned matter.

**I. Introduction**

**A. Staff’s Position**

Staff’s position, distilled down to its very essence, rejects the notion that the Energy Infrastructure Modernization Act (“EIMA”) should be interpreted in such a way that the Commission would effectively be prohibited in an annual update proceeding from reflecting changes in its formula rate order to a utility’s revenue requirement

related to known imprudent and unreasonable costs. Under Staff's position, the Commission would be able to enter an order approving only those costs that it determines to be prudent and reasonable. By not adopting Staff's position on this issue, the Commission would be placed in the impossible situation of violating the EIMA if the Commission knowingly approves a revenue requirement that contains imprudent and unreasonable costs.

As explained in its Initial Brief ("IB"), Staff recommends that the term "formula rate *structure*" be defined as the Commission-approved tariff set forth as Rate MAP-P, Tariff Sheet Nos. 16 – 16.013. The specific schedules which would make up the formula rate structure are Schedules FR A-1 and FR A-1 REC, which appear in the Rate MAP-P tariff on 2nd Revised Sheet No. 16.002, 2nd Revised Sheet No. 16.003, and 4th Revised Sheet No. 16.004. (Staff Ex. 8.0, 2:36-39.) Staff recommends that the term "formula rate *template*" be defined to encompass all of the schedules, appendices and associated workpapers listed as a reference or source in the tariff Rate MAP-P other than Schedules FR A-1 and FR A-1 REC which are wholly incorporated in the Rate MAP-P tariff itself. This recommendation is for ease of reference and to provide the Commission, on a going-forward basis, with a useful and consistent term for such underlying documentation. The supporting schedules, appendices, and workpapers provide guidance on the development of the inputs for Schedules FR A-1 and FR A-1 REC that are in the Rate MAP-P tariff (i.e., the formula rate structure) and, therefore, Staff believes the term "formula rate template" would distinguish the underlying documentation from the term "structure" referred to in the Energy Infrastructure Modernization Act ("EIMA").. (See Commonwealth Edison Co., ICC Docket No. 12-

0321, Order at 105 (December 19, 2013).) Staff’s approach provides a straight forward demarcation between the formula’s structure and the underlying documentation. Alternatively, if the Commission prefers not to define terminology (i.e., formula rate template) that has been already been used by parties in preceding dockets, Staff suggests that the Commission limit its clarification to the statutory term “structure” from EIMA, as recommended above.

### **B. Ameren’s Position**

The Ameren Illinois Company d/b/a Ameren Illinois (“Ameren” or “Company”) , on the other hand, argues that the “formula rate *structure*” should include Schedules FR A-1 and FR A-1 REC, as well as supporting Schedules FR A-2 through FR D-2, and Appendices 1 through 11 inclusive, but is exclusive of the workpapers listed on 2nd Revised Sheet No. 16.006. (Ameren Ex 6.0, 4:68-72.) The Company also contends that the formula rate *template* “represents the formula rate structure” Id. and includes the schedules and appendices listed in the tariff along with Schedules FR A-1 and FR A-1 REC, but excludes the workpapers listed in the tariff. (Staff Ex. 5.0, 11-15; Staff Ex. 6.0, 15-19.) Ameren’s proposal, however, regarding the definition of “structure” is arbitrary and inconsistent with the Commission’s duty to approve prudent and reasonable rates in update cases under IEMA. Under Ameren’s position, however, the mere format of supporting schedules would affect how an issue is considered for recovery through the formula rates, putting form over substance.

### **C. The Energy Infrastructure Modernization Act**

The EIMA indicates the main responsibility of the Commission in implementing formula based rates pursuant to Section 16-108.5 of the Public Utilities Act (“PUA” or

“Act”) is to “provide for the recovery of the utility’s actual cost of delivery services that are *prudently incurred and reasonable* in amount *consistent with Commission practice and law.*” 220 ILCS 5/16-108.5(c) (emphasis added). Indeed, in multiple references throughout EIMA the Commission is repeatedly charged to base cost determinations not otherwise specified in the statute on prudence and reasonableness and the Commission’s authority to make such determinations is affirmed, as exemplified in the following excerpts from the law:

Nothing in this Section shall prohibit the Commission from investigating the *prudence and reasonableness of the expenditures* made under the infrastructure investment program during the annual review required by subsection (d) of this Section and shall, as part of such investigation, *determine whether the utility’s actual costs under the program are prudent and reasonable.*

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

The performance-based formula rate approved by the Commission shall do the following . . . (2) [r]eflect the utility’s actual year-end capital structure . . . subject to a *determination of prudence and reasonableness* consistent with Commission practice and law; . . . (4) [p]ermit and set forth protocols, subject to the *determination of prudence and reasonableness* consistent with Commission practice and law.

220 ILCS 5/16-108.5(c)(2), (c)(4) (emphasis added).

Nothing in this Section is intended to allow costs that are not otherwise recoverable to be recoverable by virtue of inclusion in FERC Form 1.

220 ILCS 5/16-108.5(c).

Within 45 days after the utility files its annual update of cost inputs to the performance-based formula rate, the Commission shall have the authority, either upon complaint or its own initiative . . . to enter upon a hearing concerning the *prudence and reasonableness of the costs* incurred by the utility to be recovered during the applicable rate year that are reflected in the inputs to the performance-based formula rate derived from the utility’s FERC Form 1 . . . The Commission shall apply the same evidentiary standards, including, but not limited to, those concerning the *prudence and reasonableness of the costs* incurred by the utility, in the hearing as it

would apply in a hearing to review a filing for a general increase in rates under Article IX of this Act.

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

Ameren's position in this docket, however, would subvert the clear intent of the statute by significantly constraining the Commission's ability to make a determination of the prudence and reasonableness of the Company's actual costs within a formula rate update proceeding. Ameren opposes Staff's and Intervenors' proposed adjustments in formula rate update proceedings because, if adopted by the Commission, the adjustments would necessitate a change to a supporting schedule or appendix (which the Company argues are "structures or protocols" that cannot be adjusted in an annual update proceeding- even though the supporting schedules or appendices are not set forth in the approved formula rate tariff). Ameren's position is that the format of supporting schedules and appendices affects how an issue is considered for recovery through the formula rates. (Ameren Ex. 1.1, 12:205 – 223.) The Commission, however, clearly disagreed with the Company when the Commission addressed this very same issue when it first arose in the Company's Docket No. 13-0301 formula rate case:

The Commission understands AIC to be arguing that an adjustment proposed during a formula rate update proceeding can not be implemented if the existing template itself can not physically accommodate the adjustment. Such an approach places form over substance. The Commission does not accept that this is what the legislature intended when it adopted the EIMA and the later revisions thereto. *To do so would essentially eviscerate the Commission's ability to review formula rates under the EIMA and protect the public.*

(Ameren Illinois Company, ICC Docket No. 13-0301, Order at 150 (December 9, 2013) (emphasis added).)

The Company incorrectly claims no debate is necessary over the definitions of the terms at issue in this docket because the status quo is fine and to do otherwise invites litigation over changes to the supporting schedules and appendices in formula update proceedings. (Ameren IB, 2.) Staff, however, does find that debate is necessary. Moreover, the “status quo” is neither clear nor of such long standing that it has survived the test of time and should be respected for that. The People of the State of Illinois (“AG”) and Citizens Utility Board (“CUB”) agree that in the few formula rate cases before the Commission, parties have interchangeably used the terms “formula rate structure” and “formula rate template.” (AG IB, 4; CUB IB, 4.) Moreover, the subject of litigation in a formula rate update proceeding should not be, as Ameren suggests, resolved based on the physical appearance or format of the schedules and appendices that are not included in its approved formula rate tariff. Rather, the subject of litigation in a formula rate proceeding has been and continues to be the authorized amounts to be reflected in (1) the filing year revenue requirement; (2) the reconciliation year revenue requirement; and (3) the ROE collar adjustment, if any, that are in turn reflected on Schedules FR A-1 and FR A-1 REC of the compliance filing. It appears the only party who would like to litigate such an irrelevant matter as the appearance and format of a supporting document in the future is the Company itself.

## **II. Argument**

### **A. Should "formula rate structure" be defined to mean the approved tariff set forth in Ameren's tariffs as Rate MAP-P, Tariff Sheet Nos. 16 – 16.013?**

#### **1. Ameren's position on what is included in "formula rate structure" does not comport with Commission Orders or EIMA.**

Ameren incorrectly claims that because the Commission could not have entered an order in Docket No. 12-0001 approving a revenue requirement to be recovered through the formula rate without the detail formula calculations contained in all of its supporting schedules and appendices, such supporting schedules and appendices must be considered a part of the formula rate structure and protocols. (Ameren IB, 4.) This argument fails for two reasons. First, a vast portion of Ameren's detail formula calculations that feed into its schedules and appendices came from several workpapers; yet, Ameren consistently excludes those workpapers from its definition of the formula rate structure and protocols. (Id., 8; Ameren Ex. 7.0, 2.) Ameren's argument provides no rationale that would justify both the *inclusion* of one set of underlying documents (schedules and appendices) in the definition of structure and the *exclusion* of another (workpapers)- other than arbitrary line drawing. If Ameren truly believed that the detail formula calculations should be part of the formula rate structure, then Ameren should have also proposed to include the workpapers upon which all the schedules and appendices rely for their respective formula rate calculations; otherwise, Ameren's argument is internally inconsistent. Further, Ameren has never explained how its argument that only supporting schedules and appendices, but not workpapers, are part of the formula rate structure comports with the provisions of EIMA. .

Second, while the detailed schedules and appendices are important in the understanding of the adjustments to the authorized revenue requirement, it is only the revenue requirement that the Commission ultimately approved that was presented in the Final Order in Docket No. 12-0001 and reflected in Schedule FR A-1 in the

Company's compliance filing.<sup>1</sup> In Docket No. 12-0001, with the exception of the two schedules that were in its approved formula rate tariff, Schedules FR A-1 and FR A-1 REC, the Commission did not approve any of the filed schedules and appendices that detail the formula calculations that feed into Schedule FR A-1 and FR A-1 REC. In fact, the Commission concluded in Docket No. 12-0321, that it was

“more appropriate for ComEd to fill out the formula rate template with actual values derived from the Order at that time, rather than ask Staff, who did not develop the very complex template, to do so as part of this Order. Having the fully populated formula rate template included as part of the compliance filing rather than attached to this Order will decrease the likelihood of unintended errors. If ComEd desires further disclosure, the Company may include the formula rate schedules in its compliance filing rather than just in workpapers.”

(Commonwealth Edison Co., ICC Docket No. 12-0321, Order at 105 (December 19, 2013).)

The Commission's decision correctly recognizes that at the end of the day, it is not the physical format or appearance of underlying documentation that matters; but rather, whether the resulting revenue requirement reflects prudent and reasonable costs incurred by the utility. That resulting revenue requirement calculation appears in the Company's compliance filing as Schedule FR A-1 and FR A-1 REC. Through the thorough vetting of the proposed adjustments by parties within a formula rate proceeding, the Commission is able to determine from record evidence the adjustments needed to ensure that the approved revenue requirement reflects: (1) the appropriate cost of equity calculation required by EIMA; (2) the appropriate ROE collar calculation as required by EIMA; and (3) the appropriate treatment of plant assets in rate base and

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<sup>1</sup> While the Commission also approved the format of Schedule FR A-1 REC in Docket No. 12-0001, there was no reconciliation revenue requirement that had to be approved.

operating expenses as required by EIMA. And where a reconciliation applies, the Commission is also able to determine from record evidence the adjustments needed to ensure that the approved reconciliation revenue requirement that appears on Schedule FR A-1 REC is prudent and reasonable and reflects the appropriate reconciliation methodology as required by EIMA.

**2. Ameren mischaracterized the recent Fourth District Appellate Court Case for the proposition that formula rate structure is broader than the current tariff.**

Ameren cites a recent decision by the Fourth District Appellate Court for the proposition that the formula rate structure is broader than the current tariff. (Ameren IB, 5.) The Company, however, mischaracterizes the issue that was addressed by the Court and relies on its mischaracterization to derive its flawed conclusion.

The relevant portion of the Appellate Court decision on the vacation accrual adjustment referred to by Ameren is as follows:

We initially note it has not been consistent with the Commission's practice or law to reduce a public utility's rate base by accrued vacation pay; in fact, the Commission has only done so in this case and in Commonwealth Edison's related case (Illinois Commerce Commission No. 11-0721, order of May 29, 2012), which is now pending on appeal. The Commission's assertion that accrued but unused vacation pay results in additional monies for Ameren's use is suspect given Ameren's liabilities associated with the funds. *However, because of our discussion below, we are not required to decide whether a reduction of the rate base by accrued but unused vacation pay is appropriate.*

*We agree with the Commission's argument that it lacked authority in No. 12-0293 to recalculate the rate base during the reconciliation proceedings.* Subsection (c) of the Modernization Act pertains to the establishment of the initial performance-based formula rate, while subsection (d) governs proceedings during the annual reconciliation process. 220 ILCS 5/16-108.5(c), (d) (West 2012). Subsection (d)(1) provides "[t]he first such reconciliation is not intended to provide for the recovery of costs previously excluded from rates based on a prior Commission order finding

of imprudence or unreasonableness." 220 ILCS 5/16-108.5(d)(1) (West 2012). Under subsection (d)(3), "the Commission shall not \*\*\* have the authority in a proceeding under this subsection (d) to consider or order any changes to the structure or protocols of the performance-based formula rate approved pursuant to subsection (c) of this Section." 220 ILCS 5/16-108.5(d)(3) (West 2012). *In other words, the plain, unambiguous language of subsections (d)(1) and (d)(3) prohibited the Commission from reconsidering the initial performance-based formula rate during the first annual reconciliation proceeding at issue in No. 12-0293.* 220 ILCS 5/16-108.5(d)(1), (d)(3) (West 2012).

*We therefore conclude the Commission lacked the authority to recalculate the rate base during the first reconciliation proceeding and properly refused to alter the rate base by removing the calculation for accrued but unused vacation pay.*

(Ameren Illinois Co. v. Illinois Commerce Commission, 2013 IL App (4<sup>th</sup>) 121008, ¶44-46 ("Appellate Decision") (emphasis added).)

In the Appellate Decision, Ameren claimed that unused vacation pay could not be deducted from rate base. Ameren did not challenge this issue in Docket No. 12-0001, Ameren's initial formula rate filing, but presented the argument for the first time in Docket No. 12-0293. The Court found that the Commission was correct in rejecting the Ameren position to recalculate the rate base the Commission had set in a prior formula rate case in a subsequent case (i.e., a reconciliation proceeding). Ameren's reliance on this case as supportive of its argument is misplaced. It is clear from the Court decision above that it is irrelevant whether the expense being appealed by Ameren was, or was not, reflected in any schedule or appendix or workpaper supporting its formula rate filing. Further, Ameren has failed to demonstrate how its contention that this Appellate Decision confirms that the formula rate structure is broader than the current formula rate tariff. Ameren's appeal appears to be an attempt to subvert the intent of the statute by asking for another bite at the proverbial apple, that is, to re-litigate an issue Ameren lost

during its initial formula rate proceeding in the subsequent reconciliation proceeding, even though such action is expressly prohibited by EIMA.

**3. Staff's position does not eliminate the need for Section 9-201 proceedings as required by EIMA.**

Ameren argues that Staff's proposal would "effectively eliminate the need for Section 9-201 proceedings." (Ameren IB, 7.) This is patently false. Rather, what is at issue in this proceeding is where the line is drawn between the "structure" that may be revised only in a Section 9-201 proceeding and the underlying documentation that does not require a Section 9-201 filing. Staff's proposal requires that changes to the formula rate structure (Schedules FR A-1 and FR A-1 REC), which are specifically included in Ameren's formula rate tariff Rate MAP-P, must be approved by the Commission through a Section 9-201 filing. In contrast, Staff proposes that changes in the underlying schedules, appendices and workpapers are not required to be made only in a Section 9-201 filing. Having a definition of formula rate structure as proposed by Staff would make identifying changes to the formula rate structure that require approval by the Commission through a Section 9-201 filing easier and would be consistent with the language in EIMA. Ameren would draw the line not between the tariff and its underlying documentation but rather, between workpapers and the schedules and appendices such workpapers support. Staff sees no legitimate reason to distinguish workpapers from other documentation that support the tariff.

In attempting to distinguish various terms used in EIMA, Ameren contends Staff's position is that the formula rate tariff and formula rate structure are the same. (Ameren IB, 7.) . This is an oversimplification. Staff's proposal is simply that FR A-1 and FR A-1

REC are the formula rate schedules that are included in the term “formula rate structure”. These are the only two schedules identified and specifically approved by the Commission in its Order in Ameren’s initial formula rate filing. (Ameren Illinois Company, ICC Docket No. 12-0001, Order at 151 (Sept. 19, 2012).)

Ameren goes to great lengths to claim that pursuant to statutory construction principles, the use of the word “tariff” in EIMA does not mean the same as the use of the phrase “formula rate structure and protocols.” Staff does not disagree. Staff recognizes that the statute did not require the tariff to include everything that makes up the structure and protocols referred to in EIMA. Nevertheless, it is Staff’s position that the Commission’s orders did require the Company to tariff its formula rate structure and protocols (Schedules FR A-1 and FR A-1 REC) for any number of administrative reasons, including transparency and clarity. Ameren is trying to create confusion in what Staff means by use of the term “formula rate structure.” However, in interpreting what is meant by “formula rate structure,” Staff is being consistent with Commission decisions under EIMA and the language of EIMA itself. Id.

#### **4. EIMA distinguishes between “structure” and “protocol”**

Ameren asserts that the concept of “structure” must be considered together with the concept of “protocol.” (Ameren IB, 9.) This argument is a red herring. First, the EIMA specifically sets forth what “protocols” are under the Act. 220 ICLS 5/16-108.5(c)(A)-(I). The use of that term is not in dispute in this proceeding. Staff has stated that EIMA sets forth specific protocols which cannot be changed in a formula rate update and require approval through a Section 9-201 filing. 220 ICLS 5/16-108.5(c)(A)-(I); (Staff Ex. 9.0, 5.) Further, the Commission cannot change what the formula rate is

supposed to accomplish, as set forth in Section 16-108.5(c)(1)-(6), for example, including the methodology for the calculation of cost of equity as set forth in Section 16-108.5(c)(1)-(3) .

Without providing any statutory construction principle for support, Ameren argues that “the concept of ‘structure’ must be considered with the concept of ‘protocol.’” (Ameren IB, 9.) Ameren could not provide such support for its position because none exists. Rather, statutory construction requires the Commission give each word in the statute meaning. Ameren’s conflation of “structure” with “protocol” is inappropriate as it would negate the meaning behind at least one of these terms. Even Ameren admits the Commission “cannot adopt an interpretation of the Act that would conflate terms the legislature clearly intended to distinguish.” (Ameren IB, 8 (*citing In re Ill. Bell Switching Station Litig.*, 161 Ill. 2d 233, 262 (1994)).) More importantly, it is well established that “a statute should . . . be construed, where possible, so that no clause is rendered meaningless or superfluous.” (*People v. Folkers*, 112 Ill. App. 3d 1007, 1009 (1983) (*citing People v. Lofton*, 69 Ill. 2d 67, 72 (1977)).) Ameren’s position that the Commission should consider “structure” together with “protocol” in the entire context of EIMA effectively renders either term meaningless; if the Legislature had wanted these terms to be considered only together, the Legislature could have easily made that clear. The Legislature did not; rather, the Legislature repeatedly reinforced that the terms were separate and had separate meanings as reflected in the language in EIMA. See, *generally*, 220 ILCS 5/16-108.5.

Ameren, in its effort to discount Staff’s position as “causing confusion,” takes certain liberties in citing to the February 20, 2014 transcript of the evidentiary hearing in

this docket, thereby creating its own confusion. The Company's characterization of the cross examination cited would lead one to believe that there would be a limit on proposals that can be made by the parties in a formula update case in the event that Staff's proposal is not accepted. (Ameren IB, 11.) To the contrary; there is no limitation on what any party may propose in a formula rate update case or indeed in any proceeding before the Commission. And as Ms. Ebrey stated, the Commission would need to respond to any proposals brought before it. (Tr., 107, 112.) However, the Commission must abide by the law in reaching its decisions and for example, to the extent that a threshold is set in the statute, the Commission must abide by that threshold when making its determination (e.g., the \$3.7M threshold for Deferred Charges). Ameren's position, if adopted, could also produce absurd results.

**5. Acceptance of Ameren's position would result in procedural and legal problems contrary to the EIMA.**

The absurdity of Ameren's argument that no changes to supporting schedules and appendices can be made in a formula rate update proceeding to reflect the Commission's approved adjustments, except in a separate Section 9-201 filing, is apparent when one considers the practical outcome of such a position -- the Commission would have to approve *affirmatively* a rate as prudent and reasonable notwithstanding evidence to the contrary in underlying documentation that and further, notwithstanding EIMA's directive to the Commission to make findings of prudence and reasonableness.. Moreover, the Commission cannot interpret a statute in a manner "which would produce absurd results[, which] are to be avoided if alternative interpretations consistent with the legislative purpose are available." (Griffin v. Oceanic Contractors, Inc., 548 U.S. 564, 575 (1982); Center for Biological Diversity v. E.P.A.,

722 F.3d 401, 411 (D.C. Cir. 2013) (“a statute should not be construed to produce an absurd result.”).)

For example, assume a situation where the Commission in an annual update proceeding is inclined to adopt several adjustments to remove imprudent or unreasonable operating expenses that have a total impact of a reduction of \$1 million to a utility’s revenue requirement. Assume further that adopting such adjustments would require a physical change to be made to Schedule FR C-1 and App 7 (i.e., inserting additional rows and verbiage to reflect the adjustment), two schedules that are not in any utility’s formula rate tariff. Under Ameren’s position, the Commission would effectively not be able to order the reduction of \$1 million of imprudent and unreasonable costs in its formula rate order. Instead, the Commission would have to approve the revenue requirement as reasonable and keep the rates in place if and until the utility makes a separate Section 9-201 filing to make changes to the form of the schedules that would accommodate an adjustment to disallow the same \$1 million of costs as imprudent and unreasonable. The procedural and legal problems presented in this example are significant.

First, the Commission is required by EIMA to “provide for the recovery of the utility’s actual cost of delivery services that are *prudently incurred and reasonable* in amount consistent with Commission practice and law.” 220/ILCS 5/16-108.5(c) (emphasis added). In this scenario, however, the Commission would be prevented from approving a formula rate revenue requirement that reflects *prudently incurred and reasonable costs* as it would knowingly have to include \$1 million of imprudent and unreasonable expenses in violation of EIMA. This would be the practical result because

the Commission is required by EIMA to issue its formula rate order within 270 days from the time the utility makes its formula rate filing. Id. By the time the Commission receives the Proposed Order issued by the Administrative Law Judges, approximately 240 days would have already elapsed. Therefore, unless the Commission somehow knew close to the beginning of the utility's formula rate filing and before the record was complete which costs the Commission would deem unreasonable or imprudent, the Commission would not have sufficient time to conclude the Section 9-201 case and reflect its conclusions there in its formula rate order. In other words, the Commission would be placed in the impossible situation of violating the EIMA if the Commission knowingly approves a revenue requirement that contains unjust and unreasonable costs. Such an interpretation of EIMA would render it internally inconsistent. A better view is that EIMA intended the Commission to fulfill the statute's obligation to review and approve just and reasonable costs.

Second, a Section 9-201 filing contemplates a utility filing with the Commission its proposal to change the utility's filed rates as opposed to the Commission initiating a proceeding to accomplish the same end. Instead, the Act authorizes the Commission to initiate a proceeding under Section 9-202 or Section 9-250 in order to address issues that the Commission sees with regard to the utility's current rates. Therefore, a key problem that arises is whether the utility would even voluntarily file a Section 9-201 case that would result in a reduction of \$1 million to the utility's approved revenue requirement. And if the utility did not do so, the Commission would then have to initiate a Section 9-202 or Section 9-250 proceeding in order to reduce the formula rates by \$1 million found to be imprudent and unreasonable. In either case, unnecessarily initiating

a new and separate proceeding is a drain on the limited resources of all parties, particularly on the Commission.

Third, assuming for the sake of argument that a utility voluntarily files a Section 9-201 filing reflecting a proposal to reduce its revenue requirement by \$1 million, unless that Section 9-201 proceeding has an order issued by December 1, the formula rates for the following year will reflect the \$1 million of imprudent and unreasonable costs. This is because EIMA also requires that where a change to the formula rate structure or protocols is made, such change should be made at the same time new rates take effect “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.” Id. Since new formula rates are effective on the first date of the rate year, or January 1, 30 days prior to that date would be December 1. It is highly unlikely, however, that a Commission Order from a contested 11-month Section 9-201 proceeding would be issued by December 1, which would already be 240 days (8 months) into the formula rate proceeding. For a Section 9-201 Order to be issued by December 1, such Section 9-201 case would have to have been filed 11 months prior (January 1) which is a little over three months before the formula rate update proceeding would have even commenced (typically in April). The conundrum then is how could the utility know three months prior to when it files its formula rate case the costs that will be contested in the case, let alone the costs that the Commission will find to be imprudent and unreasonable? The answer simply is: it can't. In a perfect world, if all parties to the Section 9-201 proceeding agreed on all the formula rate revenue requirement adjustments *and* agreed to an expedited proceeding,

perhaps a December 1 Order could be attained. There is, however, no guarantee that would occur every time.

These troubling legal and procedural problems that result from adopting the Company's proposal also result in formula rates that are not just, prudent, or reasonable. It is difficult to conceive that the Legislature embarked upon this new form of ratemaking only to ensure that the Commission would effectively have no authority to determine and ensure that only prudent and reasonable costs can be recovered from ratepayers.

**B. Should the “formula rate template” be defined to mean the formula rate schedules (other than FR A-1 and FR A-1 REC), appendices, and related work papers?**

Ameren claims that Staff's definition of the “formula rate template” in this case “does not accord with any prior Commission cases.” (Ameren IB, 12.) This, however, is not the case; Staff's position is consistent with the Commission's conclusion that a “template is merely a guideline, not a fully realized creation” as stated in the December 19, 2012 Order in Docket No. 12-0321. (Staff IB, 10.)

In citing to Staff's Initial Brief in the last ComEd formula rate update, Docket No. 13-0318, the Company mischaracterizes Staff's discussion concerning what schedules should be utilized to present the adjustments and resulting final revenue requirements approved by the Commission. (Ameren IB, 12-13.) Staff criticized the formula rate schedules because the formula rate schedules do not provide the necessary transparency in the formula rate proceeding. (ICC Docket No. 13-0318, Staff IB, 67-68.) The Commission agreed with Staff. (Commonwealth Edison Co., ICC Docket No. 13-0318, Order at 87 (December 18, 2013).) The Company's characterization of the cited

document only serves to further support the notion that there is not a uniform understanding among the parties of what exactly is included in the “formula rate template.”

Ameren complains that adding workpapers into the definition of a formula rate template would not allow such documents “to remain dynamic throughout annual update proceedings...” (Ameren IB, 13.) As Ameren explains, “there are hundreds of changes to the inputs and calculations described on AIC’s workpapers; these changes could reflect AIC’s agreement to or acceptance of another party’s proposal, for example.” Id. Staff agrees. What is not clear is how inclusion of workpapers in the definition of a “formula rate template” would mean constraining the ability to change such workpapers. Under Staff’s proposed definitions of formula rate structure and formula rate template, it would not have that constraint. The problem Ameren complains about would exist only if its proposed definition of formula rate structure and formula rate template are adopted. In Ameren’s incorrect view, both terms are synonymous. Thus, anything made part of the template, like the schedules and appendices, would necessarily require a Section 9-201 proceeding to be changed under Ameren’s distorted view. This problem created by Ameren’s own proposal is another reason why Ameren’s proposed definitions should be rejected. Therefore, Staff continues to recommend that the term “formula rate template” be defined to encompass all of the schedules, appendices and associated workpapers listed as a reference or source in the tariff Rate MAP-P other than Schedules FR A-1 and FR A-1 REC which are wholly incorporated in the Rate MAP-P tariff itself.

As an alternative recommendation to Staff’s position on this issue, since the term “formula rate template” is not used in either EIMA or the PUA, the Commission could

decide that it is not necessary to define this term. Although the parties and even the Commission have used this term during the formula rate proceedings, all those who have used the term do not appear to have the same definition of what “formula rate template” means. In the event a uniform definition of this term cannot be made, Staff would propose that Commission find that the term “formula rate template” should not be used by the parties in testimony or briefing in future formula rate update proceedings.

**C. Should changes to only Schedules FR A-1 and FR A-1 REC require Commission approval through a Section 9-201 filing?**

Consistent with Staff’s position explained *supra*, only changes to Schedules FR A-1 and FR A-1 REC should require Commission approval through a Section 9-201 filing. The following three reasons further elaborate why Staff’s position is the correct one.

First, Staff’s proposed position is consistent with both past Commission common practices and the EIMA. In traditional rate cases, subsequent to the Commission issuing a Final Order, the supporting schedules containing detail rate calculations filed by the utility under Part 285 (“sub-schedules”) have never been changed to correct errors and ensure compliance with the Commission’s substantive conclusions on individual issues and the overall revenue requirement or rate. Once the utility filed its proposed revenue requirement, the Commission evaluated the justness and reasonableness of all components of that proposed revenue requirement. The utility’s sub-schedules, even if updated by the utility with data from the record to support its position, are never retroactively changed to conform to the Commission’s Final Order because in the final analysis what matters is that the resulting revenue requirement is just and reasonable. In other words, the Commission has never considered changes to

the sub-schedules supporting the utility's revenue requirement to require a Section 9-201 proceeding.

Further, the recent 4<sup>th</sup> District Appellate Court Opinion expressly found, when addressing another Ameren formula rate update proceeding, that traditional rate case past practices survive EIMA, unless specifically replaced. The Appellate Court noted that:

The Commission contends it is common practice to make ADIT adjustments to a rate base, and the Commission has the authority under the Modernization Act to rely on its common practices in determining a just and reasonable rate.

Appellate Decision at ¶ 38.

The Appellate Court agreed with the Commission and concluded that:

As it was consistent with the common practice of the Commission to include ADIT in the ratemaking process, we conclude the Commission did not err by including the ADIT adjustment for projected plan additions in its ratemaking calculation.

Appellate Decision at ¶ 40.

Staff interprets this holding to mean that unless EIMA unambiguously replaces a Commission past common practice in a traditional rate case under Article IX, that common practice survives the enactment of EIMA. As noted above, the common practice in traditional rate cases was *not* to treat the sub-schedules as requiring a Section 9-201 proceeding for changes as these updates to schedules simply were not required once the revenue requirement was determined (although any adjustments that had an impact to the rates in a traditional rate case were, of course, taken into account in the Commission's decision).. The Appellate Court also indicates in its decision

quoted above that the Commission should not change that common practice unless EIMA expressly requires it. This is entirely consistent with EIMA.

EIMA states that:

The performance-based formula rate shall be implemented through a *tariff* filed with the Commission consistent with the provisions of this subsection (c) that shall be applicable to all delivery service customers.

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

EIMA further provides that:

The utility shall file, *together with its tariff, final data* based on its most recently filed FERC Form 1, plus projected plant additions and correspondingly updated depreciation reserve and expense for the calendar year in which the tariff and data are filed, that shall populate the performance-based formula rate and set the initial delivery services rates under the formula.

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

The specific language “together with” clearly treats the tariff containing the performance-based formula rate (including schedules FR A-1 and FR A-1 REC) distinctly from all the other *final data*. Although EIMA requires “[s]ubsequent changes to the performance-based formula rate structure or protocols shall be made as set forth in Section 9-201 of this Act,” EIMA also expressly retains the Commission’s overall Article IX authority.

In sum, in traditional rate cases changes to the sub-schedules containing the detail rate calculations were never treated as requiring Sec. 9-201 approval. This common practice survives the enactment of EIMA. EIMA itself treats the performance-based formula rate tariff distinctly from all other *final data* contained in the detail rate calculations reflected in the supporting schedules, appendices and workpapers. Consequently, there is no reason to think that changes made in the formula rate

schedules appendices and workpapers, excluding schedules FR A-1 and FR A-1 REC, would require a Section 9-201 proceeding.

Second, the Company criticizes Staff's proposal that only changes to Schedules FR A-1 and FR A-1 REC require approval through a Section 9-201 filing, claiming that Staff would improperly allow protocols not reflected on those schedules to be changed in an annual update proceeding. (Ameren IB, 14.) This is false and unfounded. Staff identifies its understanding of "protocols" to be limited to those specifically outlined in Section 16-108.5(c)(4) subparagraphs (A) through (I). Nothing in Staff's position would result in ignoring any statutory requirement and, in particular, the prohibition for changing protocols as specified in the law. While Subsection 16-108.5(c) allows for subsequent changes to be made to the formula rate structure or protocols pursuant to Section 9-201, Section 16-108.5(c) also *precludes* any changes that would be inconsistent "with paragraph (1) through (6) of this subsection (c)." 220 ILCS 5/16-108.5(c). In other words, this language renders it impossible for the Commission to change the protocols listed in Subsection 16-108.5(c)(4) subparagraphs (A) through (I) since such provisions fall within "paragraph (1) through (6) of this subsection (c)." Hence, Ameren's concern is moot since even if Staff's proposal changes a protocol, which it does not, the Commission would be precluded from adopting that proposal.

Third, Ameren claims that Staff admits its proposal for the requirement for a Section 9-201 filing is too narrow. (Ameren IB, 15.) Again, Ameren mischaracterizes Staff's testimony during cross examination. Staff witness Ebrey admitted that parties could make a variety of proposals during an annual updated reconciliation proceeding. However, Ms. Ebrey also indicated that parties in the two rounds of formula rate update

cases did not make proposals to remove or somehow change a line item on one of the schedules contained in the template. (Tr., 109, 110.) The parties' proposals were to make adjustments to the amounts included in the revenue requirements. The Company's line of cross, which focused on changing the appearance or format of a schedule (Ameren IB, 15.), simply moves the focus of evaluating a proposed adjustment based on the *merits* of the adjustment to judging whether a *form* restricts the Commission in its evaluation.

**D. Should the issues raised by Staff be deferred for consideration in the ordered formula rate rulemaking?**

Ameren claims that because Staff is asking the Commission to interpret the law in a way that will affect more than one utility, the matter should be addressed in a rulemaking. (Ameren IB, 16.) Both the AG and CUB agree with Staff that the issues raised in this case should not be deferred to a later rulemaking. (AG IB, 11-12; CUB IB, 12-13.)

Certain Commission conclusions have been reached in the Orders for both ComEd and Ameren without a rulemaking in prior formula rate cases. The Commission has consistently found which schedules filed by the utilities should be included in the tariffs for the formula rates. (See Docket Nos. 11-0721 and 12-0001.) Additionally, the Commission has consistently reached a conclusion on how Cash Working Capital should be calculated for the reconciliation year versus the filing year when issues on that line item were raised. (See Docket Nos. 13-0301 and 13-0318.) This practice is consistent with Ameren's acknowledgment that the Commission has the discretion (not an obligation) to "choose to use either rulemaking or contested case procedures" to

establish its policy. (Ameren IB, 16.) There is no compelling reason why the Commission should now deviate from that practice that has been in place for the first three rounds of formula rate proceedings of two utilities. Furthermore, to delay addressing this issue to a rulemaking would put the Commission in the position of possibly having no alternative but to approve as just and reasonable a rate that is known to be the opposite without any recourse to refunds. Furthermore, to delay addressing this issue to a subsequent rulemaking would put the Commission in the position of possibly having no alternative but to approve as just and reasonable a revenue requirement that is known to be the opposite, without any recourse to reexamination and consequently, Commission ordered refunds. See 220 ILCS 5/16-108.5(d) (“The Commission's determinations of the prudence and reasonableness of the costs incurred for the applicable calendar year shall be final upon entry of the Commission's order and shall not be subject to reopening, reexamination, or collateral attack in any other Commission proceeding, case, docket, order, rule or regulation, provided, however, that nothing in this subsection (d) shall prohibit a party from petitioning the Commission to rehear or appeal to the courts the order pursuant to the provisions of this Act.”).

### **III. Conclusion**

WHEREFORE, the Staff of the Illinois Commerce Commission respectfully requests that its recommendations be adopted in their entirety consistent with the arguments set forth in its Initial Brief and herein.

Respectfully,

\_\_\_\_\_/s/\_\_\_\_\_

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