

**STATE OF ILLINOIS  
ILLINOIS COMMERCE COMMISSION**

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

**BRIEF ON EXCEPTIONS ON BIFURCATED ISSUES  
OF THE CITIZENS UTILITY BOARD**

Now comes the Citizens Utility Board (“CUB”), pursuant to Rules of Practice of the Illinois Commerce Commission (“ICC” or “the Commission”), 83 Ill. Admin. Code Part 200.800, and pursuant to the briefing schedule established by the Administrative Law Judges (“ALJs”), to hereby file this Brief on Exceptions on Bifurcated Issues in the above-captioned proceeding.

**I. INTRODUCTION**

The Administrative Law Judges’ Proposed Order of May 9, 2014 (“Proposed Order” or “PO”) correctly decides that the Commission should resolve the issues briefed by the parties in this docket, rather than waiting on a future rulemaking, and properly defines the term “formula rate structure.” These are important determinations that will aid the Commission and parties in the future by establishing a uniform definition to be used and understood by all. However, the Proposed Order does not go far enough by simply adopting a uniform definition. The ultimate purpose of defining “formula rate structure” is to establish precisely what changes to Ameren

Illinois Company's ("Ameren's") formula rate tariffs and schedules can be adopted in an annual formula rate update under the Energy Infrastructure Modernization Act ("EIMA" or "Act"), 220 ILCS 5/16-108.5, and what changes can only be approved in a Section 9-201 proceeding. Indeed, the very purpose of bifurcating the issues addressed at this point in this docket was to make that determination.

The EIMA requires that changes to the formula rate "structure or protocols" shall be made in a Section 9-201 proceeding and not in a formula rate update proceeding. 220 ILCS 5-16-108.5(c), 220 ILCS 5-16.108.5(d)(3). When the Office of the Illinois Attorney General ("AG") and the ICC Staff ("Staff") filed testimony in Ameren's 2013 formula rate update proceeding, Ameren witnesses alleged certain of those proposals were changes to the formula rate "structure or protocols" and thus not possible within the context of that docket. Ameren Ex. 1.1 at 5:36-39. Ameren itself also desired to make certain changes to its "structure or protocols," and thus filed ICC Docket No. 13-0517 to effectuate those changes. The AG also filed a complaint, ICC Docket No. 13-0501, to investigate formula rate "structure and protocol" changes. Both cases were consolidated into the instant docket, whose purpose then is to conclusively determine what formula rate changes require a Section 9-201 proceeding and what changes may be made in a formula rate update proceeding. The Proposed Order's conclusion to define "formula rate structure" in line with Staff's proposed definition is a step toward that, but the Proposed Order's choice not to go one step further and affirm that only changes that fall under Staff's definition of "formula rate structure" or the Act's definition of formula rate "protocols" require a Section 9-201 proceeding falls short of accomplishing the goal of this case. At the conclusion of this docket, the Commission should make clear, and the parties should be put on notice, exactly what changes require a Section 9-201 proceeding. As the language in the

Proposed Order now stands, parties will likely continue to litigate these issues in case after case, year after year. That nearly negates the purpose of this docket and the tremendous time and effort all parties put into explicitly litigating these issues here. The Commission should go the final step of declaring that only changes to the formula rate structure, as defined by Staff and adopted by the Proposed Order, and the formula rate protocols, as specifically set forth in the Act, require a Section 9-201 proceeding.

**II. SHOULD CHANGES TO ONLY SCHEDULES FR A-1 AND FR A-1 REC REQUIRE COMMISSION APPROVAL THROUGH A SECTION 9-201 FILING?**

Ameren is a participating utility under the EIMA. Describing the annual formula rate update proceedings for participating utilities, the EIMA states that:

Subsequent to the Commission’s issuance of an order approving the utility’s performance-based formula rate structure and protocols, and initial rates under subsection (c) of this Section, the utility shall file, on or before May 1 of each year, with the Chief Clerk of the Commission its updated cost inputs to the performance-based formula rate for the applicable rate year and the corresponding new changes.

220 ILCS 5/16-108.5(d). The statute later states:

The Commission shall not, however, have the authority in a proceeding under this subsection (d) [a formula rate update proceeding] 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). That is in line with the statute’s earlier statement that “[s]ubsequent changes to the performance-based formula rate structure or protocols shall be made as set forth in Section 9-201 of the Act...” 220 ILCS 5/16-108.5(c). Based upon a clear reading of the statute, then, only changes to the formula rate “structure or protocols” require a Section 9-201 proceeding. Other changes may take place in a formula rate update proceeding.

The formula rate protocols are expressly delineated by the Act. In Section 108.5(c)(4) of the Act, the Commission is directed to approve performance-based formula rates that “Permit and set forth protocols, subject to a determination of prudence and reasonableness consistent with Commission practice and law, for the following...” The “protocols” are then listed in subsections (c)(4)(A)-(I). The Act sets forth additional aspects of the formula rate that the Commission cannot change in a formula rate update proceeding, such as the methodology for the calculation of the cost of equity, as set forth in Section 16-108.5(c)(1)-(6). Thus, it is clear what “protocols” require a Section 9-201 proceeding (and which simply cannot be changed except by the General Assembly). The only issue, then, has been what constitutes the “formula rate structure,” which also requires a Section 9-201 proceeding. That issue is settled by the Proposed Order in Section II.B.5., which should be adopted by the Commission. Assuming the Commission does adopt the Proposed Order’s definition of “formula rate structure,” then, there should be no real question as to exactly what changes require a Section 9-201 proceeding. The Act is clear that changes to the formula rate protocols, as set forth in the act, and changes to the formula rate structure, defined as schedules FR A-1 and FR A-1 REC, are the only changes to a formula rate that require a Section 9-201 proceeding.

The Proposed Order, however, finds that the Commission is “constrained” by the language in the Act, and because the Commission cannot envision with certainty exactly what changes may be proposed in the future, it will review such proposals on a case-by-case basis. That finding has two primary flaws. First, the language of the Act does not “constrain” the Commission from finding that only changes to schedules FR A-1 and FR A-1 REC, or to the protocols in the Act, require a 9-201 proceeding. In fact, the very opposite is true – the Act empowers the Commission to decree as much. As described above, the language in the Act is

very clear. Only changes to the formula rate “structure” or “protocols” – both of which have now been defined, require a Section 9-201 proceeding. It therefore necessarily follows that only changes that fall under one of those definitions require a Section 9-201 proceeding.

Second, the Proposed Order’s statement that it will review future changes on a “case-by-case” basis to determine whether they can take place in a formula rate update proceeding or whether they require a Section 9-201 proceeding not only negates the very purpose of this proceeding, but also results in administrative inefficiency. The reason that “formula rate structure” needed a consistent definition was so that all parties and the Commission understood what changes required a Section 9-201 proceeding. Establishing that definition was bifurcated in this docket because of the importance of making the determination of what changes could take place in an annual formula rate update and what could not. If not to make this ultimate determination, then the other issues in this docket would not exist. Therefore, the Commission should do what it set out to do in this docket, and should definitively state that only changes to the formula rate structure – defined as schedules FR A-1 and FR A-1 REC – or to the formula rate protocols – defined by the Act – require a Section 9-201 proceeding.

CUB therefore respectfully requests that the Commission make the following revisions to the Commission Conclusion on page 36 of the Proposed Order:

Exception No. 1

~~The Commission is constrained by the language in Section 16-108.5 of the Act. In the Commission's view, it is not possible to foresee all possible proposed changes to the support for Schedules FRA-1 and FR A-1 REC. The Commission believes it will be necessary to review any such proposed change on a case by case basis as it arises. The Commission finds it would be inappropriate to prejudge any such proposal. As noted, the Commission is constrained by the language of the Act and has no intention of entertaining frivolous proposed changes to the formula rate structure or protocols. Nevertheless, the Commission has~~

reviewed the parties' arguments and concludes that it can not reach a conclusion on this question at this time. Section 16-108.5(c) and 108.5(d)(3) of the Act make clear that only changes to the formula rate structure or protocols require a Section 9-201 proceeding. Because the Commission has adopted Staff's definition of "formula rate structure" (and because the formula rate "protocols" are explicitly set forth in the Act and are not at issue here), it necessarily follows that only changes to Schedules FR A-1 and FR A-1 REC should require Commission approval through a Section 9-201 proceeding. Changes to other schedules, tariffs, workpapers, etc. may be proposed and adopted in an annual formula rate update proceeding under Section 16-108.5(d).

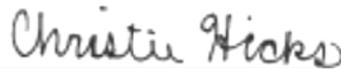
### III. CONCLUSION

WHEREFORE, CUB respectfully request that the Commission adopt the Proposed Order's conclusions with respect to the threshold issue and the definition of "formula rate structure," and amend the Proposed Order's conclusion at page 36 as described above.

Dated: May 23, 2014

Respectfully Submitted,

THE CITIZENS UTILITY BOARD



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