

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

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

**REPLY 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 Reply Brief on Exceptions on Bifurcated Issues in the above-captioned proceeding.

I. INTRODUCTION

The arguments set forth by Ameren in its Brief on Exceptions Regarding Bifurcated Issues (“Ameren BOE”) all essentially boil down to the same point – that Ameren disagrees with defining the term “formula rate structure” at all in this (or possibly any) proceeding. The record amply demonstrates a need to define that term, which governs the significant issue of what adjustments to a formula rate may be proposed in an annual update proceeding and what issues must instead be litigated in a separate 9-201 proceeding. The Commission has expressed a desire to define the term since the very first formula rate case – ICC Docket No. 11-0721 – was decided. The ALJ Proposed Order (“Proposed Order”) correctly notes that the Commission’s

final order in that docket called for a rulemaking proceeding on the topic, though one has yet to be initiated. Proposed Order at 5. Ameren’s proposal that the Commission “simply reject[] the ALJPO’s definition of ‘structure’ and continue[] under its existing practice” (a practice that does not formally define “formula rate structure”) ignores Commission’s stated desire in previous dockets. The Proposed Order does what the Commission has expressed that it wants – defines the term “formula rate structure” such that the Commission, participating utilities and all other parties use the term consistently and are on notice of what issues may be litigated in an annual formula rate update proceeding and what may not. The Commission should adopt the Proposed Order’s definition of “formula rate structure,” as well as the exception proposed in CUB’s Brief on Exceptions on Bifurcated Issues.

II. SHOULD "FORMULA RATE STRUCTURE" BE DEFINED TO MEAN THE APPROVED TARIFF SET FORTH IN AMEREN'S TARIFFS AS RATE 21 MAP-P, TARIFF SHEET NOS. 16 – 16.013?

Just as it did in its Initial Brief on Bifurcated Issues in this docket, the Ameren BOE relies on arguments that misinterpret the law and ignore important facts. For example, Ameren relies heavily on the Fourth District Appellate Court’s decision, which it claims interprets the term “structure” in a manner that is contrary to the Proposed Order’s definition. That simply is not so. The decision referenced by Ameren is the Fourth District Appellate Court’s decision in its review of Ameren’s initial formula rate case and its first reconciliation, ICC Docket Nos. 12-0001 and 12-0293. Ameren overlooks all of the facts underlying the decision, which was based on whether it was permissible to re-litigate previously excluded costs based on prudence and reasonableness. The court relied on Section 16-108.5(d)(1) of the Energy Infrastructure Modernization Act (“EIMA”), 220 ILCS 5/16-108.5, which 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). In ICC Docket No. 12-0293, Ameren attempted to re-litigate the issue of treating accrued vacation pay as an operating reserve and deducting it from rate base. Docket No. 12-0293, Final Order of December 5, 2012 at 12. In its conclusion, the Commission noted that it previously adopted that position (in Docket No. 12-0001) because that resulted in the proper ratemaking treatment for the item. *Id.* The Commission held that the facts in Docket No. 12-0293 had not changed, and even conducted further analysis as to why accrued vacation pay is indeed an operating reserve. *Id.* at 13. In other words, the Commission refused to “provide for the recovery of [a cost] previously excluded from rates based on a prior Commission order finding of imprudence or unreasonableness.” 220 ILCS 16-108.5(d)(1). Importantly, the Commission made no reference to whether a departure from its previous decision would have violated the EIMA’s requirement not to change the formula rate structure and protocols in the context of a reconciliation. That is because that was not the basis of the Commission’s decision. Rather, the basis was that the balance was previously found to be (and still was) prudently and reasonably deducted from rate base. Ameren is therefore incorrect that accrued vacation pay was not reconsidered because it was part of the formula rate structure or protocols. Rather, accrued vacation pay was not reconsidered because it was previously found to be imprudent and unreasonable for inclusion in rate base, and the Commission found that the facts continued to support that finding. Thus Ameren’s reliance on the supposed definition of “structure” provided by the Fourth District is misplaced, as the court’s decision only applied to the narrow circumstance of reconsideration of a cost deducted from rate base in the initial formula based on prudence and reasonableness. The basis of the decision had nothing to do with which schedule contained the adjustment, and whether that schedule was part of the “formula rate structure.”

Ameren further argues that “formula rates *have already been* successfully operating in a standardized manner under AIC’s definition of ‘structure.’” Ameren BOE at 8 (emphasis in original). It is hard to imagine how Ameren came to such a conclusion, given that in 2013 alone Ameren participated in four ICC dockets solely related to formula rate-setting. *See* ICC Docket Nos. 13-0301, 13-0385, 13-0501 and 13-0517. Those dockets were Ameren’s annual formula rate update (ICC Docket No. 13-0301), as well as amendments proposed by Ameren to its tariffs as a result of legislative changes (ICC Docket No. 13-0385), amendments proposed by Ameren to its formula rate structure to conform with another utility and to make housekeeping changes (ICC Docket No. 13-0517), and the Illinois Attorney General’s formal complaint requesting that the Commission investigate the tariff changes approved in Docket No. 13-0385, alleging that changes not authorized by PA 98-0015 were made in that docket (ICC Docket No. 13-0501). The latter two cases were consolidated into the instant case, which was then bifurcated, resulting in two separate rounds of testimony and briefing, to address various EIMA-related concerns. Ameren’s statement that formula rates have been “successfully operating in a standardized manner” is therefore unconvincing. Four cases in one year to address the same or similar issues hardly seems “successful” or “standardized.”

The only way for the formula rate to operate in a “standardized manner,” as Ameren notes is required by the EIMA (Ameren BOE at 3-7, *citing* 220 ILCS 5/16-108.5(c) and (d)), is for the Commission to formally define “formula rate structure” consistent with the Commission’s broad authority under the EIMA. Such definition should appropriately set the parameters of what the Commission may consider in the context of a formula rate update proceeding (and, conversely, what may only be considered in the context of a 9-201 proceeding). To have multiple proceedings for each participating utility – an annual formula update as well as a 9-201

proceeding to address any proposed changes to the schedules – is inefficient and contrary to the intent of the EIMA. The Proposed Order’s definition of “formula rate structure” is reasonable and allows the Commission to retain the authority granted in 16-108.5(c) while recognizing the legislature’s intent to keep formula rate update proceedings to a narrower scope than 9-201 proceedings.

Ameren purports that its definition of “formula rate structure” does not impinge up on the Commission’s authority because the Commission is still free to consider changes in a 9-201 proceeding. But that ignores the EIMA’s broad grants of authority to the Commission in 16-108.5(c) in a formula rate update proceeding – not just in a related 9-201 proceeding. The language of the Act is clear. In the annual update proceeding, the Commission’s investigation shall be “consistent with the provisions of this subsection (c) and the provisions of Article IX of this Act to the extent they do not conflict with this subsection (c).” 220 ILCS 5/16-108.5(c). That does not limit the Commission’s authority to 9-201 proceedings, but grants the Commission that same authority *in the annual update proceeding*. Ameren’s suggested definition of “structure” then, which Ameren asserts “merely ensure[s] that the changes to the formula itself be considered separately,” is not, in fact, in accordance with the EIMA. *See* Ameren BOE at 15.

III. SHOULD THE ISSUES RAISED BY STAFF BE DEFERRED FOR CONSIDERATION IN THE ORDERED FORMULA RATE RULEMAKING?

The Proposed Order correctly determines that the issues at hand should be decided in this docket rather than awaiting an as of yet uninitiated rulemaking. Proposed Order at 5. In order to address the issues raised here in a timely fashion, and to gain maximum benefit from the consistent use and understanding of the terms at issue, the Commission cannot wait another two years or more for a rulemaking to be completed. Ameren, however, continues to argue that the issues should be put off for a rulemaking largely because another utility, Commonwealth Edison

Company (“ComEd”) – to whom, under the Proposed Order – this decision would *not* apply – has not had an opportunity to participate in this docket. Ameren BOE at 18-19. While CUB maintains that this decision can and should be applicable to ComEd, the fact that Ameren’s primary argument is its supposed concern over the fairness to another utility demonstrates the frailty of its case. The Commission should adopt the Proposed Order’s conclusions with respect to the question of whether the issues raised by Staff should be deferred for consideration in the ordered formula rate rulemaking. CUB does not oppose Staff’s proposed addition to the Commission’s conclusion to make clear that, because the issues have been decided here, the previously-ordered rulemaking is now withdrawn. Staff Brief on Exceptions on Bifurcated Issues at 1-2.

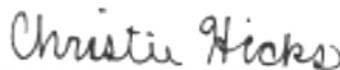
IV. CONCLUSION

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.”

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Respectfully Submitted,

THE CITIZENS UTILITY BOARD



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