

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

People of the State of Illinois)	
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)	
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.)	

**REPLY BRIEF ON EXCEPTIONS 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 200.830 of the Commission’s Rules of Practice (83 Ill. Adm. Code 200.830.), respectfully submits its Reply Brief on Exceptions (“BOE”) to the Administrative Law Judge’s Proposed Order (“ALJPO”) issued by the Administrative Law Judges (“ALJs”) on May 9, 2014.

I. Introduction

Initial Briefs (“IB”) were filed on March 7, 2014 by the Citizens Utility Board (“CUB”); the People of the State of Illinois (“People”); Staff; and Ameren Illinois

Company d/b/a Ameren Illinois (“Ameren”). Staff’s IB identified and responded to many, if not most, of the arguments raised in Ameren’s IB. Reply Briefs (“RB”) were filed by the respective parties on March 28, 2014. Staff, CUB, and Ameren filed substantive BOEs on May 23, 2014. Also on May 23, 2014, the People filed a BOE stating it took no exceptions to the ALJPO. Staff now respectfully submits this Reply Brief on Exceptions.

II. Contested Issues

A. The Commission should Uniformly Determine that Only Changes to the Formula Rate Structure and the Formula Rate Protocols Require a Section 9-201 Filing.

Each party that submitted a substantive BOE expresses concern that the Commission should make a definitive decision on whether only changes to the formula rate structure and the formula rate protocols require a Section 9-201 filing. (CUB BOE at 5; Ameren BOE at 17; Staff BOE at 6.) Staff agrees with CUB: “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 at 5.)

By requiring a Section 9-201 proceeding for changes to the formula rate structure or the formula rate protocols, the Commission ensures standardization of Ameren’s formula rates year over year. As CUB correctly notes, the statute is clear that the Commission has authority to consider or order any change other than those to the formula rate structure and the formula rate protocols. 220 ILCS 5/16-108.5(d)(3); (see CUB BOE at 3, 4-5.) If the Legislature has intended to limit the Commission’s authority to consider or order changes beyond the formula rate structure and the formula rate

protocols, it could have done so. It chose not to, indicating the Legislature's intent that the Commission's authority to consider and order changes to anything other than FR A-1 and FR A-1 REC remains in place. *Northern Moraine Wastewater Reclamation Dist. v. Ill. Commerce Comm'n*, 392 Ill. App. 3d 542, 565 (2d Dist., 2009) ("Under the principle of *inclusion unius est exclusion alterius*, the enumeration of one thing is construed as the exclusion of all others."). Ameren, however, repeatedly argues that the "formula is intended to remain fixed, or "standardized," from year to year. (Ameren BOE at 1.) As discussed above, the contemplated standardization is that of the formula rate structure and the formula rate protocols; accordingly, the Commission should find that any change to either the formula rate structure or the formula rate protocols would require a Section 9-201 filing, but that any other changes would not. (See Staff BOE at 5-6.)

Additionally, Ameren contends that "it has been AICs' belief and Commission practice[] that such changes to the formula calculations and methodology required approval in a separate Section 9-201 proceeding." (Ameren BOE at 2-3.) However, Ameren itself modified the values it used to calculate the Cash Working Capital from using the "filing year" inputs in its direct testimony to using the "reconciliation year" inputs in its rebuttal testimony in ICC Docket No. 13-0301 even without separate approval to do so under a Sec. 9-201 proceeding. *See, generally*, ICC Docket No. 13-0301. That change is a change in the calculation of the component of rate base. Ameren did not request or receive Commission approval to make that change. *See id.* Clearly, neither the Commission nor Ameren has functioned under the "practice" Ameren contends above. (See Ameren BOE at 2-3; ICC Docket No. 13-0301.)

B. The ALJPO correctly delineated between formula rate structure and formula rate tariff, and is more reasonable than AIC's interpretation of those terms.

First, Ameren claims that “the ALJPO incorrectly assumes that the formula rate tariff and the formula rate structure are the same thing.” (Ameren BOE at 2.) However, the ALJPO does not equate the formula rate structure with the formula rate tariff; the ALJPO defines the formula rate structure to be the approved format of the Schedules FR A-1 and FR A-1 REC. (ALJPO at 18-19.) The only formula rate “structure” that was approved by the Commission is contained within the formula rate tariff as Schedules FR A-1 and FR A-1 REC. The formula rate revenue requirement approved by the Commission has always been attached as an appendix to the Order in each formula rate case and has never included the supporting schedules, appendices (which Ameren claims are included in the formula rate structure) or work papers.(Order, Docket No, 11-0721, May 29, 2012, Appendix A; Order, Docket No 12-0001, Sept. 19, 2012, Appendix; Order, Docket No. 12-0293, Dec 5, 2012, Appendix; Order, Docket No. 12-0321, Dec 19, 2012, Appendix A and Appendix B; Docket No. 13-0301, Dec 9, 2013, Appendix A and Appendix B; Order, Docket No. 13-0318, December 18, 2013, Appendix A and Appendix B.)

Second, Ameren claims that its interpretation of formula rate structure is more reasonable than the ALJPO's interpretation. (Ameren BOE at 11-13.) The ALJPO, however, correctly finds that the definition proposed by AIC is potentially too limiting of the Commission's ability to take reasonable actions in future annual rate update and reconciliation proceedings. (ALJPO at 18.) While the Company argues that formula rate calculations can be changed in separate Section 9-201 proceedings (AIC BOE at 3),

this constrains the Commission's authority to approve just and reasonable rates in a current proceeding in the event that an adjustment, even an adjustment with which all parties agree, cannot be accommodated by an existing supporting schedule.¹ This, in and of itself, would violate the requirements of EIMA.

EIMA provides that:

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 5/16-018.5(d). The evidentiary standards the Commission applies in a general rate case under Article IX of the Act requires the Commission to consider any proposals brought before it in the formula rate updates. Therefore, the Commission must also consider the substance of each adjustment to the revenue requirement pursuant to EIMA, and cannot be bound by the form of schedule or appendix which it never specifically approved.

This directly contradicts the point Ameren attempts to make in its BOE. The Company suggests hypothetical situations where parties could propose certain changes to supporting workpapers in a formula rate update. (Ameren BOE at 2.) Similar hypothetical situations were posed during the evidentiary hearing held in this case on February 20, 2014 and responded to by Staff witness Ebrey. (Staff IB at 14.)

Most of the hypothetical situations raised in Ameren's BOE (Ameren BOE at 6-7) have been previously addressed. The source of the rate base component for the ROE

¹ This was the exact concern that was addressed by the Ameren filing in Docket 13-0517 which was consolidated with 13-0501.

collar calculation (year-end versus average) was specifically addressed by Public Act 098-0015. The topic of ADIT associated with projected plant was already vetted in Ameren Docket 12-0001. (Order, Docket 12-0001, September 19, 2012, pp. 51 – 53) Ameren itself indicates that the proposal to “gross up” the weighted average cost of capital when calculating the interest amount on reconciliation balances was already vetted in ComEd Docket No 13-0533. None of these were separate Section 9-201 filings.

Similarly, Ameren incorrectly claims that “the Commission has approved new rates by inputting the prudently-incurred costs into the same Schedules and Appendices it approved in Docket 12-0001.” (Ameren BOE at 9 (*citing Ameren Ill. Co.*, Docket No. 12-0293, Final Order at 103 (Dec. 5, 2012).) Ameren cites to the December 5, 2012 Order in Docket No. 12-0293, but Staff finds no such discussion. Final Order, Docket No. 12-0293 at 103 (Dec. 5, 2012).) The new rates the Commission has approved in each formula rate case, both the initial case and the subsequent update cases, were supported by the revenue requirement schedules contained in the Appendices attached to each Order. (Order, Docket No, 11-0721, May 29, 2012, Appendix A; Order, Docket No 12-0001, Sept. 19, 2012, Appendix; Order, Docket No. 12-0293, Dec 5, 2012, Appendix; Order, Docket No. 12-0321, Dec 19, 2012, Appendix A and Appendix B; Order, Docket No. 13-0301, Dec 9, 2013, Appendix A and Appendix B; Order, Docket No. 13-0318, December 18, 2013, Appendix A and Appendix B.) None of those schedules and appendices are those that the Company incorrectly claims to be part of the formula rate structure.

Finally, Ameren argues the ALJPO definition of formula rate structure renders the term “structure” “virtually meaningless.” (Ameren BOE at 8.) Again, Ameren is mistaken. As the ALJPO clearly points out, the formula rate structure consists of FR A-1 and FR A-1 REC, the two documents that provide the structure of the formula rate. (ALJPO at 18-19; see Ameren Illinois Company, ICC Docket No. 12-0001, Final Order at 151 (Sept. 19, 2012).) Despite Ameren’s assertion that the formula rate structure so defined would contain “almost no calculations,” and is thus somehow meaningless, the presence or absence of calculations has no bearing on the meaning of the term in statute. The Commission may make any reasonable interpretation of a statute or statutory term that is ambiguous. *Chevron, U.S.A., Inc. v. NRDC, Inc.*, 467 U.S. 837, 844 (1984)(*holding* if statute “has expressly left a gap for the agency to fill, there is an express delegation of authority to the agency to elucidate a specific provision of the statute by regulation. Such legislative regulations are given controlling weight unless they are arbitrary, capricious, or manifestly contrary to the statute.”). The term, as used in EIMA, is ambiguous, and the Commission is well within the bounds of its authority to define formula rate structure as the approved format of the Schedules FR A-1 and FR A-1 REC within the formula rate tariff. See 220 ILCS 5/16-108.5.

C. The Appellate Decision Supports Staff’s Position, not Ameren’s

The Company claims that the decision in *Ameren Illinois Co. v. Illinois Commerce Commission*, 2013 IL App (4th), 121008, (“Appellate Decision”) makes it clear that formula rate structure includes far more than merely Schedules FR A-1 and FR A-1 REC. (Ameren BOE at 12-13.) As Staff explained in its RB, the Company mischaracterizes the issue that was addressed by the Court and then relies on its

mischaracterization to derive its flawed conclusion. (See Staff RB at 9-11.) 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, a reconciliation proceeding. 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 Ill. Co. v. Ill. Commerce Comm'n*, 2 N.E.3d 1087, 1096, 377 Ill. Dec. 806, 815 (2013).)

Ameren's reliance on this case as supportive of its argument is misplaced. It is clear from the Appellate Decision 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. (*Ameren Ill. Co. v. Ill. Commerce Comm'n*, 2 N.E.3d 1096.) Further, Ameren has failed to demonstrate how its contention that the 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. (See Staff RB at 9-11.)

D. The Issues Raised in this Proceeding Should Not be Deferred to a Rulemaking

Ameren argues that "a rulemaking proceeding is the only forum in which the Commission might appropriately adopt the proposals advanced by Staff." (Ameren BOE at 19.) While Ameren is correct that Section 10-101 requires "any proceeding intended

to lead to the establishment of policies, practices, rules or programs applicable to more than one utility may, in the Commission's discretion, be conducted pursuant to either rulemaking or contested case provisions, provided such choice is clearly indicated at the beginning of such proceeding and subsequently adhered to," it is incorrect that, *ipso facto*, the Commission cannot make a determination on this issue for Ameren because it may make a similar determination on this issue for another utility in the future. (Ameren BOE at 18-19); 220 ILCS 5/10-101. While Staff has noted that the outcome of this proceeding may be relevant to other proceedings, including proceedings with other utilities, that fact does not mean these issues must be decided in a rulemaking. See *Id.* If Ameren's argument were true, this Commission could never consider its own previous Orders when making similar determinations in other dockets for different utilities. However, it is common practice by utilities, Staff, and other Intervenors to refer to previous Commission orders on relevant issues in arguing the merits of a position. Furthermore, the statute does not prohibit the Commission from making a finding as to one utility, and then making a similar finding as to another, as Ameren attempts to argue. (Ameren BOE at 19.) Rather, the statute means the Commission must consider the issue and any arguments and facts presented when, and if, it comes up in a ComEd proceeding.

Moreover, the ALJPO is correct that "the outcome of this proceeding will not be automatically applied to ComEd." (ALJPO at 6.) While parties and the Commission may consider previous findings and conclusions from other docketed proceedings, they are not precedential. Central Illinois Public Service Co. d/b/a AmerenCIPS, ICC Docket No. 01-0522, Final Order at 2 (Aug. 8, 2001)("Given the general rule that the doctrine of

stare decisis does not apply to Commission orders, . . . the Commission’s ruling is limited to the unique facts and circumstances . . . described in the Petition, and does not serve as precedent or other controlling authority in any future proceeding or for any interpretation of Illinois law.); South Austin Coalition Community Council v. Commonwealth Edison Company, ICC Docket No. 02-0706, Final Order at 6 (“[T]his Commission is not bound by *stare decisis*, which . . . requires that prior decisions should not be overruled by later decisions without good cause or a compelling reason.” (internal citations omitted)).

III. CONCLUSION

WHEREFORE the Staff of the Illinois Commerce Commission respectfully requests that the Commission amend the ALJPO consistent with Staff’s position set forth herein and in its BOE.

Respectfully,

_____/s/_____

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