

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

Illinois Commerce Commission)
On Its Own Motion) Docket No. 11-0711
Development and adoption of rules)
concerning rate case expense)

AMEREN ILLINOIS COMPANY'S VERIFIED COMMENTS
TO FIRST NOTICE RULE

COMES NOW Ameren Illinois Company d/b/a Ameren Illinois, and for its Comments to
the First Notice Rule as 83 ILAC 288 published in the Illinois Register on August 8, 2014, states
as follows:

Ameren Illinois' comments to the First Notice Order entered on June 11, 2014, and the
subsequently published First Notice Rule are largely limited to Section 288.10.1 Ameren Illinois
offers a slight modification to the First Notice Rule, assuming the Commission finds clarification
is in order. In addition, at the status hearing held on September 2, 2014, the Administrative Law
Judge (ALJ) offered that the parties may respond to the recent Appellate Court decision in
Commonwealth Edison Company v. Illinois Commerce Commission ("2014 ComEd"), 2014 WL
2945780 (Ill.App.1 Dist.), and address whether this decision has any bearing on the First Notice
Rule.

I. The Scope of Rule Should Not Include Service Company Expenses

The scope of the First Notice Rule applies to amounts designated by the utility to 1)
compensate outside counsel/support staff and outside experts/support staff, and 2) compensate
affiliate counsel, support staff and affiliate experts/ support staff to prepare and litigate a rate

1 Pursuant to the ALJ's direction at the status hearing held on September 2, 2014, the parties were instructed to refer
to the JCAR edited version of the rule.

case filing (the expenses described in 2) are collectively referred to as "Affiliate Expense"). As the First Notice Rule provides, the scope of the rule applies to those amounts described in Section 288.10 (a) and (b) that are *designated by a utility as rate case expense and sought to be recovered through rates*. Assuming the utility elected to recover its Affiliate Expense as rate case expense, the utility is required to provide certain evidence to support their recovery. *See* Section 288.30(a)(6) . The scope of the Final Notice Rule as plainly stated, only requires this information *if* the utility intends to recover Affiliate Expenses as rate case expense to be recovered through rates. In short, Ameren Illinois understands the scope of the rule to not include service company expenses, even where the service company and utility may be “affiliates.”

This interpretation is completely in accord with Section 9-229 of the Public Utilities Act, 220 ILCS 5/9-229. The statute focuses on “attorney and expert compensation,” or “technical experts to prepare and litigate a general rate case filing.” 220 ILCS 5/9-229. The statute does not call into question the utility’s service company expenses, whereby some expenses may be incurred to assist the utility in the rate case. No case law that has been cited in these proceedings, nor any Commission decision, that would obligate a utility to construe service company expenses whose allocation and underlying service agreement has been approved pursuant to a Commission order, be construed as rate case expense. Not only would such an interpretation fall outside the statute and First Notice Rule, but would render impractical the service company agreement, and result in additional cost to rate payers.

Ameren Illinois, as stated in this proceeding, relies partly on its affiliate, Ameren Services Company (Ameren Services) to provide it a variety of services (collectively “Ameren Service Expenses) AIC BOE at 1-5 (June 13, 2014). Some of these services, from time to time,

support a rate case. Services provided by Ameren Services include those from the Controller, General Counsel, Human Resources, Internal Audit, Tax, and Treasurer. For example, the Human Resources employee may provide information for a data request. Or services may be provided by an attorney who participates in the rate case. But Ameren Services does not exist for the purpose of providing rate case support. Indeed, the vast majority of the services provided by Ameren Services are not needed for rate case support.

As the Commission previously noted, Ameren Services provides for an efficient and cost effective means for the utility to have available these services where its costs are shared among many parties. The Commission found in 1997 the General Services Agreement to be reasonable and in the public interest for these reasons. 180 P.U.R. 4th 185, 1997 WL 709 598 (Ill.C.C.) The Commission has approved on several occasions revisions to the General Services Agreement whereby Ameren Services' agreement to provide services to Ameren Illinois and other affiliates is prescribed. The description of the services to be provided is set forth in Schedule 1 of the agreement, as are the allocation factors used in allocating the costs associated with those services. Central Illinois Light Co, et al., Dkt No. 09-0234 (July 14, 2010). A copy of the agreement is attached as Appendix A. If not for Ameren Services, Ameren Illinois would require its own General Counsel, Human Resources, Internal Audit, Tax, and Treasurer departments, among others. In effect there would be a wasteful and unnecessary duplication of personnel and resources, which would be an additional cost to ratepayers.

The expenses associated with the services provided by Ameren Services to Ameren Illinois are recovered in Ameren Illinois' revenue requirement. These costs and expenses are generally categorized as Administrative and General expenses, or A&G expense. A&G expenses are scrutinized in every rate case and they must meet the "just and reasonable" standard.

Ameren Illinois intends, at least for the foreseeable future, to recover these expenses as part of the A&G expenses included in its revenue requirement.

The Commission's First Notice Order, however, raises questions on this subject as to whether service company costs are subject to the First Notice Rule, and may conflict with a plain reading of the First Notice Rule. The Commission states in its Analysis and Conclusions:

“...whether the rate case services are provided by a sibling (a sister corporation or the holding company) or by a stranger (an “outside” law firm or expert), such legal or other expert) services can properly be treated as “outside” expenses to the public utility. For these reasons, the Commission finds amounts expended by utility affiliates to prepare and litigate a rate case filing fall within the scope of the rule.”

First Notice Order at 6

It could very well be the phrase "amounts expended by utility affiliates," was only intended to make clear those Affiliate Expenses designated by the utility as rate case expenses fall within the scope of the rule. But to be clear, and for which confirmation is sought, the statement in itself does not mandate or require the utility to recover its service company costs as rate case expense. Rather the utility could do as Ameren Illinois has and plans to do, and recover Ameren Services Expenses as part of its A&G expense.

It would appear the Commission's statements were meant to provide context to its earlier statements, that the utilities interchanging use of “in house” and "affiliate" did not excuse the rule's application; meaning that the rule would apply where the utility sought to recover the Affiliate Expense as a rate case expense.² (Understandably, there was much unintended confusion in the terminology used by the utilities.) But in a later section of the First Notice Order, the Commission describes in depth ComEd's arguments—and seemingly agrees with

² The utility may elect to declare affiliate costs associated with rate case services as a “rate case expense” by including such affiliate costs in Schedule C-10 of the Commission's standard information requirements for a utility filing for an increase in rates (83 ILAC 285.3085). Such election would make such affiliate costs subject to this rule.

ComEd. In arguments filed in its Reply Brief on Exceptions on June 14, 2014, ComEd refers to "internal" employees, and as part of those arguments included affiliate costs or affiliate employees, to wit:

- “Utility and affiliate employees were not at issue in that docket [ComEd’s rate case docket], they were not contemplated by the Commission when initiating this rulemaking, and they are not within the scope of this rulemaking. ComEd RBOE at 3.”
- “The Commission’s well-established practice is to allow utilities to recover utility and affiliate employee expenses associated with rate cases as either administrative and general expense or as part of rate case expense, at the utility’s prerogative.” ComEd RBOE at 3.
- “Regardless of the manner in which a utility chooses to recovery utility and affiliate costs incurred in preparation and litigation of a rate case, both costs are not subject to the evidentiary standard set forth in the Draft Rule.” ComEd RBOE at 3.
- “Certain affiliate employees do bill their time, but they do not maintain narrative descriptions and would have similar difficulty providing the information specified in the parties’ proposed Exceptions.” ComEd RBOE at 4.

In its First Notice Order the Commission articulated the ComEd position at pages 6 and 7. Unfortunately, here again ComEd’s reference to “internal employees” including utility and service company employees creates possible confusion, given the Commission’s now reference to “utility affiliates.” But the Commission states agreement with ComEd’s positions, that unlike the situation with outside counsel, outside expert witness and utility affiliates, there are invoices specifying that litigation tasks were being performed. The Commission also made note that overhead costs realistically cannot be tracked. First Notice Order at 7. Fundamentally, Ameren Illinois’ situation is no different. There are no invoices for what an Ameren Illinois or Ameren Services employee did to further rate case litigation, nor is there an ability to track overhead costs. Narrative time records are not kept nor is there any need. The Commission has already

prescribed what services Ameren Services may provide and how these costs are to be allocated.

Any effort to segregate service company expenses as rate case expense is fraught with error. Rate case expense, by its nature, is intended to include only the incremental cost of litigation for the rate proceeding. Accordingly, to the extent Ameren Illinois is required to submit certain Ameren Service Expense, any requirement to record and track some subjective measure of these expenses as rate case expense is impractical and makes no sense. Ameren Service employees are compensated regardless of the presence or absence of a pending rate case, thus deciding which costs exist solely due to a rate case is an inherently subjective endeavor.

The Commission explained certain of the provisions of the General Services Agreement when it was first approved in 1997:

Section 3 of the revised GSA provides that Ameren Services Company shall be paid the cost of the services it provides, computed in accordance with applicable SEC rules and regulations. Section 3 indicates that the compensation to be paid shall include direct charges and allocated costs. Schedule 2 sets forth the expected allocation factors that will be used to allocate direct costs. Mr. Baxter described the method for allocating indirect costs, which he described as those costs of a general overhead nature that cannot be separately identified to a single or group of companies within the Ameren system. He indicated that departmental indirect costs will be allocated to Ameren Corporation and its subsidiaries based on the ratio of total direct and allocated direct costs charged to each company by each Ameren Services Company department. He stated that corporate indirect costs will be allocated on the basis of total billings to Ameren Corporation and its subsidiaries.

180 P.U.R. 4th 185, 1997 WL 709 598 (Ill.C.C.) (emphasis supplied)

As is plainly evident, Ameren Illinois cannot measure and credibly track any rate case costs associated with the services provided by its services company in the manner the rule prescribes for Affiliate Expense. Allocation factors are used to allocate direct costs. Indirect costs, such as overhead costs, cannot be segregated but have their own allocation. The reality is, Ameren Illinois has no means to comply with Section 288.30(a)(6)(D) and provide documentation as to the “rates” being charged.

Referring back to the General Services Agreement, and examining only the allocation of General Counsel costs, the allocation factors that may be used in allocating the General Counsel costs include any one of these: Total Capitalization, Number of Employees, Number of Customers, Peak Flow, Generating Capacity, and Governmental Affairs Allocation, and Composite Allocation. This means Ameren Services may allocate the General Counsel cost to Ameren Illinois and the other parties to the General Services Agreement based on Total Capitalization, as one of many allocators to select. Simply, charges that stem from a Total Capitalization allocation bear no resemblance to an hourly rate that an outside attorney may charge a utility for rate case work.

The segregation, tracking, and reporting of these costs accounted already as operating expense pursuant to a prescriptive Commission approved agreement will lead to litigation and inaccuracy. The effort of segregating some subjective measure of incremental cost of litigating rate cases for services company employees and then reporting that measure together with outside attorney and consultant costs will not provide an accurate depiction of rate case expenses.

Further, since rates established pursuant to traditional rate cases are typically in effect for more than a year at a time, and rate case expense is usually amortized for multiple years, inclusion of Ameren Service Expense as rate case expense *will never lead to the actual or correct amount of the costs to be recouped over the life of the rates. Because of this subjectivity and rate case expense amortization, any effort to track these costs will lead to one of two problems: over or under-recovery of operating or rate case expenses.*

To be clear, Ameren Illinois does not object to the manner that People's Gas and Light Company/North Shore Gas Company proceed in recovering Affiliate Expense. These utilities have a contractual relationship with its affiliate where the affiliate bills the utility in the way an

outside law firm or consultant might charge. But Ameren Illinois uses its service company pursuant to the Commission approved General Service Agreement and so it cannot and should not be required to comply with the First Notice Rule.

For the reasons above, Ameren Illinois recommends the following clarification:

Section 288.10

- b) amounts expended by a utility to compensate affiliate counsel/support staff and affiliate technical experts/support staff to prepare and litigate a rate case filing. ***This Part shall not apply to a utility that receives service company services from an affiliate pursuant to a Commission approved service company agreement, unless the utility makes an affirmative election to comply with this Part.***

II. Consideration of the 2014 ComEd Decision

The question raised by the ALJ at the status hearing on September 2, 2014, was whether the 2014 ComEd decision referred to above goes further than People Ex rel. Madigan v. Illinois Commerce Commission, 200 IL App (1st) 101776, 357 Ill.Dec 831, 964 N.E. 2d 510 in adopting the factors in determining the reasonableness of the rate case success.

In response, Ameren Illinois asserts that the First Notice Rule already requires the information needed to establish the justness or reasonableness of its rate case expenses charged by counsel and experts. The Appellate Court's reasoning focused on the evidence in support of the ComEd rate case expenses. The court agreed with the Commission that it could not assess the justness and reasonableness of any amount expended by ComEd to compensate attorneys for its 2011 rate case filing. Specifically, the court's holding was there was no evidence as the specific amounts and fees, what each amount was for, the amount that ComEd expended, the rates charged, or the reasonableness of those rates. Section 288.30(a) of the First Notice Rule does, in fact, call for the information and evidence that the Appellate Court stated was required in order to support the justness and reasonableness of the rate case expenses. Section 288.10

requires the utility to provide an explanation of the reasonableness of the fees to be paid to persons covered by Section 288.10, by examining the factors listed in Section 288.40. In short, the rule need not change in light of the 2014 ComEd decision.

Respectfully submitted,

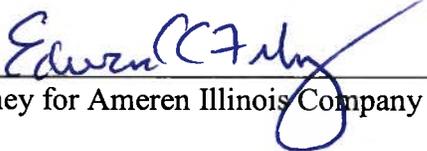
AMEREN ILLINOIS COMPANY
d/b/a Ameren Illinois



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CERTIFICATE OF SERVICE

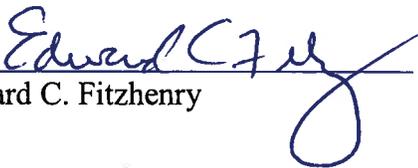
I, Edward C. Fitzhenry, counsel for Ameren Illinois Company, hereby certify that a copy of the foregoing *Verified Comments to First Notice Rule* was filed on the Illinois Commerce Commission's e-docket and was served by electronic mail to all individuals listed on the Commission's Service List for Docket No. 11-0711 as of this 22nd day of September, 2014.



Attorney for Ameren Illinois Company

VERIFICATION

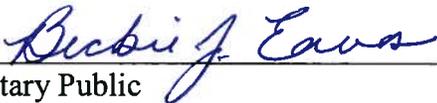
I, Edward C. Fitzhenry, being first duly sworn, hereby state that: i) I am the Director and Assistant General Counsel for Ameren Illinois Company; ii) I am authorized to make this verification on its behalf; iii) I have knowledge of the facts therein; and iv) the facts as stated are true and correct to the best of my knowledge, information and belief.



Edward C. Fitzhenry

STATE OF MISSOURI)
) SS
CITY OF ST. LOUIS)

SUBSCRIBED and SWORN to before me this 22nd day of September, 2014.



Notary Public

