STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

AMEREN ILLINOIS COMPANY d/b/a Ameren Illinois, Petitioner Rate MAP-P Modernization Action Plan -Pricing Annual Update Filing	))))))	Docket No. 14-0317

INITIAL BRIEF OF AMEREN ILLINOIS COMPANY

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I. INTRODUCTION

A. Overview

As this brief will show, there are only approximately a half dozen contested issues remaining in this case. Of these, one issue stands out: the AG and CUB/IIEC proposals to adjust the Energy Infrastructure Modernization Act's (EIMA) calculation of reconciliation interest to reflect certain claimed tax consequences. This issue was addressed in testimony by four parties and six witnesses, and actually involves two proposals: reduce the reconciliation balance by the amount of deferred taxes before applying the statutory interest rate (primary proposal), or deduct the amount of reconciliation related deferred taxes from rate base (alternative rate base proposal). These proposals are not new to the Commission; instead they are variations on efforts to adjust the calculation of reconciliation interest for taxes that interveners have now proposed in various forms in at least five cases—without avail, and justifiably so. Such an adjustment, no matter what the form, is contrary to the plain language of EIMA and has never been adopted by the Commission. These proposals should be rejected yet again here.

EIMA specifies each variable and mathematical step necessary to calculate interest on the reconciliation balance. The principal balance to which interest must be applied is the "over-collection or under-collection indicated by [the] reconciliation." 220 ILCS 5/16-108.5(d)(1). "[The] reconciliation" refers to a specific sum, namely, the difference between "the revenue requirement that was in effect for the prior rate year" and "the actual revenue requirement for the prior rate year." *Id.* The statute then defines the rate of interest to be applied as "a rate equal to the utility's weighted average cost of capital." *Id*. No statutory provision adjusts the reconciliation interest calculation for taxes—a statutory basis for such an adjustment does not exist.

As it did elsewhere in the EIMA, such as in the return on equity collar calculation, the legislature could easily have added language permitting the Commission to make tax adjustments to the reconciliation interest calculation. But it did not.

Nevertheless, the intervenor proposals ask the Commission to add new mathematical terms to the calculation of reconciliation interest to reflect tax consequences; that is, to add statutory terms where none exist. This is beyond the Commission's authority, and was exactly why the Commission rejected this proposal previously: the Commission recognized "where the Act does intend that adjustments be made to an amount of a balance, it has done so specifically" and then concluded "it is difficult for the Commission to support an interpretation of the Act which reads into it exceptions, limitations, or conditions the legislature did not express." *Ameren Ill. Co.*, Dockets 13-0501/13-0517 (cons.), Interim Order at 26 (Nov. 26, 2013)

And even if the Commission were authorized to address taxes in the reconciliation interest calculation, the AG and CUB/IIEC proposals still must fail, because they apply their "cost-based" principles inconsistently and unfairly. For example, when the AG and CUB/IIEC adjust the reconciliation balance for taxes before applying interest, they do not propose to "gross-up" the interest rate for taxes as well. The AG's alternative proposal is similarly inconsistent, because it would reduce AIC's rate base, where the return is grossed up for taxes, but would not gross-up the reconciliation interest for taxes. In short, the AG and CUB/IIEC seek to apply cost principles where it will lower the revenue requirement, and ignore them when it will not.

Therefore, the AG and CUB/IIEC proposals on reconciliation interest must be rejected.

B. Nature of AIC's Operations

Ameren Illinois Company d/b/a Ameren Illinois (AIC) is a combination gas and electric public utility whose service area is located in central and southern Illinois and consists of the former service territories of its three predecessor companies: AmerenCILCO, AmerenCIPS, and AmerenIP. AIC was formed on October 1, 2010, when AmerenCILCO and AmerenIP were merged into AmerenCIPS. Concurrent with the merger, the newly-formed company changed its name to Ameren Illinois Company and began doing business as Ameren Illinois. Ameren Illinois provides electric delivery service to approximately 1.2 million customers.

C. Procedural History

The case was filed on April 17, 2014. Testimony and discovery took place according to an approved schedule. An evidentiary hearing took place on September 17, 2014. The record was marked heard and taken on the same date.

D. Legal Standard

The annual update of cost inputs and reconciliation for Rate MAP-P is governed by Section 220 ILCS 5/16-108.5(d) of the Public Utilities Act.

II. RATE BASE

E. Uncontested or Resolved Issues

1. Plant in Service

AIC's rate base includes its gross investment in plant in service at original cost, after applying the asset separation project percentage, before projected plant additions. (Ameren Ex. 2.0 (2d. Rev.), p. 20.) AIC made ratemaking adjustments to this amount to remove items recovered through other tariffs or disallowed in prior cases. (*Id.*) No party contested the method by which this amount was calculated, or the total included in rate base. In addition, no party objected to AIC's request that the Commission approve an original cost of electric plant in service as of December 31, 2013. As a result, AIC considers these issues to be uncontested.

2. Accumulated Depreciation

AIC's rate base includes accumulated depreciation and amortization for both distribution and general and intangible plant. (Ameren Ex. 2.0 (2d Rev.), p. 21.) No party contested the method by which the accumulated depreciation was calculated, or the total included in AIC's rate base. Therefore, AIC considers this issue to be uncontested.

3. Adjustments to Accumulated Deferred Income Taxes (ADIT) – Ameren Exhibit 13.3 (Except for II.B.1.)

Staff and the AG proposed to remove certain deferred tax assets and liabilities (ADIT) from rate base where the underlying item is not also in rate base. (ICC Staff Ex. 1.0 (2d Rev.), pp. 9-10; AG Ex. 2.0, pp. 7-8.) AIC accepted these proposals, and agreed to review the treatment of other ADIT balances where the related item is not also in rate base. (Ameren Ex. 13.0 (Rev.), p. 3.) As a result of this review, AIC proposed to remove several additional ADIT balances from rate base. (*Id.*) The purpose of these adjustments was to ensure consistency between the ratemaking treatment of the ADIT and the related cost items. (*Id.* at 4.) AIC's removal of these additional cost items from rate base was not contested by any party, and AIC understands the issue to be uncontested.

4. Additional DS Jurisdictional Rate Base Items (Except for II.A.3 and B.1-4.)

AIC's rate base includes items in the category "Additional DS Jurisdictional Rate Base Items." These items include construction work in progress (CWIP), property held for future use, cash working capital, ADIT, materials and supplies inventories (M&S), other deferred charges, customer deposits and advances, and other post-employment benefits (OPEB). (Ameren Ex. 2.0 (2d. Rev.), pp. 22-28.)

Except for a limited number of contested issues discussed in Section II. B, no party contested the totals for these items, or the method by which they were calculated. Therefore, AIC understands these issues to be uncontested.

5. Rate Base Adjustments for Projected Plant Additions

Section 16-108.5(d) requires a participating utility to include in its rate base "projected plant additions and correspondingly updated depreciation reserve and expense for the calendar year in which the inputs are filed." 220 ILCS 5/16-108.5(d). AIC's rate base includes its projected plant additions for 2014. (Ameren Ex. 2.0 (2d. Rev.), p. 29.) The amount of projected plant additions was based on forecasted data from AIC's corporate budgeting systems. (Ameren Ex. 3.0, p. 5.) AIC made ratemaking adjustments to this amount to remove items disallowed in prior cases. (*Id.* at 6.) The corresponding estimated depreciation reserve and expense was calculated using FERC Form 1 data. (*Id.*) Additional adjustments to ADIT and cash working capital were made to reflect the impact of adjustments for projected additions. (Ameren Ex. 2.0 (2d. Rev.), pp. 23, 29-30.) No party contested the manner in which the projected plant additions or corresponding depreciation reserve and expense were calculated, or adjustments to ADIT and cash working capital for projected additions, or the total amounts included in rate base. As a result, AIC considers these issues to be uncontested.

6. Additional Company Adjustments to Rate Base

AIC has reflected an adjustment to reduce its rate base by the electric delivery service portion of accrued vacation liability, net of related deferred income taxes. (Ameren Ex. 2.0 (2d. Rev.), p. 24.) This adjustment is consistent with Commission orders in prior formula rate proceedings. (*Id.*) AIC has also reflected adjustments to reduce rate base by amounts related to the NESC Rework project, the jurisdictional amount of the company's year-end 2013 OPEB expense, and incentive compensation costs based on earnings per share goals and the costs of the Performance Share Unit Program. (*See* Ameren Ex. 13.1, pp. 17, 22.) All AIC adjustments to rate base were identified in Ameren Exhibit 2.1, App 1 and App 4. No party has contested these adjustments, and AIC considers these issues to be uncontested.

F. Contested Issues

1. Accumulated Deferred Income Taxes (ADIT) for Metro East Assets

In 2005, AIC's predecessor company, CIPS, acquired electric utility assets in the Metro

East area from Union Electric Co. pursuant to an asset transfer and related accounting approved by the Commission. To this day, there remains no dispute that the accounting expressly approved by the Commission was and is correct. In this case, however, the AG asks the Commission to undo that approved accounting for ratemaking purposes, and reduce AIC's rate base by nearly $5 million for deferred income taxes accumulated on the assets before the transfer. The AG's adjustment is unnecessary and unlawful. But before AIC explains why the adjustment should be rejected, it will explain the history of the assets and how AIC acquired them, to clarify this potentially confusing issue.

<u>The history of the Metro East assets.</u>

The Commission twice approved the asset transfer and the related accounting.

In 2000, Union Electric and its affiliate CIPS jointly petitioned the Commission to approve a transfer to CIPS of the assets that Union Electric used to provide retail electric service to the Illinois-portion of the St. Louis metropolitan (Metro East) area. *Cent. Ill. Pub. Serv. Co., Union Elec. Co.*, Dockets 00-0650/0655 (cons.), Order at 1, 3 (Dec. 20, 2000). The transfer would separate all regulated utility operations in Illinois from the electric generation and marketing functions, and separate Ameren's Illinois-regulated electric operations from its Missouri-regulated electric operations. *Id*. at 3. Among other benefits, this would alleviate electric generating capacity shortfalls projected for Union Electric and assure Metro East area customers an adequate power supply. *Id*. at 5-6.

In conjunction with the approval request, Union Electric submitted an Asset Transfer Agreement for the Commission's review. *Cent. Ill. Pub. Serv. Co., Union Elec. Co.*, Dockets 00-0650/0655 (cons.), Order at 1, 4. The Agreement described, among other obligations, the assets and liabilities that Union Electric would transfer to CIPS. *Id*. at 4, 16; *see also Cent. Ill. Pub. Serv. Co., Union Elec. Co.*, Docket 00-0655, Union Elec. Notice of Transfer, Appx. A (filed Oct.

2, 2000). It also specified the assets and liabilities that Union Electric would retain, including certain tax obligations:

> due or becoming due by reason of . . . (ii) the ownership, possession, use, operation, purchase, acquisition, sale or disposition, of any of the Acquired Assets, including, without limitation, . . . (ii) Taxes imposed on, or accruing as a result of the transfer of the Acquired Assets; and (iii) Taxes attributable to, or resulting from, recapture of depreciation, other tax benefit items, or otherwise arising from the transactions contemplated by this Agreement.

Cent. Ill. Pub. Serv. Co., Union Elec. Co., Dockets 00-0650/0655 (cons.), Order at 4, 16; *see also Cent. Ill. Pub. Serv. Co., Union Elec. Co.*, Docket 00-0655, Union Elec. Notice of Transfer, Appx. A, Art. II, ¶ 2.2(f). Importantly, retention of these tax obligations meant that when Union Electric transferred the Metro East assets to CIPS, the accumulated deferred income taxes resulting from depreciation of the assets—or ADIT—that had accrued on Union Electric's books would *not* follow the assets. (Ameren Ex. 13.0 (Rev.) (Stafford Reb.), p. 13.) This accorded with generally accepted accounting principles (GAAP), which required (and continues to require) that when an asset is sold, the ADIT on the seller's books should be reversed. (*Id.*)

Union Electric also submitted for the Commission's review "a complete statement of the accounting entries that it [would] make on its books to record the transfer of the assets and a certificate from an independent certified public accountant stating that the entries are in accordance with generally accepted accounting principles." *Cent. Ill. Pub. Serv. Co., Union Elec. Co.*, Dockets 00-0650/0655 (cons.), Order at 4, 8; 220 ILCS 5/16-111(g)(i) (2000).

After a litigated proceeding, and over a Staff and intervenor objection that the transfer may increase Metro East area base rates, the Commission approved the transfer as it was described in the Asset Transfer Agreement. *Cent. Ill. Pub. Serv. Co., Union Elec. Co.*, Dockets 00-0650/0655 (cons.), Order at 10-12, 15-16. Notably, the AG did not participate in the proceeding. *Id*. at 2.

Three years later, Union Electric and CIPS sought Commission approval to transfer Union Electric's Metro East retail gas assets to CIPS. *Cent. Ill. Pub. Serv. Co., Union Elec. Co.*, Docket 03-0657, Order at 1 (Sept. 22, 2004). Again, the Commission approved the transfer as it was described in the utilities' Asset Transfer Agreement. *Id*. at 24-25. The Commission specifically found that the transfer was "in the public interest" and that "neither the ratepayers of AmerenUE nor of AmerenCIPS are likely to be adversely affected in the event the proposed asset transfer and reorganization takes place." *Id*. at 17. The Commission also approved the accounting treatment for transfer, with a single correction proposed by Staff to the entries to remedy an inadvertent omission of the calculation of the deferred tax gain that would be recorded on Union Electric's books as a result of the transfer. *Id*. at 20. The Order explains:

> Staff witness Hathhorn . . . discovered a difference, other than the book value amounts, between the journal entries in Mr. Nelson's Schedule 2 and those offered by the Companies in the electric proceeding, Docket Nos. 00-0650 and 00-0655 (Consolidated). Specifically, she says that the deferred tax gain calculation was inadvertently omitted from the calculation of the 2000 journal entries. Ms. Hathhorn found no reason to object to this correction from the previous proceeding, and she recommended that the Commission accept the proposed journal entries.

Id. (internal citations omitted). The Commission otherwise found "the Companies' proposed journal entries to be reasonable, and those journal entries are approved." *Id*. Again, the AG did not participate in the proceeding. *Id*. at 1.

The utilities consummated the Commission-approved asset transfer and accounting.

In 2005, Union Electric and CIPS carried out the Metro East transfer. Consistent with the transfers and accounting approved by the Commission, the ADIT that had accrued on Union Electric's books related to the assets did not follow the assets. (Ameren Ex. 2.0 (2d Rev.)

(Stafford Dir.), p. 25.) Likewise, consistent with the Commission-approved accounting, CIPS "stepped-up" the assets' tax basis from the adjusted-for-depreciation basis on Union Electric's books to the purchase price on its own books. (*Id*. at 14-15.) To specifically account for this "step-up" in the assets' tax basis, CIPS recorded and amortized a Metro East deferred tax asset on its books. (Ameren Ex. 2.0 (2d Rev.), p. 26.) There is no dispute that this treatment was also consistent with—indeed required by—GAAP and federal tax regulations; those rules provide that a purchaser's tax basis in an asset is the purchase price, regardless of whether the seller and purchaser are affiliated entities. (Ameren Ex. 19.0 (Stafford Sur.), p. 10.) Thus, those rules required CIPS to record the "stepped-up" basis.

But the "step-up" in basis was temporary. This is because with it, the accrual of ADIT on the assets restarted, as if CIPS had purchased and put the assets in-service on the day of the transfer. (*Id*. at 25-26; Ameren Ex. 13.0 (Rev.), p. 13.) This meant that, in time, the net book value of the Metro East assets on CIPS's books—their "stepped-up" basis net of accrued ADIT—would be equal to or less than the depreciated value of the assets on Union Electric's books. (Ameren Ex. 13.0 (Rev.), pp. 14-15.) And importantly, because ADIT reduces a utility's rate base for ratemaking purposes, this ADIT "reset" meant that Metro East area customers would receive the benefits of the assets' depreciation on CIPS's books, as they did on Union Electric's books, *again*—and to a greater extent. (Ameren Ex. 2.0 (2d Rev.), pp. 25-26.)

The Commission repeatedly approved rates that reflected CIPS's, now AIC's, accounting for the transfer.

Over the course of the next ten years, through a series of rate cases, CIPS, and later AIC, accounted for the ADIT associated with the Metro East assets in the manner approved by the Commission, without any objection from any party. *See generally, Cent. Ill. Pub. Serv. Co., et al.*, Dockets 09-0306, et al. (cons.), Order (May 6, 2010); *Cent. Ill. Pub. Serv. Co., et al.*, Dockets 07-0585, et al. (cons.), Order (Sept. 24, 2008); *Cent. Ill. Pub. Serv. Co., et al.*, Dockets 06-0070, et al. (cons.), Order (Nov. 21, 2006). And the Commission approved rates that reflected this treatment in at least five electric rate cases. *See Ameren Ill. Co.*, Docket 12-0293, Order at 34 (Dec. 5, 2012); *Ameren Ill. Co.*, Docket 12-0001, Order at 69 (Sept. 19, 2012); dockets listed *supra.*

In 2012, in AIC's initial performance-based electric formula rate case, Docket 12-0001, the AG recommended an adjustment to AIC's rate base that effectively would have required AIC to recognize on its books the ADIT for the Metro East assets that had accrued on Union Electric's books. *Ameren Ill. Co.*, Docket 12-0001, Order at 67-68. In other words, the AG proposed to undo, for ratemaking purposes, the approved accounting for the transfer. The Commission rejected the adjustment: "The Commission finds that AIC has properly accounted for these items, and, as recommended by Staff, no adjustment is necessary in this proceeding." *Id*. at 69.

The AG again proposed the adjustment in AIC's first performance-based electric formula rate update case, Docket 12-0293. *Ameren Ill. Co.*, Docket 12-0293, Order at 32-33. And the Commission again rejected it. The Commission found that "AIC has properly accounted for [the acquisition of assets by CIPS from Union Electric], and there is no need for any additional adjustment." *Id*. at 34.

In AIC's 2013 update case, however, the Commission changed course and approved the opposite result. Although AIC continued to account for the assets consistent with the Commission-approved accounting, the Commission approved rates that amounted to a reversal of that accounting. It found that "it does not appear from the evidence presented that ratepayers will receive the appropriate tax benefits from the Metro East assets based on AIC's accounting for this issue." *Ameren Ill. Co.*, Docket 13-0301, Order at 32 (Dec. 9, 2013). (AIC has appealed this part of the Commission's Order; that appeal is pending. *See Ameren Ill. Co. v. Ill. Comm. Comm'n*, App. 4th Dist. Case No. 04-14-0128.) The Commission further directed:

> If a party wants to propose a similar adjustment in future proceedings, the information should be requested by that party and AIC shall provide the requested information to demonstrate with actual amounts or calculated amounts from the books and records of the involved entities that AIC ratepayers were not and will not be harmed by the regulatory treatment of the internal transfer of assets from one AIC operating utility to another AIC operating utility.

Ameren Ill. Co., Docket 13-0301, Order at 32.

The Metro East adjustment is unnecessary and unlawful and must be rejected.

In this case, the AG again proposes a nearly $5 million adjustment to remove the Metro East deferred tax asset from AIC's rate base. (AG Ex. 2.0, pp. 4, 7.) The adjustment ignores the fact that the Metro East transfer and resultant ADIT impact benefitted ratepayers. It should be rejected for this reason alone. The adjustment is also unlawful. It constitutes unreasonable ratemaking because it double-counts a rate component twice; it constitutes an impermissible collateral attack on the Commission's Orders approving the Metro East transfer; and it violates EIMA. For these reasons too, the AG's Metro East adjustment should be rejected.

The AG's Metro East adjustment in this case is unnecessary because the Commission-approved accounting for the assets does not harm ratepayers.

The AG's adjustment effectively would have the ADIT for the Metro East assets that accrued on Union Electric's books follow the assets (*id*. at 5), even though the Commission-approved transfer and accounting would not. Setting aside the fact the Commission approved the accounting, however, the adjustment is unnecessary because ratepayers are not harmed by inclusion of the Metro East deferred tax asset in AIC's rate base. To the contrary, they are benefitting from it. (Ameren Exs. 2.0 (2d Rev.), pp. 25-26; 2.6.)

Where ADIT, related to utility plant, is considered no-cost capital, it reduces rate base. *Ameren Ill. Co. v. Ill. Comm. Comm'n*, 2012 IL App (4th) 100962, ¶ 11. Therefore, the formula for AIC's performance-based electric rate incorporates a deduction to reduce AIC's rate base by the amount of related ADIT, including the ADIT associated with the Metro East assets. (Ameren Ex. 2.0 (2d Rev.), p. 24.) As explained, consistent with the Commission-approved accounting for the transfer, when CIPS acquired the Metro East assets in 2005, the ADIT that had accrued on the assets prior to the transfer did not follow the assets but reset on CIPS's books as of the transfer date. (*Id*. at 24-25.) The result was more ADIT—an asset that had been fully or partially depreciated on Union Electric's books and that thus had accrued ADIT that reduced Union Electric's rate base, began depreciating *again* on CIPS's books, and thus accrued ADIT that reduced rate base a second time. (*Id*. at 26.) In other words, because of the transfer, ratepayers received, and are receiving, the benefit of an *additional* rate base reduction. (Ameren Ex. 19.0, p. 7.) And they received, and are receiving, tax benefits greater than the value of the Metro East deferred tax asset. (Ameren Ex. 13.0 (Rev.), p. 9.)

Ameren Exhibit 2.6 shows the amounts that support this conclusion. The total Metro East ADIT that had accrued on AIC's books since the 2005 transfer through year-end 2013 was $18.094 million. The balance of the Metro East deferred tax asset remaining in rate base as of year-end 2013, however, was only $6.416 million. (Ameren Exs. 2.0 (2d Rev.), p. 26; 2.6.) The resulting net amount is $11.678 million, or $8.913 million after application of the electric jurisdictional allocation factor. AIC has reduced its rate base in this case by that amount. (*Id.*; Ameren Ex. 2.6.) In summary, when netted against the attendant ADIT deduction, the result is a net ratepayer benefit of $8.913 million, or an $8.913 million reduction to rate base (($18.094M) + $6.416M = ($11.678M x 76.32% = $8.913M)). (*Id.*)

AIC confirmed the beneficial ratepayer impact of the transfer another way. Taking a representative sample of the thousands of Metro East assets that were transferred, AIC compared (1) the book and tax depreciation amounts, and deferred taxes that resulted from the Metro East transfer; and (2) the book and tax depreciation amounts, and resulting deferred taxes, had the transfer never occurred. (Ameren Exs. 13.0 (Rev.), pp. 10-11; 19.0, pp. 11-12; 19.3.) AIC's analyses show that, although the net book basis (original cost net of depreciation) under both scenarios is similar, ratepayers have benefitted from *additional* ADIT—reducing rate base by an extra $248,917 for the assets studied—as a result of the transfer. (Ameren Ex. 19.0, p. 12.)

The AG witness, Mr. Effron, complains that AIC's analyses are not relevant because (he thinks) "the question of what would have happened in the absence of the transfer is not the same as the question of what would have happened in the absence of the step-up of the tax basis." (AG Ex. 4.0, p. 2:32-34.) He appears to suggest that the comparison should consider two scenarios, one with the transfer and step-up recorded, and one with the transfer and no step-up recorded. But accounting and tax rules, and the Commission-approved accounting treatment for the transfer, *required* CIPS to "step-up" the tax depreciation basis to the purchase price of the assets. (Ameren Ex. 19.0, p. 10.) Therefore, the only meaningful comparison that can be done, putting aside the other benefits of the Metro East transfer, is the one that AIC has done, and that comparison proves a demonstrable ratepayer benefit resulting from the transfer.

Even if it were possible to transfer the assets without a step-up in tax basis, the correct adjustment, at most, would be the *difference* between the ADIT balance produced in that scenario and the ADIT accrued since the time of the transfer, assuming the first value was greater than the second.. (*Id*. at 16-17.) The AG, however, does not quantify that difference. And although it is the AG's burden, *see, e.g.*, *In re Ill. Comm. Comm'n on its own mtn. v. Ill.*

Consol. Tel. Co., Docket 94-0042, 1995 Ill. PUC LEXIS 828, *103 (Order, Dec. 6, 1995) ("[E]ach party proposing a result should bear the burden of adducing evidence in support of that proposal."), the AG does not tie Mr. Effron's nearly $5 million rate base adjustment to any alleged ratepayer harm or attempt to quantify that alleged harm. (Ameren Ex. 13.0 (Rev.), p. 14.) There is none. In short, the Commission-approved accounting for the Metro East transfer, with which AIC has since complied, does not harm ratepayers. As shown, it *benefits* them. So the AG's adjustment is unnecessary.

The AG's Metro East adjustment is an unlawful collateral attack on the Commission's Orders approving the Metro East transfer and accounting.

The fact that the AG's Metro East adjustment is unnecessary is not the only legal obstacle to its adoption. The adjustment also represents a collateral attack on prior Commission orders.

"A collateral attack 'is an attempt to impeach [a] judgment in an action other than that in which it was rendered.'" *Buford v. Chief, Park. Dist., Police*, 18 Ill. 2d 265, 271 (1960); *see also People v. Hubbard*, 2012 IL App (2d) 101158 ¶¶ 17-19 (same). Orders of the Commission that are within its jurisdiction are not subject to collateral attack. *Peoples Gas Light & Coke Co. v. Buckles*, 24 Ill. 2d 520, 528 (1962); *Valier Coal Co. v. Dept. of Rev.*, 11 Ill. 2d 402, 409 (1957). "The proper means by which to correct perceived errors in Commission orders is through the rehearing and appeal processes [in Sections 10-113 and 10-201 of the Public Utilities Act]. Such corrections should not be sought in other dockets." *Ill. Comm. Comm'n v. Ill. Power Co.*, Docket 01-0701, 2004 Ill. PUC LEXIS 101, *17-18 (Order, Feb. 19, 2004). *See also Illini Coach Co. v. Ill. Comm. Comm'n*, 408 Ill. 104, 110-11 (1951) ("The rehearing and appeal process provided for in Sections 10-113 and 10-201 of the Public Utilities Act are the exclusive remedies for review of a final Commission Order.").

The AG does not argue that CIPS should not have acquired the Metro East assets. Nor does the AG dispute the many benefits of the Metro East transfer. *See, e.g.*, *Cent. Ill. Pub. Serv. Co., Union Elec. Co.*, Dockets 00-0650/0655 (cons.), Order at 5-6; (Ameren Ex. 19.0, p. 14). And the AG does not expressly contend that the Commission-approved accounting for the transfer, including the requirement that Union Electric's ADIT *not* follow the Metro East assets, was wrong. (Ameren Ex. 13.0 (Rev.), p. 9.)

Nevertheless, that is the substance of the AG's position; the AG questions the propriety of the accounting sanctioned by the Orders approving the Metro East transfer. The testimony of Mr. Effron makes this plain. He complains, "[u]tility holding companies should not be allowed to increase the net rate base value of assets by transferring the assets between affiliates." (AG Ex. 2.0, p. 5:109-10.) And he "disagree[s] with the premise that it was appropriate to reset the ADIT balance to zero for ratemaking purposes." (AG Ex. 4.0, p. 4:72-73.) The AG's position, besides ignoring accounting and tax rules, would undermine the Commission-approved accounting for the transfer and penalize AIC for its compliance with that approved accounting. Thus, although subtle in form, the AG's adjustment is an unlawful collateral attack on the Commission's asset transfer Orders. It also is patently unfair.

Asking that that ADIT follow the assets "for ratemaking purposes" (*id*. at 4:77) does not cure the unlawfulness of the AG's adjustment. Instead, it suggests that the Commission was either unaware of, or turned a blind eye to, the potential ratemaking impacts of the transfer. But this is not the case; the Commission considered the impact of the transfer on rates and concluded that "the record firmly establishes that there is no strong likelihood that after the Transfer[,] Metro East ratepayers will be subjected to a rate increase request and the transfer cannot be prohibited on this ground." Dockets 00-0650/0655 (Cons.), Order at 12. It also found that the transfer was "in the public interest" and "neither the ratepayers of AmerenUE nor of

AmerenCIPS are likely to be adversely affected in the event the proposed asset transfer and reorganization takes place." *Cent. Ill. Pub. Serv. Co., Union Elec. Co.*, Docket No. 03-0657, Order at 17.

If the AG disagreed with the accounting approved by the Commission for the Metro East transfer, or wanted different accounting to apply for ratemaking purposes, then the AG should have intervened in the Metro East transfer proceedings and advocated its position there. The AG cannot collaterally attack those orders here.

The AG's Metro East adjustment unlawfully double-counts ADIT.

The AG's adjustment must also be rejected because it would unreasonably double-count ADIT on the Metro East assets.

Unreasonable rate orders are unlawful. *United Cities Gas Co.*, 48 Ill. 2d 36, 40 (1971). The Commission and Illinois courts have recognized time and again that double-counting factors in establishing utility rates is unreasonable. *See, e.g.*, *Commonwealth Edison Co.*, Docket 05-0597, Order at 128 (July 26, 2006) (where "a recovery of [certain] costs in rates . . . constitutes a double recovery," it is "neither just nor reasonable"); *Ill. Bell Tel. Co.*, Docket 02-0864, Order at 186 (June 9, 2004) (noting that the utility was double-counting certain expenses, and adopting a Staff proposal "to correct this problem"); *Commonwealth Edison Co.*, Docket 13-0318, Order at 65, 69 (Dec. 18, 2013) (agreeing with the utility that double-counting certain revenues "would be wrong"); *cf. Ill. Am. Water Co.*, Docket 11-0767, Order at 55 (Sept. 19, 2012) (rejecting an adjustment premised on an assumption of double-counting upon finding that "there is not a duplication or double-counting"); *see also Ill. Power Co. v. Ill. Comm. Comm'n*, 254 Ill. App. 3d 239, 309 (3d Dist. 1993) ("If a mere mathematical error resulted in a double reduction for [certain] charges, the mistake should be remedied."); *Bus. & Prof'l People for Pub. Interest v. Ill. Comm. Comm'n*, 171 Ill. App. 3d 948, 959 (1st Dist. 1988) (where customers were effectively required to pay twice for energy, this "resulted in a double charge and did harm to the ratepayers.").

Double-counting is not only unlawful in ratemaking, but also improper from an accounting perspective; it misstates the financial and accounting impact of the underlying transaction or accounting entry that gave rise to the double-counting error. (Ameren Ex. 13.0 (Rev.), pp. 13-14.)

The AG's adjustment to remove the Metro East deferred tax asset, and effectively have the ADIT that accrued on Union Electric's books follow the assets, would count the deferred tax benefits associated with this single group of assets *twice*. AIC has already reduced rate base by the ADIT that has accrued on its books since 2005 related to the Metro East assets. (*Id*. at 13.) The AG's adjustment, however, would count a portion of that ADIT again by imputing to AIC the ADIT accrued on Union Electric's books for the same assets. In other words, because the accrual of ADIT reset at the time of the transfer, some of the ADIT the AG would impute to AIC's rate base would be counted twice—once pre-transfer, and once post-transfer. (Ameren Ex. 19.0, p. 15.) This double-counting of ADIT is unlawful.

<u>The AG's Metro East assets ADIT adjustment violates EIMA.</u>

Finally, in addition to the issues discussed above, there are two ways in which the AG's proposed adjustment would violate EIMA: it would alter the structure of AIC's formula-based rate and disallow costs that are not alleged to be unreasonable or imprudent.

It is unlawful for the Commission to alter in this update and reconciliation proceeding the rate base treatment it established in Docket 12-0001 for the Metro East ADIT.

To ensure that the formula for the performance-based formula rate remains "standardized," EIMA provides that the Commission "shall not . . . have the authority in [an annual update proceeding] to consider or order any changes to the structure or protocols of the performance-based formula rate approved" by the Commission in an initial formula rate case. 220 ILCS 5/16-108.5(d)(3). In addressing the treatment of a rate base adjustment ordered in AIC's initial formula rate case, the Fourth District Appellate Court found this means that the Commission "lack[s] authority . . . to recalculate the rate base during the reconciliation proceedings." *Ameren Ill. Co. v. Ill. Comm. Comm'n*, 2013 IL App (4th) 121008, ¶ 45. In that case, the Commission had reduced rate base for AIC's vacation accrual in the initial formula rate approval docket. The Court found that such adjustment could not be reversed in an annual update. *Id.* Although the Commission has since found that parties can propose changes to most formula schedules in annual update cases under EIMA, *see Ameren Ill. Co.*, Dockets 13-0501/0517 (cons.), Order at 37 (Aug. 19, 2014), the Appellate Court's decision would continue to prohibit changes to the "structure" of AIC's rate base, like the vacation accrual adjustment, in an annual update proceeding.

In AIC's initial formula rate case, the AG proposed, and the Commission rejected, an adjustment to remove the Metro East deferred tax asset from AIC's rate base. *Ameren Ill. Co.*, Docket 12-0001, Order, at 67-69. The Commission expressly found that AIC had "properly accounted for these items, and . . . no adjustment is necessary." *Id*. at 69. This rejection of the Metro East adjustment set the structure of AIC's formula rate base, much as the Commission's decision on vacation accrual did in *Ameren Ill. Co. v. Ill. Comm. Comm'n*.

The AG's adjustment, however, revises the underlying structure of AIC's rate base. Because modification of the structure of the formula rate base is barred in an annual update case, the AG's Metro East adjustment is unlawful.

It is unlawful for the Commission to disallow costs that are prudent and reasonable.

The Commission's authority to reduce rates in each annual formula rate update proceeding is limited to determining the "prudence and reasonableness of the costs incurred" in the year under review. 220 ILCS 5/16-108.5(d)(1).

The AG does not challenge the prudence or reasonableness of any aspect of the Commission-approved Metro East transfer. The sole basis for the AG's adjustment is Mr. Effron's complaint that "this transfer of property from one regulated utility to another should not have resulted in any increase to the net value of those assets included in the Company's rate base." (AG Ex. 4.0, p. 4:76-78.) As explained, this ignores the circumstances of the transfer and the Commission's Orders approving it. And the AG's assertion does not even allege, much less support a finding, that any costs were unreasonable or imprudent.

Because the Commission's sole authority and responsibility in an annual formula rate update proceeding is to review the prudence and reasonableness of the utility's costs in the year under review, the AG's adjustment must be rejected.

2. Cash Working Capital – Current Income Taxes

AIC has accepted Staff's proposal to list current state and federal taxes separately in its cash working capital calculation. (Ameren Ex. 19.0 (Stafford Sur.), p. 6.)

The AG argues that, when the "Current Income Taxes" value in AIC's calculation of cash working capital is negative, the negative value should be replaced with a zero. (AG Ex. 1.0, p. 23.) The AG argues that inclusion of the negative value contravenes the Commission's orders in prior cases, specifically Dockets 13-0301 and 13-0501/13-0517 (cons.). But AIC's cash working capital calculations precisely reflect the Commission's determinations in those cases, and need not be altered.

AIC is complying with the Commission's prior orders regarding the calculation of cash working capital.

The AG argues that AIC's calculation of cash working capital does not comply with

Commission orders in Dockets 13-0301 and 13-0501/13-0517 (cons.) The AG witness, Mr. Brosch, asserts that, in those dockets, the Commission approved his proposal "which would exclude negative income tax expenses from the determination of cash working capital." (AG Ex. 3.0, p. 24.) But that description does not accurately reflect the AG's position, or the Commission's conclusion, in those dockets. Contrary to the AG's assertions, AIC has fully complied with the Commission's prior orders on cash working capital.

In the prior dockets, the AG proposed to add a line item to AIC's cash working capital calculation, but took the position that it was "proper" to include negative values for current income tax.

In Docket 13-0301, the AG proposed that the title of a particular line item on AIC's App. 3 should be modified. Specifically, "the AG propose[d] modifying App. 3, line 8 with the caption '(Less) Deferred Income Taxes' to eliminate the … income tax entry on line 27." *Ameren Ill. Co.*, Docket 13-0301, Order at 14 (Dec. 9, 2013). At the time, line 8 of AIC's App. 3 was titled "Other Revenue Items If Any," and line 27 was titled "Income Taxes (Including Investment Tax Credit Adjustment)." *Ameren Ill. Co.*, Docket 13-0301, Ameren Ex. 1.1, p. 19, line 8. The AG made an identical proposal in Dockets 13-0501/13-0517 (cons.). *Ameren Ill. Co.*, Dockets 13-0501/13-0517 (cons.), Order at 39 (Nov. 26, 2013). In both cases, the AG pointed to the fact that "ComEd's lead lag study filed in Docket No. 13-0318 *properly includes* … *negative* 'Current Federal Income Tax.'" *Id.* (emphasis added); *see also Ameren Ill. Co.*, Docket 13-0301, Order at 14. Thus, the AG's position in those cases was that a line item subtracting deferred taxes should be inserted in the calculation of cash working capital, but that it was proper to include a negative value of current tax liability.

In both cases, the Commission determined that it would "adopt the AG's proposed adjustment on this issue." *Ameren Ill. Co.*, Docket 13-0301, Order at 16; *see also Ameren Ill. Co.*, Dockets 13-0501/13-0517 (cons.), Order at 40. The Commission took note of ComEd's calculation of cash working capital, and found that AIC should conform its cash working capital calculation to ComEd's. *Id.*

AIC has complied with the Commission's orders regarding cash working capital.

As a result, AIC added a line item to its App. 3: the new line 7a is titled "(Less) Deferred Income Taxes (Including Investment Tax Credit Adjustment)." (Ameren Ex. 19.1, p. 19.) AIC also changed line 27 to reflect "Current Income Taxes," rather than the total "Income Taxes" it had previously used. (*Compare* Ameren Ex. 19.1, p. 19 *with Ameren Ill. Co.*, Docket 13-0301, Ameren Ex. 18.1, p. 19.) Together, these changes subtract deferred income taxes from the overall cash working capital calculation, while including current income taxes. (*Id.*) Like ComEd in Docket 13-0318, AIC's "Current Income Tax" is negative, and that negative value is reflected in AIC's cash working capital calculation. (Ameren Ex. 19.1, p. 19, line 27.) Thus, AIC fully complied with the Commission's order adopting the AG proposal when AIC inserted a line "with the caption '(Less) Deferred Income Taxes' to eliminate the … income tax entry on line 27," and included negative "Current Federal Income Tax" in the calculation. *Ameren Ill. Co.*, Docket 13-0301, Order at 14.

Staff agrees that AIC has properly complied with the Commission's determinations in Dockets 13-0301 and 13-0501/13-0517 (cons.). The Staff witness, Ms. Everson, testified that the Commission's Order in Docket 13-0301 "supports the removal of deferred income tax expense and the inclusion of current income tax expense in the cash working capital calculation regardless of whether the value is positive or negative." (ICC Staff Ex. 4.0, p. 8.)

The AG's proposal in this case is not the same as its proposals in prior cases.

The AG argues that its current proposal "was approved by the Commission in Docket No. 13-0301." (AG Ex. 3.0, p. 23.) But the AG's proposal in this case is not the same as its proposals in Dockets 13-0301 and 13-0501/13-0517 (cons.). The Commission has not ordered AIC to implement the AG's current proposal in any prior proceeding.

In this case, the AG proposes that "the *amount* used on [App. 3] line 7a should be revised to completely eliminate Current Income Tax on line 27." (AG Ex. 1.0, pp. 23, 25 (emphasis added).) In other words, the AG would like App. 3, line 27 (which is now titled "Current Income Tax") to reflect a value of zero, rather than the negative value it currently reflects. But the AG also argues that "no negative amounts be reflected as [income tax expense] until in future years the Company begins actually disbursing cash to pay such income taxes." (*Id.* at 25.) Thus, the AG proposes that App. 3, line 27 reflect a value of zero *only if* the actual value that belongs in that column is negative. If the value is positive, the AG believes the positive value should be reflected. This proposal to adjust the *numerical* values within the cash working capital calculation under certain circumstances (but not others) is clearly not the same as the AG's earlier proposal to insert a new line item into the calculation.

<u>The AG's proposal is unnecessary, would cause difficulty and confusion, and should not be adopted.</u>

AIC's current cash working capital calculation precisely reflects the Commission's most recent orders concerning this issue, as discussed above. Therefore, it is unnecessary to make the additional alterations the AG requests.

In addition, implementation of the AG's proposal would cause inconsistency and potential confusion in the calculation of cash working capital. As AIC witness, Mr. Stafford, explained at hearing, all of the inputs into AIC's cash working capital calculation are taken from AIC's FERC Form 1, which is based on accrual accounting. (Tr. 148-49.) But the AG's current proposal would require that cash-based accounting principles be applied to a single element of the cash working capital calculation. This would mean that one element of the cash working capital calculation would be handled inconsistently from the rest. Moreover, as discussed above, the AG's proposal would require that a single item in AIC's cash working capital calculation be replaced with a zero—but only when the actual value that should be reflected for that item is negative. (AG Ex. 1.0, pp. 23, 25.) The AG has not described how this change would be implemented in AIC's formula rate schedules and appendices. Thus, there is potential for confusion as well.

3. Materials & Supplies (M&S)

CUB and IIEC suggest an adjustment to reflect the four-year average (2010-2013) M&S balance in the updated revenue requirement, rather than the actual year-end 2013 jurisdictional M&S balance. But they fail to adequately support this adjustment. They have not identified any portion of the year-end M&S balance that they consider imprudent. They have not explained why formula ratemaking requires, or even allows, the Commission to average or "normalize" an actual delivery service expense. All they have done is to point out that the M&S balance was higher in 2013 than in prior years. That observation alone is insufficient and cannot be a valid basis for an adjustment. In contrast, the evidence presented by AIC shows that the year-end 2013 M&S balance was both prudently incurred and reasonable in amount. For these reasons, the Commission should reject CUB and IIEC's proposed adjustment.

EIMA permits the recovery of a utility's *actual* delivery costs, subject to a determination that the costs were prudently incurred and reasonable in amount consistent with Commission practice and law. 220 ILCS 5/16-108.5(c)(1). One of the formula rate cost inputs that is updated annually is the year-end M&S balance included in rate base. 220 ILCS 5/16-108.5(d)(1). In this proceeding, AIC's formula rate reflects a 2013 year-end jurisdictional M&S balance of $50.38

million. (Ameren Exs. 2.0 (2d Rev.) (Stafford Dir.), p. 27; 19.1, p. 17, App. 1, line 49.)[1] That amount constitutes a 9% increase from the 2012 year-end jurisdictional M&S balance of $46.42 million. (CUB IIEC Ex. 2.0, p. 2.) CUB and IIEC claim that this increase is not justified, and in its place, propose to substitute the average year-end M&S balance from 2010-2013. (*Id*. at 4.) This adjustment would reduce rate base by $6.6 million and the revenue requirement by $1.7 million.

In traditional ratemaking, where rate cases do not happen every year, the Commission may normalize or average a volatile expense to include in the revenue requirement a prudent and reasonable amount representative for the proposed test year. *Ameren Ill. Co.*, Docket 11-0282, Order at 32 (Jan. 10, 2012). But in formula ratemaking, "[n]ormalization adjustments shall not be required." 220 ILCS 5/16-108.5(d). The "letter of the law" thus does not authorize the Commission to substitute an averaged amount and forego an analysis of the actual cost for the year. Instead, in each update proceeding, the Commission is tasked with reviewing the prudence and reasonableness of the actual year-end M&S balance from the prior calendar year. *Id*. Under Illinois's formula rate regulatory framework, there also can be no "gaming the system" by utilities in the choice of the test year. The mechanism requires the actual annual change in a particular cost, no matter how volatile, to be reflected in rates. This ratemaking structure does not employ an averaging of a fluctuating cost to determine a reasonable, representative amount.

CUB and IIEC witness, Mr. Gorman, notes that the year-end M&S balance has increased, not just from 2012 to 2013, but since 2010. But the pertinent increase that should concern the Commission is the increase from 2012 to 2013. In Docket 13-0301, the Commission approved

[1] Accounts payable related to M&S inventories is then subtracted from the jurisdictional M&S amount to derive the balance that is included in rate base ($43,635,000). (Ameren Exs. 2.0 (2d Rev.), p. 27; 19.1, p. 17, App. 1, line 51; *Id*. at 8, Schedule FRB-1, line 30.)

an updated formula rate revenue requirement without making any adjustments to the year-end 2012 jurisdictional M&S balance. The purpose of the annual update proceedings is to review the change in cost inputs to the utility's formula rate from the cost inputs used in the prior calendar year. Indeed, EIMA expressly provides, "The Commission's determination of the prudence and reasonableness of the costs incurred for the applicable calendar 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…." 220 ILCS 5/16-108.5(d). The focus here thus is the change in the year-end M&S balance from 2012 to 2013.

Mr. Gorman, however, has not attempted to review or analyze the actual year-end 2013 M&S balance. In response to data request IIEC 2.02, AIC submitted an excel schedule that showed the year-end storeroom balances from 2010 to 2013 for all of the storerooms across AIC's entire service area. (Ameren Ex. 20.0 (Getz Sur.), p. 4.) Mr. Gorman didn't refute or challenge any of the information provided. (*Id.*) He didn't attempt to explain why, for example, particular storeroom inventories were overstated or imprudent in amount. (*Id.*) He hasn't identified a portion of the actual year-end balance that he considers imprudent. (*Id.*) He didn't even submit additional discovery requests on the individual storeroom balances. (*Id.* at 5.) Instead, Mr. Gorman simply pointed to lower amounts in prior years in support of his adjustment. That basis alone—the fact that the balance was lower in prior years—is not consistent with EIMA, which states, "The sole fact that a cost differs from that incurred in a prior calendar year or that an investment is different from that made in a prior calendar year shall not imply the imprudence or unreasonableness of that cost or investment." 220 ILCS 5/16-108.5.

In sharp contrast to the dearth of support for CUB and IIEC's proposed adjustment, the evidence submitted by AIC explains and justifies the increase in the year-end M&S balance.

Materials and Supplies are Account 154 inventory materials and equipment maintained to support operations, maintenance and construction. (Ameren Ex. 3.0 (2d Rev.) (Getz Dir.), p. 8.) They include wire and cable, poles and crossarms, fuses, circuit breakers, reclosers, insulators and other pole and line hardware. (*Id.*) The M&S balance also includes Account 163 – Stores Undistributed costs associated with the time and labor of personnel working in the storeroom. (*Id.*) The M&S inventory ensures that adequate materials are on hand to support AIC's day-to-day operations and maintenance activities, construction projects and emergencies. (*Id.*) AIC's central warehouse consolidates and distributes these common materials to local storerooms. (*Id.* at 8-9.) In addition, AIC's storm trailers carry these common materials for use in service restoration and to supplement local inventory levels during severe weather events. (*Id.* at 9.) This inventory process supports the electric delivery operations by ensuring that common materials are available to AIC field personnel as needed and at the least cost. (*Id.*)

The rebuttal and surrebuttal testimonies of AIC witness Mr. Getz demonstrate that the year-end 2013 M&S balance increased to reflect and accommodate the increased level of construction spending that has occurred since 2010 and is expected to occur in 2014. Mr. Getz's rebuttal testimony noted that electric distribution construction capital expenditures (excluding meters and line transformers, which are not charged to M&S) increased 27% in 2013 from 2012 (and 60% from 2010). (Ameren Ex. 14.0 (Rev.) (Getz Reb.), p. 17.) Specific areas of the increase were for distribution reliability work (up 54% in 2013 from 2010) and distribution line work (up 71% in 2013 from 2010). (*Id.*) Included in this work is the incremental EIMA construction spending: $7.3 million in EIMA plant additions placed in service in 2012, $3.5 million in EIMA plant additions placed in service in 2013, and $27.3 million projected to be placed in service in 2014. (*Id.*) In addition, Mr. Getz's surrebuttal testimony identified drivers of the inventory increase at the storeroom level by division. (Ameren Ex. 20.0, pp. 8-9.) Those drivers included additional reliability, distribution, government relocation, and storm-related work, including tornados and storms that impacted Divisions 1 and 3 in November 2013. (*Id*.) The evidence shows that there has been an increase in material utilization and an improvement in inventory turnover. (*Id*. at 7.) Thus, although the increased distribution work supports a larger M&S inventory, the materials still are being prudently purchased and efficiently used.

The substantial evidence in the record supports the prudence and reasonableness of the year-end 2013 M&S balance included in rate base. CUB and IIEC, on the other hand, propose a normalization adjustment that is neither required under EIMA nor supported by any analysis of the actual M&S balance. The Commission should reject CUB and IIEC's proposed adjustment.

4. Alternative Rate Base Treatment of Accumulated Deferred Income Taxes (ADIT) associated with Reconciliation Balance

The issue addressed in this section is the AG's alternative proposal to deduct ADIT associated with the EIMA reconciliation balance from rate base. This proposal is an alternative to the proposals of the AG and CUB/IIEC to reduce the reconciliation balance by the amount of ADIT before calculating interest—which are discussed in Section VI.B.1 below. Although the AG presents this as a new proposal, it is not; it is simply an alternative method for achieving the same thing the AG and other intervenors have now proposed in various forms in at least five cases: to adjust the calculation of reconciliation interest for taxes. Such an adjustment, no matter what the form, is contrary to the plain language of EIMA and has never been adopted by the Commission. These proposals should be rejected yet again here.

EIMA specifies each variable and mathematical step necessary to complete a calculation of interest on the reconciliation balance. The calculation follows the prescribed interest model—customers are charged or receive interest based on a predetermined rate. (Ameren Ex. 15.0

(Rev.), p. 5.) The interest charge is simply a charge for the use of money, and the costs to the utility in carrying and financing the reconciliation balance are not considered. Consistent with the model, no adjustment is specified in EIMA for the effect of taxes related to the reconciliation balance.

The absence of statutory authority is no obstacle for the intervenors. All of the intervenor proposals on reconciliation interest, including the AG's alternative proposal, ask the Commission to exercise some vague discretionary power, not provided in the EIMA, to include cost-based factors in the calculation of reconciliation interest. This is beyond the Commission's authority. But even if the Commission were authorized to apply cost-based principles, the AG and CUB/IIEC proposals still must fail, because they apply cost-based principles inconsistently and unfairly. For example, as discussed further in Section VI.B.1 below, when the AG and CUB/IIEC adjust the reconciliation balance for taxes before applying interest, they do not propose to "gross-up" the interest rate for taxes as well. The AG's alternative proposal is similarly inconsistent and imbalanced, because it would reduce AIC's rate base, where the return is grossed up for taxes, but would not gross-up the reconciliation interest for taxes.

Variations on the AG's alternative proposal—all with the same goal of adjusting the reconciliation interest calculation for taxes—have been proposed in several previous formula rate cases. These proposals have never been adopted:

- In Docket 11-0721, the AG proposed that, to "ensure that the reconciliation interest calculation recognizes the non-investor-supplied source of funds represented by reconciliation ADIT," the Commission should either (1) proportionately reduce the allowed interest rate to a net of income tax equivalent rate, or (2) apply the complement of the income tax rate to the over- or under-collected balance, with interest then calculated by applying the approved interest rate to the over-collection or under-collection net of income taxes. *Commonwealth Edison Co.*, Docket 11-0721, Order on Reh'g at 30 (Oct. 3, 2012). The Commission did not adopt these proposals. *Id.* at 36.

- In Docket 13-0553, the AG proposed that the reconciliation balance should be reduced by the amount of related ADIT before calculating interest. *Commonwealth Edison Co.*, Docket 13-0553, Order at 43 (Nov. 26, 2013). The Commission rejected this proposal. *Id.*

- Most recently for AIC, in Docket 13-0501/13-0517 (cons.), the AG proposed to reduce the reconciliation balance by the amount of ADIT before calculating interest. *Ameren Ill. Co.*, Docket 13-0501/13-0517 (cons.), Interim Order at 25-26 (Nov. 26, 2013). The Commission rejected the adjustment. *Id.*

As discussed below, these decisions confirm that calculation of reconciliation interest set forth in EIMA does not consider the utility's tax costs.

<u>The AG's alternative rate base adjustment is contrary to the plain language of EIMA.</u>

The AG witness Mr. Brosch proposes that, instead of deducting the associated ADIT from the reconciliation balance before calculating interest as AG witness Mr. Effron and IIEC/CUB witness Mr. Gorman propose, the Commission could deduct the reconciliation ADIT from rate base. (*See generally* AG Exs. 1.0, p. 13; 3.0, pp. 4-10.) But the EIMA does not provide for such a rate base deduction.

EIMA expressly provides the terms of the calculation of interest on the reconciliation balance, and it does not include a rate base deduction for deferred taxes related to the reconciliation balance:

> Any over-collection or under-collection indicated by such reconciliation shall be reflected as a credit against, or recovered as an additional charge to, respectively, with interest calculated at a rate equal to the utility's weighted average cost of capital approved by the Commission for the prior rate year, the charges for the applicable rate year.

220 ILCS 5/16-108.5(d)(1).

The Act specifies each step of the interest calculation. First, what is the principal balance to which interest must be applied? It is the "over-collection or under-collection indicated by such reconciliation." *Id*. "Such reconciliation" refers to a specific sum, namely, the difference between “the revenue requirement that was in effect for the prior rate year (as set by the cost inputs for the prior rate year) [and] the actual revenue requirement for the prior rate year (determined using a year-end rate base).” *Id.* Having established the principal, the statute then precisely defines the rate of interest to be applied: “a rate *equal to* the utility’s weighted average cost of capital.” *Id*. (emphasis added). No provision is made to adjust rate base or the reconciliation balance for related taxes.

As it did elsewhere in the EIMA, the legislature could easily have added language permitting the Commission to make tax adjustments to the reconciliation interest calculation. *See* 220 ILCS 5/16-108.5(c)(4)(D); (c)(5). It did not do so here. Instead, the balance to which interest is applied is “over-collection or under-collection *indicated by* such reconciliation,” no more or less. 220 ILCS 5/16-108.5(d)(1) (emphasis added). Likewise, the legislature could have adjusted the calculation of the interest rate, but it did not. Instead, the words “equal to” denote mathematical identity and, as the Commission found in Docket 13-0553 (*Commonwealth Edison Co.*, Docket 13-0553, Order), leave no room for changing the rate, up or down. In short, EIMA contains no provision adjusting the reconciliation interest calculation for the effect of taxes related to the reconciliation balance.

The AG’s argument that ADIT must be included in rate base because the ADIT is “ICC Jurisdictional” is unfounded and inconsistent with regulatory principles.

In arguing for the AG’s alternative proposal, Mr. Brosch repeatedly asserts that the reconciliation-related ADIT is “jurisdictional,” and that all “jurisdictional” items must be included in rate base. (*See, e.g.* AG Ex. 1.0, pp. 15-16; 3.0, pp. 8-10, 12, 17-18, 21-22.) Basic ratemaking theory, however, requires inclusion of both the asset or cost item *and* the related ADIT in rate base. (Ameren Ex. 18.0 (Blessing Dir.), p. 7.) To include one and not the other would unreasonably and inconsistently favor either the ratepayer or the utility. (*Id.*) The reconciliation balance is not in rate base. Indeed, the AG has argued that the reconciliation balance *cannot* be in rate base. (AG. Ex. 3.0, p. 9.) Therefore, it would not be appropriate to include the reconciliation ADIT in rate base.

The AG's position is inconsistent with positions taken by the AG's own witnesses, as well as that of Staff witness Ms. Everson and AIC witness Mr. Stafford on other ADIT-related issues. (Ameren Ex. 23.0 (Blessing Sur.), p. 14.) All of those witnesses advocate the exclusion from rate base of ADIT-related items where the underlying cost item is not in rate base. Mr. Brosch noted (with apparent approval) that AIC intended to review whether its ratemaking treatment of several debit ADIT balances (that increase AIC's rate base) was "consistent with the ratemaking treatment of the related costs" and to remove the balances from rate base where appropriate. (AG Ex. 1.0, pp. 20-21.) Likewise, Mr. Effron and Ms. Everson both affirmatively recommended that AIC remove certain of the same deferred tax balances from rate base because the associated item was not included in rate base. (AG Ex. 2.0, pp. 7-8; ICC Staff Ex. 1.0 (2d Rev.), pp. 9-10.) Mr. Stafford accepted these recommendations in his rebuttal testimony. (Ameren Ex. 13.0 (Rev.), pp. 3-4.) All of these witnesses recognized the need to ensure consistency in ratemaking treatment of the ADIT and the related items.

Yet the AG's alternative proposal would deduct reconciliation related ADIT from rate base even though the related cost item—the reconciliation balance—is not in rate base. The Commission should disregard this inconsistent, results-oriented recommendation. As discussed below, if the Commission were to endorse this approach, it would require a re-evaluation of the ratemaking treatment of $6 million in costs currently excluded from rate base. (*See* Ameren Ex. 13.0 (Rev.), pp. 4-5, 21; *see also* Ameren Ex. 13.3.)

The AG will undoubtedly argue that ADIT adjustments to rate base are common in

Illinois ratemaking. *See Ameren Ill. Co.*, 2013 IL App (4th) 121008 at ¶ 38 ("it is common practice to make ADIT adjustments to rate base.") But such arguments assume that the item generating ADIT is *also* in rate base. For example, the most common and well-understood type of ADIT pertains to depreciable assets included in rate base. But the ADIT at issue for the reconciliation balance *did not arise from the depreciation of assets.* Instead, the ADIT associated with the reconciliation balance is "accumulated" and "deferred" because the utility's revenue (in an over-collection year) or its expense (in an under-collection year) does not occur until the reconciliation proceeding is complete. (Tr. 91-92; AG Cross Ex. 2, pp. 6-7 (response to AG data request 13.04(b)); Ameren Exs. 15.0 (Rev.) (Warren Reb.), pp. 10-11:217-19; 21.0 (Warren Sur.), p. 5.)

The ADIT at issue here is not "traditional" ADIT, and making any reference to "traditional" ADIT adjustments inapplicable.

Applying a WACC interest rate to the reconciliation balance is not "comparable" to including the reconciliation balance in rate base, such that deducting rate reconciliation ADIT from rate base is justified.

Mr. Brosch also attempts to justify the deduction of reconciliation ADIT from rate base on the theory that recovery of interest at a rate equal to the weighted average cost of capital (WACC) rate is "comparable" to including the reconciliation balance in rate base. (AG Exs. 1.0, pp. 18-19; 3.0, pp. 6, 18-19.) Whether "comparable" results would justify otherwise improper regulatory treatment need not be resolved—the treatment is not "comparable."

The treatment of a reconciliation balance under EIMA, even with application of a WACC interest rate, is fundamentally different from the treatment of rate base. A utility is entitled to recover a full return on its rate base. This means that the return on rate base is grossed-up for taxes, so that the utility actually earns the return established by the Commission as just and reasonable, after the utility pays taxes. For example, in AIC's last formula rate case, the

Commission approved a WACC of approximately 8%. *Ameren Ill. Co.*, Docket 13-0301, Order, Appx. A, Sch. 8, p. 1:6 (Dec. 9, 2013). In order to ensure that AIC actually earned an 8% return, even after it paid taxes, the Commission grossed-up the rate of return, and then applied the grossed-up rate to rate base. *Id.* The gross-up factor was approximately 70%. *Id.*; *see also* AG Ex. 3.1, p. 2:11.

However, no such gross-up factor is applied to the statutory interest rate on the reconciliation balance, as the Commission recognized in Docket 13-0553: "This Section of the Act does not provide for adjusting WACC for the purported impact of income taxes." *Commonwealth Edison Co.*, Docket 13-0553, Order at 43 (Nov. 26, 2013). There, the Commission confirmed that the WACC interest rate set by EIMA was not a full "return," stating, "[t]he fact that the legislature, in P.A. 98-0015, specified an interest rate [for the reconciliation], *not a return*, and set WACC as the interest rate to be applied to the reconciliation balance without any mention of a 'gross-up' for the effect of income taxes is determinative." *Id.* (emphasis added).

Mr. Brosch admits that the WACC interest rate on the reconciliation balance is not the "same" as rate base treatment. (Ameren Cross Ex. 2, p. 2 (response to data request AIC-AG 4.12).) And Mr. Brosch's own analysis of the revenue requirement effect of including an item in rate base confirms that rate base treatment is not "comparable" to the application of the WACC interest rate. As AG Exhibit 3.1 makes clear, when something is in rate base, the WACC percentage is applied, *then an interest synchronization adjustment is made and the amounts are grossed up for taxes.* (AG Ex. 3.1, p. 2 (emphasis added).) This indicates a full return would be provided by a fixed interest rate of approximately 11.4%, not the 8% WACC. (*Id.* at 2:8-9.) Mr. Brosch's position that the treatment of the reconciliation balance and a rate base item are "comparable" is simply wrong.

<u>The AG's proposed rate base deduction creates a circular loop, rendering the calculation impossible.</u>

The foregoing discussion shows that the AG's recommendation contradicts both the express provisions of EIMA and proper ratemaking practices. But even if these legal obstacles did not exist, the recommendation also has serious practical problems.

Most notably, the AG witness Mr. Brosch does not identify where within AIC's formula rate schedules, appendices and workpapers the reduction to rate base for reconciliation ADIT calculation might take place. This is a crucial omission. As described by AIC witness Mr. Blessing the AG's proposal would create an unending loop of calculations. (Ameren Ex. 23.0 (Blessing Sur.), p. 15.) First, one would calculate the reconciliation balance, then apply the tax rate to the balance to determine the reconciliation-related ADIT. (*Id.*) Next, the reconciliation ADIT would be deducted from the reconciliation year rate base. (*Id.*) But changing the reconciliation rate base would change the amount of the reconciliation balance, and because the ADIT is a product of the reconciliation balance, the amount of ADIT to be deducted from the reconciliation rate base would change as well. (*Id.*) Mr. Brosch utterly fails to address how to escape the "chicken and egg" problem that arises under his proposal because the ADIT and the reconciliation balance mutually inform one another.

In interpreting statutes, it is "presume[d] that when the legislature enacted a law, it did not intend to produce absurd, inconvenient or unjust results." *Brucker v. Mercola*, 227 Ill. 2d 502 (2007). The Commission should not apply EIMA to require the absurd results described immediately above. Mr. Brosch's proposal should be rejected.

<u>Consistent application of the AG's logic would require an increase in AIC's rate base of at least $6 million.</u>

Finally, the Commission must consider how it could accept the AG's theory without also requiring at least a $6 million increase in rate base.

Adopting the AG's alternative proposal would suggest that there is in fact no need for consistent treatment of rate base items and the related tax items. A cost item could be excluded from rate base, while the related tax item is included in rate base. Adopting the AG's alternative proposal would thus require the Commission to revisit the parties' agreement to remove certain deferred tax assets from rate base, because the related costs are not included in rate base. (*See* Ameren Ex. 13.0 (Rev.), pp. 4-5.) The total dollar value of these items is approximately $6 million. (Ameren Ex. 13.3.)

As discussed above, the AG's proposal fails for multiple reasons: it violates EIMA; it disregards sound ratemaking principles; and it presents serious implementation problems. But if the Commission will look past all of these issues, it must then apply the AG's logic consistently, which would necessitate adding at least $6 million to AIC's rate base.

G. Original Cost Determination

AIC requests the Commission approve an original cost of electric plant in service as of December 31, 2013, before adjustments for projected plant additions, of $5,481,627,000. (Ameren Ex. 2.0 (2d Rev.), p. 20.) Staff recommended that the Commission approve AIC's request for an original cost finding. (ICC Staff Ex. 1.0 (2d Rev.), p. 14.) Staff further recommends that if the Commission makes any adjustments to plant, those adjustments should also be reflected in the original cost determination. (*Id.*) Staff suggests the following form of language in the Findings and Orderings paragraphs in this proceeding:

> (x) the Commission, based on AIC's proposed original cost of plant in service as of December 31, 2013, before adjustments, of $5,481,627,000 and reflecting the Commission's determination adjusting that figure, unconditionally approves $5,481,627,000 as the composite original jurisdictional distribution services plant in service as of December 31, 2013.

H. Recommended Rate Base

1. Filing Year

The proposed filing year rate base is shown on Schedule FR A-1. (Ameren Ex. 19.1, p. 2.)

2. Reconciliation Year

The proposed reconciliation year rate base is shown on Schedule FR A-1 REC. (*Id*. at 3.)

III. OPERATING EXPENSES

A. Uncontested or Resolved Issues

1. Distribution Expense

AIC's revenue requirement includes distribution operations and maintenance expense. (Ameren Ex. 2.0, (2d. Rev.), pp. 31-32.) The distribution operating expenses increased in 2013 by approximately 8% over 2012. (*Id.* at 45.) AIC witness, Mr. Pate, grouped the expense into five categories: supervision and engineering, dispatch, station, line, and miscellaneous expense, (*id.*), and described the factors that drove increased expenses in each category. (*Id.* at 51-54.) Mr. Pate further testified that the levels of operations and maintenance expense reflected in the revenue requirement were prudent and reasonable. (*Id.* at 51-54.) No party contested Mr. Pate's conclusion. Thus, AIC considers this issue uncontested.

2. Customer Expense (Except for III.B.1)

AIC's Customer Expense includes labor and costs related to performing customer support activities, including meter reading, maintaining customer records, payment processing, customer billing, uncollectibles, customer service, informational assistance to customers, and energy efficiency. (Ameren Ex. 3.0 (Rev.), pp. 11-12.) AIC witness, Mr. Getz, testified that the Customer Expenses included in AIC's formula rate revenue requirement were prudent and reasonable. (*Id.*) No party contested this conclusion, and AIC considers the issue uncontested.

3. Administrative and General Expenses

AIC's Administrative and General Expenses include costs for corporate and indirect expenses that are not chargeable to a particular operating function, such as corporate leadership, financial services, human resources, information technology, legal expense, salaries and pensions, property insurance, regulatory expenses, and rents. (Ameren Ex. 3.0 (Rev.), p. 14.) These services are provided by AIC employees, external contractors, and Ameren Services Company (AMS) under the terms of the General Service Agreement. (*Id.* at 15.) When AMS provides a service, the cost is allocated to AIC in accordance with approved allocation factors. (*Id.*) AIC witness, Mr. Getz, testified that the Administrative and General Expenses included in AIC's formula rate revenue requirement were prudent and reasonable. (*Id.* at 16-17.) No party contested Mr. Getz's conclusion, or proposed adjustments to the level of expenses. Thus, AIC considers the issue to be uncontested.

4. Depreciation and Amortization Expense

AIC's revenue requirement includes depreciation and amortization expense. (Ameren Ex. 2.0 (2d. Rev.), pp. 33-34.) A portion of AIC's depreciation expense is related to 2014 projected plant additions, net of projected retirements. (*Id.*) No party contested the manner in which the depreciation and amortization expense was calculated, or the totals included in the revenue requirement. As a result, AIC considers this issue uncontested.

5. Taxes Other Than Income

AIC's revenue requirement includes expenses for taxes other than income taxes. (Ameren Ex. 2.0 (2d. Rev.), p. 38.) No party contested the manner in which the expense for taxes other than income taxes was calculated, or the total included in the revenue requirement. AIC therefore considers this issue uncontested.

6. Regulatory Asset Amortization

AIC's revenue requirement includes amortized levels of regulatory expense incurred in 2013 in connection with Dockets 12-0001, 12-0293, and 13-0301. (Ameren Ex. 2.0 (2d. Rev.), pp. 36-37.) In addition, AIC continues to amortize costs previously authorized by the Commission and recorded as regulatory assets or deferred debits. (*Id.* at 37.) No party contested the manner in which these amounts were calculated, or the total included in the revenue requirement. Therefore, AIC considers the issue uncontested.

7. Formula Rate Case Expense

EIMA permits recovery of rate case expenses related to a participating utility's initial performance-based formula rate case and subsequent proceedings related to the formula, amortized over a three-year period. 220 ILCS 5/16-108.5(c)(4)(E). In Docket 12-0293, the Commission directed AIC to amortize the expense related to its initial formula rate proceeding, Docket 12-0001, over a single three-year period beginning in 2012. *Ameren Ill. Co.*, Docket 12-0293, Order at 80-81 (Dec. 5, 2012). EIMA also permits recovery of rate case expenses related to a utility's annual formula rate update cases, expensed and recovered through the annual rate. 220 ILCS 5/16-108.5(c)(4)(E). Section 9-229 of the Act requires the Commission to specifically assess the justness and reasonableness of any amount expended by a public utility to compensate attorneys or technical experts to prepare and litigate a general rate case filing. 220 ILCS 5/9-229.

As permitted by EIMA and consistent with Commission's Docket 12-0293 directive, in this case, AIC requests total rate case expenses of $1,906,000. (Ameren Exs. 19.0 (Stafford Sur), p. 4; 19.4, pp. 1-2.) That amount includes an $873,000 amortized level of expense associated with Docket 12-0001, a portion of which was incurred in 2013 and a portion of which was incurred in 2011 and 2012 and reviewed and approved by the Commission in AIC's 2013 update case, Docket 13-0301. (Ameren Ex. 19.4, pp. 1-2.) (The remaining unamortized balance of the Docket 12-0001 expense will be recovered in AIC's 2014 revenue requirement, per the Docket 12-0293 directive. (*Id*.)) The amount also includes $64,000 incurred in 2013 related to AIC's 2012 formula rate update case, Docket 12-0293, and $969,000 incurred in 2013 related to Docket 13-0301. (Ameren Exs. 2.0 (2d Rev.) (Stafford Dir.), p. 49; 2.9; 19.4, pp. 1-2.)[2] AIC and Staff agree that all of these rate case expenses are just and reasonable. (Ameren Ex. 19.4, pp. 1-2.)

To enable the Commission to make a finding pursuant to Section 9-229, AIC offered extensive testimonial and documentary evidence in support of its rate case expenses. (*See* Ameren Exs. 2.0 (2d Rev.), pp. 49-55; 2.9; 2.10 – 2.14 (Confidential and Proprietary); 2.15.) The Company explained in testimony how it controlled the expenses. (Ameren Ex. 2.0 (2d Rev.), pp. 49-55.) When it engaged outside counsel and experts, AIC considered vendors with extensive Illinois regulatory experience, experience with AIC issues specifically, and experience in previous AIC rate cases. It also considered the scope of the work necessary, and cost-effective use of outside support services. *(Id*. at 49-50.) AIC also negotiated "not-to-exceed" agreements with certain vendors, and it required thorough documentation of rate case work, which it reviewed for accuracy and reasonableness. (*Id*.) Further, AIC explained why it selected the specific vendors that it used for 2013 rate case work, Concentric Energy Advisors, Inc., Sussex Economic Advisors, and Whitt Sturtevant LLP. And it provided engagement agreements and invoices for those vendors that detail the services they provided, the individuals who performed them, those individuals' qualifications, the time they expended for each service, and the associated hourly rates. (*Id*. at 50-54; Ameren Exs. 2.10 – 2.14 (Confidential and Proprietary).)

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[2] AIC agreed to a $1,025 disallowance for 2013 consultant travel expenses that appeared to have been charged to AIC in error. (*See* Ameren Ex. 13.0 (Rev.) (Stafford Reb.), pp. 16-17.)

Staff reviewed the extensive evidence that AIC offered in support of its rate case expenses (ICC Staff Exs. 2.0, pp. 4-6; 5.0, p. 2; 3.0, p. 3), and, again, Staff agrees that those expenses are just and reasonable (Ameren Exs. 19.0, p. 4; 19.4, pp. 1-2). Staff thus agrees that the Commission should include the following finding on rate case expense in its Final Order in this case:

> The Commission has considered the costs expended by AIC to compensate attorneys and technical experts to prepare and litigate rate case proceedings, and assesses that the amount included as rate case expense in the revenue requirements of $1,906,000 is just and reasonable pursuant to Section 9-229 of the Act. This amount includes the following costs: (1) $873,000 amortized rate case expenses associated with the initial formula rate proceeding, Docket No. 12-0001, a portion of which are charges for Docket No. 12-0001 incurred in 2013; (2) $64,000 associated with Docket No. 12-0293; and (3) $969,000 associated with Docket No. 13-0301. The Commission also finds that the unamortized balance of charges for Docket No. 12-0001 incurred in 2013 to be recovered in the 2014 revenue requirements are supported by the record in this case and are just and reasonable.

(Ameren Ex. 19.4, pp. 1-2.) The Commission should include this language in its final order, and approve recovery of AIC's 2013 rate case expenses, consistent with EIMA and Section 9-229 of the Act.

8. Industry Association Dues

In his direct testimony, Staff witness, Mr. Tolsdorf, proposed a variety of adjustments to Industry Association Dues, on the basis that the dues were out-of-period expenses, lacked outside support, or were for legal fees that were not related to delivery service. (ICC Staff Ex. 2.0, pp. 7-8.) AIC accepted Mr. Tolsdorf's proposal to disallow legal fees Mr. Tolsdorf argued were not related to delivery service. (Ameren Ex. 19.0, p. 3.) These fees were paid in connection with AIC's membership in the Utilities Water Act Group. (*Id.*) In addition, in order to limit the number of contested issues, AIC accepted two adjustments to remove expenses Mr.

Tolsdorf's believed to be for "out-of-period" expenses, since these amounts were dues for a single organization that happened to be expensed twice in the same year. (Ameren Ex. 14.0 (Rev.), p. 10.) However, AIC reserved the right to contest similar adjustments in future proceedings if the dues for the applicable year could not be recovered in that year. (*Id.*)

The remaining adjustments for "out-of-period" adjustments did not meet the materiality level AIC uses for O&M accruals. (*Id*. at 11.) In addition, because these expenses were reported in AIC's 2013 FERC Form 1, they could not form the basis of formula rate recovery in any year other than 2013. (*Id.*) AIC therefore opposed the adjustments, since no party had argued that the dues were imprudent, unreasonable, or unrelated to delivery services. (*Id*.) AIC also opposed Mr. Tolsdorf's proposed adjustment to remove industry dues he alleged "lacked outside support." (*Id.* at 12-13.) Mr. Tolsdorf withdrew these adjustments in his rebuttal testimony. (ICC Staff Ex. 4.0, p. 2.)

As a result, all of the issues related to Industry Association Dues have been resolved among the parties.

9. Adjustment to Blended Tax Rate – Ameren Exhibit 13.4

In his rebuttal testimony, AIC witness, Mr. Stafford, updated the blended tax rate calculation, which is used to reduce income tax expense in the revenue requirement. (Ameren Exs. 13.0 (Rev.), p. 5; 13.4.) Mr. Stafford indicated that the blended rate included in his direct testimony did not properly reflect the final as-filed jurisdictional allocators. (*Id.*) In addition, the blended rate was updated to reflect the exclusion of ADIT balance related to merger initiatives. (*Id.*) No party contested these adjustments, and AIC considers the matter to be resolved.

10. Additional Company Adjustments to Operating Expense

In her direct testimony, AIC witness, Ms. Russi, described the measures AIC has taken to comply with the Commission's order in Docket 13-0301, and the ongoing Docket 13-0075. (*See* *generally*, Ameren Ex. 9.0.) AIC's self-disallowances in this case were intended to reasonably approximate the disallowances recommended by Staff in Docket 13-0301, and AIC undertook a review process similar to that used by Staff in the prior case in order to arrive at the amount of the disallowance. (*Id.*) No party contested AIC's review methodology, or the amount of its self-disallowance. As a result, AIC considers this issue resolved.

In his direct testimony, Mr. Stafford reduced operating expenses and increased rate base for storm costs incurred in excess of $3.7 million for a single storm event, in accordance with Section 16-108.5 of the Act. (Ameren Ex. 2.0 (2d. Rev.), pp. 27-28.) No party contested these adjustments, and AIC considers the matter to be resolved. Other expense adjustments were proposed by the Company, including adjustments to the amount of franchise expense, injuries and damages, adjustments to remove costs recovered through other riders, costs associated with the NESC Rework, incentive compensation costs based on earnings per share goals and the costs of the Performance Share Unit Program, and lobbying expenses, and an adjustment for company use of fuel. (Ameren Exs. 2.0 (2d. Rev.), pp. 32-48, 55-58; 13.1, p. 25.) All AIC adjustments to operating expense were identified in Ameren Exhibit 2.1, App. 7. Included among these adjustments was also an adjustment to include charitable contribution expense, which was further supported by testimony. (*See generally,* Ameren Ex. 6.0.) In addition, the Company proposed other ratemaking adjustments identified on App. 7, line 16 and Schedule C-2.16 to remove certain vendor costs. No party contested these adjustments, and AIC considers the issues to be uncontested.

B. Contested Issues

1. Advertising Expense (Focus Forward - Manage Energy Use)

The Act expressly authorizes utilities to recover the cost of advertising in rates, unless the advertising is designed to be promotional, political, institutional, or goodwill and also is not in the best interest of the customer. 220 ILCS 5/9-225(2)-(3). The advertising expenses in dispute here total $274,468 in outside fees incurred in 2013 on a "Focus Forward – Manage Energy Use" project—an advertising project intended to deliver reliable and accurate information on improvements that are and will be occurring to AIC's electric systems and how they will impact customer service and usage. (Ameren Ex. 22.0 (Rev.) (Kennedy Sur.), pp. 4-5.) Ninety percent of the disputed fees were spent on the purchase of 30-second television and radio spots and 15-second digital spots ($150,000), and on time and expenses to develop and produce the ads in question ($96,000).[3] (*Id*.) These advertisements were intended to alert customers to upgrades and technology that AIC is installing on the electrical grid under EIMA, and to direct viewers to the AIC website for more information on specific capital improvements. (*Id*. at 3.)

The AG contends that the "the primary purpose of the advertising" was for "enhancing the public image of the [Ameren] corporation." (AG Ex. 3.0, p. 27.) But there is no evidence in the record to support that subjective claim. The expenses in dispute were incurred to create messages that educate and inform customers on system improvements that will make their service safer and more reliable, or allow them to better control and conserve their usage—messages that fall squarely within categories of allowable advertising expenses. (Ameren Ex. 22.0 (Rev.), p. 4.) Moreover, the Company's research and its interactions with consumers and other stakeholders demonstrate that customers want to know what capital improvements AIC is making with ratepayer supplied funds, and how those improvements will impact their lives. (*Id*. at 5.) For these reasons, and based on the substantial evidence presented, the Commission should reject the AG's adjustment.

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[3] The remaining 10 percent of the disputed amounts were miscellaneous expenses for fees for the development of a new design for the AIC YouTube channel ($20,386) and a new template for customer newsletter ($8,081). (Ameren Ex. 22.0 (Rev.), p. 5.)

EIMA requires AIC to make $625 million in "incremental" capital expenditures over a 10-year period. 220 ILCS 5/16-108.5(b). And since AIC's election in 2012 to participate in the State's investment program, the planning for and implementation of the incremental investments has been a significant initiative. AIC has submitted its ten-year infrastructure plan, and annually updated it. It has won approval of its formula rate to recover its EIMA investments and electric delivery costs, and updated the cost inputs to that formula rate, twice. *Ameren Ill. Co.*, Docket 12-0001, Order at 199 (Sept. 19, 2012); *Ameren Ill. Co.*, Docket 12-0293, Order at 118-19 (Dec. 5, 2012); *Ameren Ill. Co.*, Docket 13-0301, Order at 155-56 (Dec. 9, 2013). It has won approval of its Advanced Metering Infrastructure (AMI) Plan, and annually updated it. *Ameren Ill. Co.*, Docket 12-0244, Order on Reh'g, at 27 (Dec. 5, 2012). And it will have placed $133.8 million in incremental plant additions in service by the end of 2014. (Ameren Ex. 11.1.)

AIC's advertising is focused on educating and informing customers about the delivery system, including investments that will be implemented to maintain and improve safety and reliability, and about benefits and programs that are available to customers. (Ameren Ex. 6.0 (Kennedy Dir.), p. 22.) The Company firmly believes in the importance of sharing this information with customers. (*Id.*) And its research indicates that customers want to know how rate dollars are spent to improve service. (Ameren Ex. 16.0 (Kennedy Reb.), p. 5.) The qualitative analysis of customer insights on reliability, service, and future energy needs (submitted as AG 7.12 Attach (Confidential and Proprietary)) showed that customers want to know more about how AIC is investing in its systems for the future and what improvements will be financed with future rate increases. (Ameren Ex. 22.0 (Rev.), p. 5.) They want information in a high-level, easily digestible form with direction to get additional information (when desired). (*Id.*) They want to know the specific upgrades that will happen in their city, sub-division, or block. (*Id*.) And they want to know how much those upgrades will cost. (*Id*.) Other stakeholders, such as CUB, have also demonstrated their interest in learning more about the electric grid modernization and AMI by touring the AIC Technical Application Center in Champaign, as well as the AIC "smart meter" lab in Collinsville. (Ameren Ex. 16.0, p. 5.) They consider it important to be informed about what is going on behind the scenes to develop new applications for customers to benefit from smart grid deployment. (*Id*.)

The Act identifies a number of categories of advertising that "shall be considered allowable operating expenses" for electric utilities. 220 ILCS 5/9-225(3). The list includes advertising that "informs consumers how they can conserve energy [and] reduce peak demand for electric [] energy," advertising "regarding service interruptions [and] safety measures," advertising that "promotes the use of energy efficient appliances, equipment or services," and advertising that "promotes the shifting of demand from peak to off-peak hours or which encourages the off-peak usage of the service." 220 ILCS 5/9-225(3)(a), (c), (e), & (h). And it is not an exclusive or exhaustive list; the statute also allows recovery of "other" categories of advertising, provided they are not political, promotional or goodwill. 220 ILCS 5/9-225(3)(i).

The 2013 "Focus Forward – Manage Energy Use" advertising that the AG seeks to disallow was not designed, planned, and implemented to praise or promote AIC as an energy provider. The purpose of the advertising was to educate and inform customers about the system upgrades that AIC is undertaking and how they will impact service. (Ameren Ex. 16.0, pp. 4, 6.) Certain incremental EIMA investments, such as AMI or "smart meters," are intended to provide customers with more information about—and greater control over—their energy usage. (*Id*.) Other incremental EIMA investments are intended to upgrade the electric distribution grid to improve reliability and reduce outages and response time to outages. (*Id*.) External messages on these subjects allow customers and other stakeholders to become more familiar with the full range of capital improvements and benefits that will flow from AIC's participation in EIMA. Thus, these are the types of messages that are considered allowable operating expenses under the Act, and prudent and reasonable expenses to recover through formula rates.

In the Company's last update proceeding, Staff withdrew a similar adjustment to remove outside agency fees for labor and expenses related to communications designed to educate and inform customers about AIC's EIMA investments. *Ameren Ill. Co.*, Docket 13-0301, Order at 41 (Dec. 9, 2013). AIC explained then that the communications informed customers how AIC would be investing ratepayer funds, and how the incremental capital investments would result in improved service. *Id*. And the Commission ultimately approved the recovery of those expenses in Docket 13-0301, and likewise, it should approve recovery of the disputed expenses here.

The AG's witness, Mr. Brosch, argues that the "Focused Forward – Manage Energy Use" project was "mostly about favorable public image and reputation building." (AG Ex. 3.0, p. 28.) But the AG hasn't pointed to any evidence that can prop up that subjective claim. The purpose of the 15-second and 30-second broadcasted advertisements was: (i) to inform customers that AIC is making investments in a smarter and more reliable grid, with new technologies to detect and reduce outages and help customers manage energy use, and (ii) to direct customers to the AIC website for more information about specific improvements. (Ameren Ex. 22.0 (Rev.), p. 6.) Armed with this factual information, customers can be better informed as to the nature and extent of the upgrades—details about which customers themselves, and other stakeholders, have said that they want to know more. (Ameren Ex. 16.0, p. 8.) These messages are designed to address the point of the view of the customer, not crafted to enhance the image of the Company.

Mr. Brosch also criticizes the advertising for not having "specific informational content that advises ratepayers of specific actions that can be taken with new technologies to either reduce outage or to mange energy use so as to save money." (AG Ex. 3.0, p. 27.) He claims that "[t]here is no information in these ads that is actionable by ratepayers to actually conserve energy." (*Id*. at 28.) Embedded in Mr. Brosch's complaint is the mistaken assumption that allowable advertising has to direct the end user to take some action, rather than just simply be informative and educational. The Act does not contain such a requirement.

But more importantly, his complaint misses the point of the 15-second and 30-second spots. The point of the advertisements was not to identify the details of every investment project, every potential customer benefit from the infrastructure improvements, and every potential customer action that could be taken to manage energy use. (Ameren Ex. 22.0 (Rev.), p. 7.) That level of detail could not possibly be communicated in a 15-second or 30-second spot. (*Id*.) Nor would including that level of detail be an effective way to capture and then hold viewers' attention. (*Id*.) While it is conceivable that AIC could produce and broadcast annually a 30- or 60-minute infomercial that describes each incremental investment in the coming year and the expected customer benefits, that type of advertising would not be a practical or cost-effective way to reach, inform, and educate the AIC customer base. (*Id*.) And that is why the advertising directs viewers to go to the AIC website to find out more details about the specific projects—what they are, where they are happening, what they cost, and what benefits they will bring. (*Id*.) In today's digital age, where information is available electronically at the viewers' convenience, AIC can supplement broadcasted communications by directing customers to the online resources that contain more detailed and easily accessible information. (*Id*. at 6.) And in that regard, the advertising in question provides customers with "actionable information"—it alerts them to the EIMA investments and encourages them to seek out additional information on the AIC website.

Lastly, Mr. Brosch complains that the advertising does not provide an "opportunity" "for the general public to become involved or provide any input to guide AIC investments being made to upgrade energy delivery systems in Illinois." (AG Ex. 1.0, p. 31.) Again, this criticism misses the primary purpose of the 15-second digital spots and the 30-second television and radio spots. Unlike mailings or social media, these advertisements were not principally designed to solicit direct customer feedback on particular projects. (Tr. 42-44.) They were designed to assist customers in becoming more familiar with the projects and to direct them to where they can find more information about them, if they so choose. (Ameren Ex. 22.0 (Rev.), p. 8.) To the extent that the AG believes that there is not a "need" for AIC to educate and inform customers on EIMA projects (AG Ex. 1.0, p. 31.), AIC disagrees. That AIC is committed to make incremental investments does not inform customers on either the specific investments that AIC will make, or how those investments will benefit them. (Ameren Ex. 16.0, p. 11.) Like anyone paying for a service, the customer deserves to know how the capital collected through rates is spent. (*Id.*)

In Docket 13-0301, the Commission approved the recovery of 2012 expenses that paid for advertising related to AIC's planned incremental EIMA investments. In this proceeding, the substantial evidence in the record continues to support the recovery of similar 2013 expenses. It remains an important, prudent and allowable expense for AIC to educate and inform its customer base and other stakeholders about its progress in implementing incremental EIMA projects. The Commission should reject the AG's proposed adjustment to disallow this expense.

C. Recommended Operating Expenses

1. Filing Year

The proposed total of filing year operating expenses is shown on Schedule FR A-1. (Ameren Ex. 19.1, p. 2.)

2. Reconciliation Year

The proposed total of reconciliation year operating expenses is shown on Schedule FR A-1 REC. (*Id.* at 3.)

IV. OPERATING REVENUES

A. Uncontested or Resolved Issues

1. Miscellaneous Operating Revenues

In his direct testimony, the AG witness, Mr. Brosch, proposed an adjustment to Miscellaneous Operating Revenue. (AG Ex. 1.0, pp. 6-7.) In his rebuttal testimony, Mr. Brosch withdrew the adjustment based on additional information provided in AIC's testimony and in response to data requests. (AG Ex. 3.0, p. 4.) As a result, AIC's miscellaneous operating revenues are uncontested.

V. COST OF CAPITAL AND RATE OF RETURN

A. Uncontested or Resolved Issues

1. Cost of Capital and Overall Rate of Return on Rate Base

a. Filing Year

Staff and AIC concur regarding AIC's December 31, 2013 capital structure, and jointly recommend that the following capital balances and attendant costs be used to calculate both the reconciliation year and filing year revenue requirements:

		Balance (Thousands)	Weight	Cost	Weighted Cost
Short-Term Debt	$	0	00.000%	0.000%	0.000%
Long-Term Debt	$	1,722,570	47.405%	6.796%	3.222%
Preferred Stock	$	57,961	1.595%	4.979%	0.079%
Common Stock	$	1,853,206	51.000%	9.247%	4.716%
Bank Facility Costs					0.058%
Total Capital	$	3,633,738	100.00%		8.075%

(ICC Staff Ex. 3.0, pp. 2-3; Ameren Exs. 5.0 (Martin Dir.), pp. 8-10, 11, 12, 14, 17, 18; 2.1 (Sch. FR D-1), p. 13.) Staff and AIC agree that this capital structure, and specifically the 51.000% common equity ratio, are reasonable and prudent. (ICC Staff Ex. 3.0, p. 3; Ameren Ex. 5.0, p. 10.)

This agreed capital structure is the result of constructive and collaborative discussions between Staff, AIC, and IIEC undertaken pursuant to the Commission's Docket 12-0001 Order. (Ameren Ex. 5.0, p. 11.) In that Order, the Commission encouraged the parties to meet outside of formal proceedings to discuss the ratio of common equity included in AIC's capital structure, and to provide the Commission a related report. *Ameren Ill. Co.*, Docket 12-0001, Order at 121 (Sept. 19, 2012). AIC met with Staff and IIEC toward that end. One result of those meetings is the agreed equity ratio included in the capital structure proposed in this case, as well as an agreed equity ratio to be proposed in AIC's 2015 and 2016 electric formula rate update cases. (Ameren Ex. 5.0, p. 9.) Another is Ameren Exhibit 5.1 (confidential and proprietary), the "Report Pursuant to the Final Order in ICC Docket No. 12-0001," which reflects Staff and AIC's understanding regarding that equity ratio. Staff, AIC, and IIEC also entered into the "Ameren Illinois Company – Formula Rate Capital Structure Agreement" (Ameren Exhibit 5.2), which further reflects the parties' equity ratio agreement. (*Id*. at 9-10; Ameren Exs. 5.1 (confidential and proprietary) & 5.2.) The agreement should streamline AIC's annual update cases by reducing litigation on this issue. (Ameren Ex. 5.0, p. 11.)

b. Reconciliation Year

See supra Section V.A.1.a.

VI. RECONCILIATION

A. Uncontested or Resolved Issues

B. Contested Issues

1. Calculation of Interest on Reconciliation Balance

The plain language of the EIMA specifies a two-part calculation of reconciliation interest; that calculation does not include any adjustments for taxes.

The primary proposal offered by the AG and CUB/IIEC regarding reconciliation interest is that the Commission should reduce the reconciliation balance by the amount of taxes, and then apply the weighted average cost of capital (WACC) interest rate only to the net of tax balance. (*See generally*, AG Exs. 2.0, pp. 9-12; 4.0, pp. 6-14; CUB/IIEC Exs. 1.0, pp. 2-8; 2.0, pp. 4-11). The proposal improperly adds terms to the calculation of reconciliation interest that are not specified in the statute. The Commission has recently rejected this proposal twice: in Docket 13-0553 and in Dockets 13-0501/13-0517 (cons.). The proposals thus should be rejected again.

The annual reconciliation is an important component of the formula ratemaking mechanism, and ensures the utility recovers its actual costs for a given year. Such a reconciliation is not a feature of traditional test year ratemaking. Rather, it is part of the prescriptive and balanced approach to utility investment that the EIMA sets out: in exchange for significant infrastructure investment commitments, participating utilities may recover their actual costs through a formula rate. *See generally*, 220 ILCS 5/16-108.5. So, when a utility participating in EIMA formula ratemaking files its annual updated cost inputs, this update filing also must include a reconciliation. 220 ILCS 5/16-108.5(d)(1). This reconciles "the revenue requirement that was in effect for the prior rate year (as set by the cost inputs for the prior rate year) with the actual revenue requirement for the prior rate year (determined using a year-end rate base) that uses amounts reflected in the applicable FERC Form 1 that reports the actual costs for the prior rate year." *Id.* The difference between these amounts, or the "over-collection or under-collection indicated by such reconciliation," is the reconciliation balance. *Id.* If the utility has an "over-collection" and has recovered more revenue than its revenue requirement, the difference is refunded to customers. If the utility has an "under-collection" and not recovered its full revenue requirement, the difference is charged to customers in the next rate year.

No party disputes the method of calculating the reconciliation balance under EIMA, or that the full amount of the balance—the "over-collection or under-collection indicated by such reconciliation"—is refunded or charged to customers in its entirety. No party disputes the amount of the reconciliation balance in this case. Rather, the dispute focuses on the calculation of interest applied to that balance.

To compensate the utility or ratepayers for the delay in receiving reconciliation over or under collections, the EIMA provides for interest on the balance, "calculated at a rate equal to the utility's weighted average cost of capital." 220 ILCS 5/16-108.5(c)(6). The precise mechanics of the reconciliation charge with interest are as follows: "Any over-collection or under-collection indicated by such reconciliation shall be reflected as a credit against, or recovered as an additional charge to, respectively, with interest calculated at a rate equal to the utility's weighted average cost of capital [WACC] approved by the Commission for the prior rate year, the charges for the applicable rate year." 220 ILCS 5/16-108.5(d)(1).

Thus, the reconciliation interest amount is the product of two factors: the balance "indicated by such reconciliation," and the rate of interest applied to that balance "calculated at a rate equal to the utility's weighted average cost of capital approved by the Commission for the prior rate year." 220 ILCS 5/16-108.5(c)(6); (d)(1). The interest rate must be "equal to" the WACC, and the reconciliation balance must be the over-collection or under-collection "indicated by" the reconciliation. No adjustment for taxes is specified. As the Commission has found, this language leaves no discretion to adjust the rate or the balance for taxes, or anything else. *Commonwealth Edison Co.*, Docket 13-0553, Order at 18 (Nov. 26, 2013). The statute provides a straightforward mathematical equation: effective revenue requirement *less* actual revenue requirement (or vice versa) *times* the WACC. No imagination is required, and no adjustment is provided for. Both factors (the principal balance and the interest rate) are set forth plainly and prescriptively.

<u>The legislature could have adjusted the reconciliation interest calculation for taxes but did not; the Commission cannot add to EIMA exceptions, limitations, or conditions the legislature did not express.</u>

The EIMA reconciliation provision does *not* contain any term for an adjustment to the calculation for taxes. But the legislature could have included an adjustment to the reconciliation interest calculation for taxes. As provisions elsewhere in EIMA make clear, when the legislature wants to instruct the Commission to adjust calculations for taxes, it knows how to do so. That adjustments for taxes were not included in the reconciliation provision confirms that they may not be added by the Commission.

In the ROE collar calculation, the utility is required to apply a credit or charge that "reflects an amount equal to the value of that portion of the earned rate of return on common equity that is more than 50 basis points higher [or lower] than the rate of return on common equity calculated pursuant to paragraph (3) of this subsection (c)…for the prior rate year, *adjusted for taxes*." 220 ILCS 5/16-108.5(c)(5) (emphasis added). Similarly, for pension assets, the EIMA provides for a return at a rate "equal to the utility's weighted average cost of long-term debt, … *net of deferred tax benefits*." 220 ILCS 5/16-108.5(c)(4)(D) (emphasis added). Thus, it is clear the legislature was generally aware of the possibility of adjusting given items to account for tax effects.

But the legislature did not specify such an adjustment here. The reconciliation balance to which interest is applied is the balance "indicated by" the simple difference between the effective and the actual revenue requirements. 220 ILCS 5/16-108.5(d)(1). No mention is made of netting or adjusting this balance for taxes, and no party has shown that this legislative instruction cannot be carried out as written, such that some addition or adjustment is needed to implement it. On the contrary, the intervenors' recommendation reflects their desire for a *different* calculation. This is beyond the Commission's authority.

As a matter of statutory construction, where the legislature includes particular language or terms in one section of a statute but omits it in another, it is generally presumed the legislature acts intentionally and purposely in the inclusion or exclusion of the different terms. *In re J.L.*, 236 Ill. 2d 329, 341 (2010); *see also Bridgestone/Firestone, Inc. v. Aldridge*, 179 Ill. 2d 141, 154-55 (1997) ("A court may not inject provisions not found in the statute, however desirable they may appear to be."). Because the legislature did not include a provision for adjusting the reconciliation interest calculation for taxes, but did include such tax-adjustment provisions elsewhere, it should be presumed the legislature intended no such adjustment. *See, e.g., Collins v. Bd. of Trs. of Firemen's Annuity & Benefit Fund*, 155 Ill. 2d 103 (1993) (interpreting the legislature's inclusion of the adjective "total" in one subsection of the governing statute but not another to "create[] a presumption that the legislature intended by the absence of such adjective … [to] clearly indicate[] that the legislature intended a different method of computation for the two different [items]," and that doing otherwise would render the use of the word "total" in the first subsection "meaningless"); *see also People v. O'Brien*, 197 Ill. 2d 88, 94-96 (2001) (finding that, because the relevant chapter and article of the statute was "replete" with the term "knowingly," but that term was omitted from the subsection at issue in the litigation, an interpretation of the relevant subsection that required knowledge would render all other uses of "knowingly" "meaningless surplusage").

Given this, the Commission cannot add terms where the legislature did not. The Commission has only the powers given to by the Act. *Commonwealth Edison Co. v. Ill. Comm. Comm'n*, 332 Ill. App. 3d 1038, 1048 (2002). And it is a fundamental principle of statutory interpretation that an agency "cannot depart from the plain language of a statute by reading into it exceptions, limitations, or conditions not expressed by the legislature." *In re Haley D.*, 2011 IL 110886 ¶ 73; *Envirite Corp. v. Illinois Envt'l Protection Agency*, 158 Ill. 2d 210, 216 (1994); *Hawthorne Race Course, Inc. v. Ill. Racing Bd.*, 2013 IL App (1st) 111780 at ¶ 37 (rejecting an agency's interpretation of statutory language on a finding that it would read exceptions into the statute). These fundamental principles confirm that the reconciliation interest calculation should not be adjusted for taxes.

The fatal flaw of all the AG and CUB/IIEC proposals on reconciliation interest is that the AG and CUB/IIEC ask the Commission to alter EIMA's requirements, and to insert into the calculation of the interest on the reconciliation balance an additional arithmetic step not provided for by law. (*See generally*, AG Exs. 2.0, pp. 9-12; 4.0, pp. 6-14; CUB/IIEC Exs. 1.0, pp. 2-8; 2.0, pp. 4-11; AG Exs. 1.0, p. 13; 3.0, pp. 4-10.) In doing so, the AG and CUB/IIEC ask the Commission to read the exact same statutory language defining the reconciliation balance two entirely different ways, depending on the circumstances: *without any adjustment* when calculating the reconciliation balance to be charged or refunded (and, as indicated, no one disputes that the full reconciliation balance is to be charged or refunded), but *with adjustment for taxes* when calculating the reconciliation balance for the purposes of applying interest. The additional math required by the intervenors' proposals thus contravenes the plain language of the

Act and the Commission's decisions on that language. This was exactly why the Commission rejected this proposal previously: the Commission recognized "where the Act does intend that adjustments be made to an amount of a balance, it has done so specifically" and then concluded "it is difficult for the Commission to support an interpretation of the Act which reads into it exceptions, limitations, or conditions the legislature did not express." *Ameren Ill. Co.*, Dockets 13-0501/13-0517 (cons.), Interim Order at 26 (Nov. 26, 2013).

<u>The Commission's decisions on reconciliation interest confirm that EIMA's plain language means what it says.</u>

The Commission has consistently applied the Act's straightforward language so as to reject imposition of additional factors in the reconciliation interest calculation. Specifically, the Commission has rejected proposals to adjust both the rate of interest *and* the balance to which the interest is applied for tax effect.

In Docket 13-0553, the Commission rejected a proposal to adjust (with a tax "gross-up") the rate of reconciliation interest to account for the utility's tax costs. Instead, the Commission found the statute set a fixed rate of interest that could not be adjusted for taxes:

> The Commission is not constructing a WACC on its own; it is applying an interest rate explicitly required by law, one that is equal to, not in excess of, ComEd's WACC. No 'gross-up' was provided for in the Act. ComEd's proposal would require the Commission to apply an interest rate greater than WACC. The fact that the legislature, in P.A. 98-0015, specified an interest rate, not a return, and set WACC as the interest rate to be applied to the reconciliation balance without any mention of a 'gross-up' for the effect of income taxes is determinative.

Commonwealth Edison Co., Docket 13-0553, Order at 18 (Nov. 26, 2013). In that same order, the Commission rejected the AG's proposal to reduce the reconciliation balance by the amount of taxes before calculating interest. *Id.* at 43.

On the same day, the Commission rejected a proposal to adjust AIC's reconciliation balance to account for the utility's income taxes. The Commission found that the Act "does not appear to require or even reference" such an adjustment, noting, "where the Act does intend that adjustments be made to an amount of a balance, it has done so specifically." *Ameren Ill. Co.*, Dockets 13-0501/13-0517 (cons.), Interim Order at 26.

Thus, the Commission simultaneously determined, in two separate formula-rate proceedings, that neither the reconciliation balance nor the applicable interest rate should be adjusted to account for income taxes. For each of the two components of the reconciliation interest computation, the Commission determined that the Act required only two mathematical steps—apply a predetermined, prescribed interest rate to a simple principal balance—and that additional steps were beyond the authority of the Commission.

The Commission can presume that the legislature has acquiesced to this understanding of the language of the Act, and specifically to the Commission's rejection of proposals to adjust the reconciliation balance for ADIT before applying interest to it. "It is a fundamental principle that where the legislature chooses not to amend a statute after a judicial construction, it will be presumed that it has acquiesced in the court's statement of the legislative intent." *Wakulich v. Mraz*, 203 Ill. 2d 223, 233 (2003), citing *Zimmerman v. Skokie*, 183 Ill. 2d 30, 49-50 (1998). In Dockets 12-0001 and 12-0293, the Commission determined that interest at AIC's short-term debt rate should be applied to the total amount of AIC's over- or under-collection, without removing ADIT. *Ameren Ill. Co.*, Docket 12-0001, Order at 185-88 (Sept. 19, 2012); *Ameren Ill. Co.*, Docket 12-0293, Order at 114 (Dec. 5, 2012); *see also Commonwealth Edison Co.*, Docket 11-0721, Order on Reh'g at 36 (Oct. 3, 2012) (same). The legislature acted quickly to correct the Commission's interpretation of EIMA, regarding the interest rate, amending the Act to specify that the WACC be used. P.A. 98-0015 (May 23, 2013). But, crucially, the legislature has done *nothing* to change the Commission's application of the interest rate to the *entire* amount of the over- or under-collection, without regard to taxes or other costs. The legislature's inaction on this finding should be presumed to indicate its acquiescence with the Commission's conclusion.

The AG and CUB/IIEC primary proposals are contrary to the statute and apply cost based factors inconsistently.

For these reasons, the AG and CUB/IIEC's proposal to adjust the reconciliation balance for income taxes is contrary to EIMA's instructions and must be rejected. The AG and CUB/IIEC's primary response is to allege that their proposal would more accurately reflect AIC's costs. (AG Exs. 2.0, p. 11; 4.0, pp. 9, 13; CUB/IIEC Exs. 1.0, pp. 2-3, 8; 2.0, pp. 9-10.) Even if that were true, it is irrelevant; their proposal is not permissible under EIMA. But in any event, their assertions are not true: the AG and CUB/IIEC proposals do not accurately reflect AIC's costs because they apply cost-based principles inconsistently.

The legislature could have chosen one of two models for the calculation of interest on the reconciliation balance—the prescribed interest model or the cost-based model. The prescribed interest method applies an agreed-upon or predetermined interest rate to a given balance. (Ameren Ex. 15.0 (Rev.) (Warren Reb.), p. 5.) The interest rate could be a number like 6%, or it could be tied to an index such as the Consumer Price Index, or to a benchmark like the LIBOR rate. (*See id.*) The key is that the interest charge is *specified* at the outset, with no consideration given to the actual costs of borrowing. (*Id.* at 7; *see also* Ameren Ex. 21.0 (Warren Sur.), p. 3.) In the EIMA, the legislature adopted the prescribed method: it instructed the Commission to apply a specified interest rate ("equal to" the utility's WACC) to a specified balance. 220 ILCS 5/16-108.5(d)(1).

What the intervenors seek is (in part) a reversal of this legislative decision and the imposition of a cost-based model. That model attempts to capture all of the costs to the utility of not having reconciliation funds, or all the benefits to the utility of having excess reconciliation funds, including the tax consequences to the utility's business. (*See* Ameren Ex. 15.0 (Rev.), p. 6.) As AIC witness Mr. Warren explained, income taxes are factored into cost-based ratemaking in two ways: first, they are considered a recoverable cost that is included in the utility's cost of service; and second, they are factored into the financing costs the utility incurs when it invests in assets. (*Id.*) Factoring income taxes into one's consideration of financing costs for the reconciliation balance thus requires *both* (1) consideration of tax consequences to the reconciliation balance *and* (2) that the utility's "return requirement either has to be 'grossed-up' by the inverse of the tax rate or some other provision needs to be made for the recovery of the tax that will be incurred as a result of the receipt of the equity return." (*Id*. at 8.)

This highlights the irrationality of the AG and CUB/IIEC proposals. They fail to consider *all* of AIC's tax costs associated with the reconciliation. They consider the impact of taxes when determining the principal (*i.e.*, by removing ADIT from the reconciliation balance). But they ignore the impact of taxes in determining the interest rate, when they fail to gross up the WACC rate. Essentially, they apply prescribed-interest methods when it suits them, and cost-based principles when it does not—on a highly selective basis. (*Id*. at 10.) Not coincidentally, their selection has the effect of maximizing the rate reduction experienced by AIC—which may be a desirable result for the intervenors, but which provides no basis for Commission action.

If the parties' goal is to reflect AIC's actual costs—and this is their stated goal[4]—then *all* costs should be reflected. But this would require (at the very least) that the WACC interest rate be grossed up (*id.* at 8)—something no party proposes here. As Mr. Blessing explained, a uniform approach requires applying either the prescribed interest model or the cost-based model

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[4] *See* (AG Exs. 2.0, p. 11; 4.0, pp. 9, 13; CUB/IIEC Exs. 1.0, pp. 2-3, 8; 2.0, pp. 9-10.)

consistently to both terms of the reconciliation interest equation. (Ameren Ex. 23.0, p. 2.) Of course, this would require the Commission to reverse its decisions that the WACC interest rate cannot be grossed-up to account for the utility's tax costs associated with the recovery of reconciliation balances. *Commonwealth Edison Co.*, Docket 13-0553, Order at 18 (Nov. 26, 2013); *Ameren Ill. Co.*, Dockets 13-0501/13-0517 (cons.), Order at 26 (Nov. 26, 2013).

But the answer to the intervenors' inconsistency is not to gross-up AIC's WACC rate. The answer is to follow the method mandated by statute.

<u>The AG and CUB/IIEC's proposals rest on the flawed assumption that AIC finances its reconciliation balance solely with debt.</u>

The AG and CUB/IIEC attempt to avoid this conclusion by saying that AIC finances its reconciliation balance solely with debt, and as the interest on such debt is deductible for income tax purposes, no gross-up for income taxes on that debt is appropriate or necessary for the utility to fully recover the cost of the debt. (AG Ex. 4.0, p. 12; CUB/IIEC Ex. 2.0, p. 9.) But the premise that AIC finances its reconciliation balance solely with debt is demonstrably false.

First, the only basis for the AG's conclusion that AIC finances its reconciliation balance with debt is the Commission's unsupported and ultimately legislatively-overruled conclusion, in Docket 12-0001, that AIC used short-term debt to finance its reconciliation balance. (AG Ex. 4.0, p. 12; *see also* Ameren Cross Ex. 1, pp. 2-3 (response to data requests AIC-AG 4.04 and 4.05) (admitting that Mr. Effron "relied on the Commission's finding in Docket 12-0001 … [and] did not conduct an independent review of how AIC finances the assets on its balance sheet.").) That conclusion was not only untrue, but it has been specifically "preempt[ed] and supersed[ed]" by the legislature. P.A. 98-0015, Subs. 1. Second, AIC has submitted uncontroverted testimony in this case that it finances its reconciliation balance using the same mix of debt and equity that it uses to finance all its other operational expenses. (Ameren Ex.

23.0, pp. 10-11.)

Moreover, if AIC did finance its reconciliation balance using only debt, such debt could not be used to finance any other operations. The debt would then have to be removed from AIC's overall capital structure—which means other financial needs must be satisfied with equity. (*Id.*) Yet neither the AG nor CUB/IIEC proposes to remove from AIC's capital structure the same debt they assume AIC uses to finance its reconciliation balance.

<u>No new arguments have been raised in this case that warrant reversal of the Commission's conclusions in Dockets 13-0501/0517 (cons.) and 13-0553.</u>

Finally, it bears noting that the Commission need not reach any of these issues. The Commission resolved this issue in Dockets 13-0501/0517 (cons.), and stated that it would revisit the issue only if "further arguments by parties are presented or clarity from the legislature is provided on this topic." *Ameren Ill. Co.*, Dockets 13-0501/13-0517 (cons.), Interim Order at 26. The conditions for revisiting this issue have not been met.

It is undisputed that the legislature has not provided further input. (Ameren Ex. 23.0, p. 6.) And the primary positions of the AG and CUB/IIEC are essentially the same as the position rejected by the Commission in Dockets 13-0501/13-0517 (cons.). The AG's alternative rate base proposal, although different in form, seeks the same result as the primary proposals. (Ameren Ex. 23.0, p. 6.) None of the AG and CUB/IIEC proposals provide any persuasive statutory argument in support of their adjustment; on the contrary, EIMA's requirements for calculating reconciliation interest remain clear. The statutory language has not changed, and neither AG nor CUB/IIEC offer any explanation as to why the Commission should view the plain language of EIMA any differently than before.

At bottom, they ask the Commission to apply a method for calculating reconciliation interest that is neither consistent with the governing statute nor rationally and consistently applied. Their proposals are unlawful and unreasonable, and they should be rejected.

VII. REVENUE REQUIREMENT

A. Recommended Revenue Requirement

1. Filing Year

The recommended revenue requirement for the filing year is shown on Schedule FR A-1. (Ameren Ex. 19.1, p. 2.)

2. Reconciliation Year

The recommended reconciliation-year revenue requirement is shown on Schedule FR A-1 REC. (*Id.* at 3.)

3. Net Revenue Requirement

The net revenue requirement is shown on Schedule FR A-1. (*Id.* at 2.)

VIII. COST OF SERVICE, REVENUE ALLOCATION, AND RATE DESIGN

A. Uncontested or Resolved Issues

1. Company's Proposed Rate Design

AIC's proposed rate design follows the revenue allocation and rate design methodology approved by the Commission in Docket 13-0476.[5] In formulating this rate design, AIC first developed an embedded cost of service study (ECOSS) that incorporated the reconciliation amount for each Rate Zone. (Ameren Ex. 8.0, p. 14.) Second, the revenue allocation process determined the revenue responsibility for each rate class in each Rate Zone. (*Id.*) Third, AIC adjusted individual charge components for each delivery service rate class. (*Id.*) AIC's

[5] The Order on Rehearing in Docket 13-0476 directed that residential rate design be further modified to reduce the level of fixed charges to recover 36.4% of the class revenue requirement and increase variable Distribution Delivery Charges to compensate. *Ameren Ill. Co.*, Docket 13-0476, Order on Reh'g at 42 (Sept. 30, 2014). Prices submitted in compliance with the Order in this proceeding will reflect the residential rate design directive Ordered in 13-0476 on Rehearing.

proposed revenue requirement in this case is greater than in the prior case, which will result in higher delivery service charges for most customers. (*Id.* at 17.) The magnitude of the changes varies by rate class and Rate Zone. (*Id.*) No party contested AIC's rate design methodology or results, and AIC therefore considers its rate design to be resolved.

IX. OTHER ISSUES

A. Uncontested or Resolved Issues

1. Incremental EIMA Plant Additions

Staff witness Ms. Everson recommended that the Commission include within its order a table describing the incremental plant additions AIC is making as a result of its participation in the EIMA scheme by year, and by dollar amount. (ICC Staff Ex. 1.0 (2d. Rev.), pp. 15-16.) AIC agreed with this proposal, and understands the issue to be resolved. (Ameren Ex. 13.0 (Rev.), p. 4.)

2. Modifications to Formula Rate Filing Schedules

a. App 7 – Storm Costs greater than $3.7 Million

Staff witness Mr. Tolsdorf recommended that AIC identify storm costs greater than $3.7 million separately on App 7 in future formula rate filings, in order to increase transparency. (ICC Staff Ex. 5.0, pp. 3-4.) AIC accepted this recommendation, and understands the issue to be resolved. (Ameren Ex. 19.0, p. 4.)

b. App 3 and Part 285 Schedules – Current State and Federal Income Tax Expense

Staff witness Ms. Everson recommended that AIC show current state and federal income taxes separately on its App 3 and Part 285 schedules in future formula rate filings, rather than presenting a combined total of the two amounts. (ICC Staff Ex. 4.0, pp. 7-8.) AIC accepted this recommendation, and understands the issue to be resolved. (Ameren Ex. 19.0, p. 6.)

B. Contested Issues

1. Safety Awareness and Recognition Guidelines

Staff and AIC agree that AIC has satisfactorily addressed the Commission's concerns in Docket 13-0301 that gave rise to a disallowance of 2012 safety recognition spending, in all but one respect. The parties have identified this issue as contested, however, because Staff and AIC disagree whether dollars spent to reward safety accomplishments are duplicative of safety-related incentive compensation. But this single point of disagreement is not ripe for resolution in this case. That is because AIC has self-disallowed 2013 safety recognition spending, and only 2013 expenses are at issue here. If AIC seeks recovery of 2014 safety recognition spending in its 2015 formula rate update case, then this point of dispute will need to be resolved. Until that time, Staff and AIC may have to agree to disagree on the issue.

AIC has addressed the Commission's Docket 13-0301 concerns related to safety recognition spending.

In Docket 13-0301, the Commission disallowed AIC's 2012 safety recognition spending, citing two concerns: (1) it perceived a lack of definitive Company standards for reviewing and evaluating employee credit card purchases, including purchases made to promote safety awareness and recognize employee safety achievements; and (2) it found that safety recognition awards serve the same purpose as the safety-related incentive compensation that AIC recovers under EIMA. *Ameren Ill. Co.*, Docket 13-0301, Order at 59-60, 69 (Dec. 9, 2013).

AIC has taken several measures to address the Commission's concerns. First, in this case, the Company self-disallowed 2013 safety recognition spending akin to the 2012 disallowed amounts. (*See* Ameren Ex. 9.0 (Russi Dir.), pp. 14-16; ICC Staff Exs. 1.0R, p. 10; 4.0, p. 13.) Thus, the level of safety recognition spending is not an issue in this case. (ICC Staff Exs. 1.0R, p. 10; 4.0, p. 13.)

Next, AIC instituted Safety Awareness and Recognition Spending Guidelines, effective January 2014, to address the Commission's concern that AIC lacked Company-wide controls over safety recognition spending. (Ameren Ex. 10.0 (Barud Dir.), pp. 3, 7-8.) The Guidelines formalize AIC's policy on safety recognition spending, and establish criteria for safety recognition awards—token, tangible recognition of individual departmental safety achievements. (*Id.* at 7-8; Ameren Ex. 24.1 (Revised Safety Awareness and Recognition Spending Guidelines).) They also strengthen oversight and control of safety recognition spending by centralizing administration within a Safety Department, requiring approval of quarterly spending reports by senior personnel, and defining the accounting to be used for safety recognition spending. (Ameren Ex. 10.0, pp. 3, 8; ICC Staff Ex. 4.0, p. 11.) In these ways, the Guidelines limit safety recognition spending, and ensure that it is prudent and reasonable in amount. (Ameren Exs. 10.0, p. 12; 17.0 (Barud Reb.), p. 6; 24.0 (Barud Sur.), p. 10.)

AIC completed the Guidelines August 1, 2014. (Ameren Ex. 17.0, p. 3.) Staff agrees that the completed Guidelines represent a Company-wide policy regarding safety recognition spending. (ICC Staff Ex. 4.0, p. 11.) Thus, the Guidelines address the Commission's Docket 13-0301 concern that AIC lacked formal controls over safety recognition spending. Again, AIC has self-disallowed its 2013 safety recognition spending in this case. AIC expects the Guidelines will eliminate the need for a self-disallowance in subsequent rate cases. (Ameren Ex. 9.0, p. 16.)

To address the Commission's concern that safety recognition spending serves the same purpose as safety-related incentive compensation, AIC extensively explained in this case how the expenses differ and why it is prudent and reasonable for AIC to encourage and ensure safety with safety recognition awards in addition to, and separate and apart from, safety-related incentive compensation. (*See* Ameren Exs. 10.0, pp. 13-16; 17.0, p. 8; 24.0, pp. 3-5.) Put simply, safety is key to AIC's success and it reduces the cost of utility service to ratepayers. Thus, AIC uses every opportunity to promote a safe workplace and workforce. This includes using safety skills training, compliance training, safety rules, safety policies and procedures, tools and equipment that support safe work and minimal strain, safety involvement, such as participating on a safety committee, safety support, SafeStart, New Employee Safety Training, and annual apprentice safety focus. It also includes rewarding employees for Company-wide safety achievements on an annual basis with safety-related incentive based compensation. And it includes recognizing individual employees or departments on a continuous basis with safety recognition awards. (Ameren Ex. 10.0, pp. 4-7.)

This does not mean, however, that any of AIC's safety measures are duplicative or superfluous, including safety-related incentive compensation and safety recognition spending. Although those safety incentives differ in myriad ways (Ameren Ex. 10.0, pp. 13-16), three key differences are their "who, when, and what."

Who. While the payment of incentive compensation depends on the safety achievements of a large group, such as division or even the entire Company, safety recognition awards are rewarded based on individual performance or that of a small work group, such as an operating center gas department. This means that a high-performing employee can receive a safety recognition award, even if he/she is not entitled to receive safety-related incentive compensation. (Ameren Ex. 24.0, p. 3.)

When. Safety recognition awards are based on shorter timeframes and are provided in real time; safety-related incentive compensation, in contrast, is based on annual performance. Thus, safety recognition awards provide a more immediate way of rewarding, and consequently reinforcing, safety achievements. Combined, safety-related incentive compensation and safety recognition awards effectively incentivize employees for the entire year. (*Id*. at 3-4.)

What. Safety recognition awards, unlike safety-related incentive compensation, are not entirely monetary. They are meals, safety-related items, the cost of a presenter at a safety meeting, and the like—periodic acknowledgements of a job safely done. (*Id*. at 4.) Because of this, safety recognition awards also provide a venue for employees to talk about safety, at a short-term award luncheon for instance, or a way for employees to display and promote safety achievements, such as a weather radio or carbon monoxide detector. (*Id*.; Ameren Ex. 10.0, pp. 15-16.) Safety-related incentive compensation does not do this. (Ameren Ex. 24.0, p. 4.)

In sum, if AIC did away with safety recognition awards, it would have no means to award individual or small group safety accomplishments on an immediate, rolling basis with discrete, tangible tokens of recognition. Considering safety recognition awards this way highlights that they are not the same as safety-related incentive compensation. (*Id*.)

Staff and AIC disagree whether it is appropriate to incentivize safety twice, but this disagreement cannot be resolved in this case.

It is true that both safety recognition awards and safety-related incentive compensation incentivize safety. (Ameren Ex. 24.0, p. 5.) But there is no evidence in this case that promoting safety more than one way is unreasonable or imprudent. Again, because safety is vital to AIC's customers and its success, AIC should and does encourage and ensure workplace and workforce safety through every avenue. (*Id*.)

EIMA also does not support a conclusion that safety recognition awards are duplicative of safety-related incentive compensation or superfluous. The Act expressly provides for recovery of: "incentive compensation expense that is based on the achievement of operational metrics related to . . . safety . . . ." 220 ILCS 5/16-108.5(c)(4)(A). But it does not delineate the *form* of safety incentives that are recoverable. If safety recognition awards are to be considered incentive compensation tied to safety, then EIMA expressly provides for their recovery.

Regardless, there is no 2013 safety recognition spending under review in this case. So this issue is one that must be resolved in a future case, should AIC seek recovery of safety recognition spending there.

X. CONCLUSION

For all of the above reasons, Ameren Illinois Company d/b/a Ameren Illinois request that the Commission adopt the revenue requirement as proposed by Ameren Illinois Company.

Respectfully submitted,

Ameren Illinois Company

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CERTIFICATE OF SERVICE

I, Albert D. Sturtevant, an attorney, certify that on October 2, 2014, I caused a copy of the foregoing *Initial Brief of Ameren Illinois Company* to be served by electronic mail to the individuals on the Commission's Service List for Docket 14-0317.

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