

**STATE OF ILLINOIS  
ILLINOIS COMMERCE COMMISSION**

ILLINOIS COMMERCE COMMISSION	)	
On Its Own Motion	)	
	)	
-vs-	)	
	)	Docket No. 13-0527
AMEREN ILLINOIS COMPANY	)	
d/b/a Ameren Illinois	)	
	)	
Reconciliation of revenues collected	)	
under power procurement riders with	)	
actual costs associated with power	)	
procurement expenditures.	)	

**INITIAL BRIEF OF AMEREN ILLINOIS COMPANY**

Pursuant to the Notice by the Administrative Law Judge (ALJ) issued on December 4, 2014, Ameren Illinois Company (Ameren Illinois or Company) provides the following answers to the ALJ's questions:

**Q. 1 Explain what legal authority this Commission has to make the adjustments proposed by Ameren witness Mr. Perniciaro on pages 4-6 of Ameren Exhibit 4.0.**

The General Assembly decided years ago an electric utility that on December 31, 2005, which served at least 100,000 customers in Illinois, shall procure power and energy for its eligible retail customers in accordance with Section 1-75 of the Illinois Power Agency Act and Section 16-111.5 of the Public Utilities Act (Act). Since that enactment we have come to know that the Illinois Power Agency prepares a procurement plan for each electric utility and has in place a process by which it identifies the power supply products it recommends the electric utility purchase. The legislative protocols define the role of the Illinois Power Agency and the review process over which the Commission oversees and approves the power supply products. After

the Commission affirms the power supply contracts, the utility enters into the contracts and those contracts become the source of the power supplied to customers. The utility - Ameren Illinois - relies on two state agencies to effectively manage and oversee the power supply contracts that will serve the electric utility's retail customer load. Ameren Illinois receives no markup or any profit on the power supply it provides; it can only pass through these costs.

In conjunction with the above, the General Assembly made abundantly clear in Section 16-111.5(l) of the Act (220 ILCS 5/16-111.5(l)) that the electric utility shall recover the costs it incurs as a result of this new power supply acquisition paradigm, and these costs include the cost for procuring power and energy and demand response resources. Specifically, the legislature requires that the tariffs include a formula rate or charge designed to pass through both the costs incurred by the utility in procuring a supply of electric power and energy for the applicable customer classes with no markup or return on the price paid by the utility for that supply, plus any just and reasonable cost that the utility incurs in arranging and providing for the supply of electric power and energy. The formula rate or charge shall also contain provisions that ensure its application does not result in over- or under-recovery due to changes in customer usage and demand patterns, and that provide for the correction, on at least an annual basis, of any accounting errors that may occur. 220 ILCS 5/16-111.5(l).

Clearly, the electric utility is to recover all of its costs incurred in providing power supply. Further, the formula rate or charge embedded in the tariff is to provide for the correction, on at least an annual basis, of any accounting errors that may occur. The statute does not state that recovery of all of the electric utility's costs must be related to

a specific period of time, nor does it limit the recovery of the utility's costs to only a reconciliation period. In sum, there is a statutory scheme that recognizes the utility is a conduit of these power supply costs and a further recognition that it should recover its power supply costs.

The Commission not only has the authority to make the adjustments proposed by Mr. Perniciaro, but as stated is required to do so under the Act. Section 5/16-111.5(l) of the Act mandates that “[a]n electric utility shall recover its costs incurred under [Section 16-111.5], including, but not limited to, the costs of procuring power and energy demand-response resources under [Section 16-111.5].” (emphasis added). This language must be given its plain and ordinary meaning. Boaden v. Dep’t of Law Enforcement, 664 N.E.2d 61, 65 (Ill. 1996). And the Illinois Supreme Court has repeatedly construed “the word ‘shall’” as “a clear expression of legislative intent to impose a mandatory obligation.” People v. O’Brien, 754 N.E.2d 327, 330 (Ill. 2001) (citing Vill. of Winfield v. Ill. State Labor Relations Bd., 678 N.E.2d 1041, 1046 (Ill. 1997); People v. Thomas, 664 N.E.2d 76, 84–85 (Ill. 1996)). Accordingly, the use of the word “shall” removes doubt that Ameren Illinois, once it establishes that it has incurred reasonable power supply or procurement costs (which no party disputes ), must be allowed to recover those costs from its customers.

In accordance with Section 16.111.5(l) of the Act, Ameren Illinois filed its Rider PER - Purchased Electricity Recovery (Rider PER) (its predecessor was Rider MV (Market Value of Power and Energy) and Rider HSS - Hourly Supply Service (Rider HSS) (its predecessor was Rider RTP-L – Real Time Pricing-Large). Under the section of Rider PER titled Purpose, it provides in part, “In accordance with Section 16-111.5(l)

of the Act, the primary purpose of this Rider is to allow the Company to recover all the costs it incurs to procure all such component services not recovered through other mechanisms.” Rider PER is peppered with similar mandates as to the requirement that Ameren Illinois recover all of its costs: “Purchased Electricity Price” - Under this Rider, the Company “recover[s] its costs of procuring power and energy” pursuant to Section 16-111.5. In particular, this Rider provides for the recovery of the Company’s “cost of procuring power that are incurred pursuant to the Commission-approved procurement plan and are specifically identified in the Commission-approved procurement plan to a “formula rate or charge” with no markup or return on the price paid by the Company for that supply, plus any just and reasonable cost that the Company incurs in arranging and providing the supply of electric power energy.” Later, under the section titled Retail Purchased Electricity Charge, it reads, “The application of retail purchased electricity charges allows the Company to recover from Customers the costs the Company incurs in procuring all of the component services it requires to meet such Customers’ instantaneous electric power and energy requirements at any given time under the Company’s tariffs, applicable tariffs not filed with FERC and other applicable law.”

Riders PER/HSS are the statutorily-authorized mechanisms for accomplishing cost-recovery. Both riders were filed with and approved by the Commission to specifically provide for, among other things, full recovery of reasonable power procurement costs. See Final Order, Docket No. 07-0527, 12/19/2007 at 85 (approving Rider PER); 95 (approving Rider HSS and noting that it will “provide[] for recovery of a broad range of procurement costs”). Here, the Commission is faced with a request to provide recovery of procurement costs that no party disputes were reasonably incurred

(even if accounted for incorrectly) via reconciliations of costs incurred and revenues recovered pursuant to the exact mechanisms set up to address such requests. Under the language of the Act and the riders themselves, the Commission is both authorized and obligated to approve the adjustment requested.

An accounting error on the part of the Company that caused an under-recovery in prior years should not disqualify the Company from the recovery to which it is otherwise statutorily entitled. While a utility is required to act with “prudence” when incurring procurement costs, no party argues that Ameren Illinois’ accounting error demonstrates imprudence, and, indeed, a simple mistake does not meet the standard. According to previous decisions of the Commission and the Illinois courts,

*Prudence is that standard of care which a reasonable person would be expected to exercise under the same circumstances encountered by utility management at the time decisions had to be made. In determining whether a judgment was prudently made, only those facts available at the time judgment was exercised can be considered. Hindsight review is impermissible.*

Ill. Power Co. v. Ill. Commerce Comm’n, 612 N.E.2d 925, 929 (Ill. App. Ct. 1993).

Of course, a “reasonable person” sometimes makes a mistake. The Commission has said “[t]he potential for human error is inherent in all human endeavors[,]” and that “[d]ata input is obviously no exception.” Ill. Commerce Comm’n v. Ill. Power Co., Docket No. 01-0701, Final Order, 2004 Ill. PUC LEXIS 101 at 64–65 (refusing to find the utility “imprudent” in the incurrence of costs at a Shanghai natural gas storage field which were potentially inflated by monitoring errors).

Consistent with the foregoing, there is ample Commission precedent—dating back many years - allowing adjustments in various annual reconciliation proceedings to account for clerical and accounting errors. See, e.g., Ill. Commerce Comm’n v. Ameren

Illinois, Docket No. 12-0548, Final Order, 6/17/2014 (incorporating adjustments in a reconciliation proceeding to remedy accounting error that led to over-recovery); Ill. Commerce Comm'n v. Ill. Power Co., Docket No. 94-0137, Final Order, 1/26/1996, 1996 Ill. PUC LEXIS 53 at 7–9, 13–14 (permitting Illinois Power Company to adjust for prior year accounting errors that led to an under-recovery, in a Rider EEA and GEA reconciliation); Ill. Commerce Comm'n v. Union Elec. Co., Docket No. 91-0584, Final Order, 4/19/1995, 1995 Ill. PUC LEXIS 275 at 6–7, 10 (incorporating multi-year accumulated under-recovery resulting from accounting error).

In fact, one of the express purposes of this proceeding is to provide Ameren Illinois with an opportunity to correct any such errors:

*With respect to Ameren Illinois, such reconciliation will also provide for the correction of any accounting errors that might have occurred in the application of the provisions of Rider PER.*

Initiating Order, 9/18/2013 at 3.

In the current proceeding, Ameren Illinois only intends nothing more and nothing less than what the governing statute requires, and as permitted under Riders PER/HSS. That is, a request to recover all the costs incurred in providing power supply to its customers.

As noted above, the Commission has recently recognized Rider PER permits adjustments that take into account prior year reconciliation periods. For example, in Docket No. 12-0548, the issue was an error that involved the Automatic Balancing Adjustment provision of Rider PER. Ameren Illinois identified an issue with the implementation of certain work paper calculations. The cumulative correction was included within the March 2011 filing during the 2010-2011 reconciliation period. This issue added almost \$35 million to the regulatory liability in March 2011. And recently

Ameren Illinois discovered an operations error involving one of its gas storage fields. Since November 2006, it had been overstating the amount of gas flowing into the system gas distribution system, impacting the costs recovered through Rider PGA - Purchased Gas Adjustment - for Rate Zone II customers. This meant for a six-year period of time, customers were overpaying for gas as Rider PGA was being applied. Ameren Illinois recognized the operational error and fixed it. Ameren Illinois came forward with the information to the Commission, explained the nature of the error, and separately filed a Petition in Docket No. 14-0219 asking the Commission to permit Ameren Illinois to refund Rider T and S customers the sum of \$21 million. Ill. Commerce Comm'n v. Ameren Illinois, Docket No. 14-0219, Final Order, 8/5/2014. Rider PGA, like Rider PER, relies on an annual reconciliation to true up the costs and expenses incurred with revenues collected. Rider PGA, like Rider PER, does not bar or limit an adjustment that can be made over a prior year's reconciliation period, as the Commission has readily recognized.

Setting aside the compelling legal authorities discussed above, it would be patently unfair and inequitable to allow for adjustments that span several prior reconciliation years that favor customers, but then to ignore the same legal authorities when the adjustment goes the other way.

**Question 2: Explain what legal authority this Commission has to make adjustments for accounting errors that occurred outside the reconciliation period.**

As noted above, the Commission has the authority to allow recovery of the requested amounts under Riders PER/HSS. The next inquiry, then, is whether the

Commission has the legal authority to allow for that recovery in the present docket or whether another procedural path is necessary.

As follows, the Commission has the same authority to make adjustments for accounting errors that occurred outside the reconciliation period as it does to make adjustments for accounting errors that occurred inside the reconciliation period, because no temporal limitation exists in Section 5/16-111.5(l) of the Act, and because, as a practical matter, Commission reconciliation dockets already act as the forum for reconciling all that came before, including prior year balances.

First, there is no temporal limitation in the Act, and the Commission's regular practice in reconciliation dockets shows that inputs predating the current year often factor into current-year adjustments.

Subsection 16-111.5(l) of the Act begins, as previously discussed, by laying out the cost-recovery requirement:

*An electric utility shall recover its costs incurred under this Section, including, but not limited to, the costs of procuring power and energy demand-response resources under this Section.*

It then sets forth a utility's obligation to file tariffs and associated riders for Commission approval, which Ameren Illinois did in Docket No. 07-0527:

*The utility shall file with the initial procurement plan its proposed tariffs through which its costs of procuring power that are incurred pursuant to a Commission-approved procurement plan and those other costs identified in this subsection (l), will be recovered.*

Next, the statute sets forth the requirements for those tariffs:

*The tariffs shall include a formula rate or charge designed to pass through both the costs incurred by the utility in procuring a supply of electric power and energy for the applicable customer classes with no mark-up or return on the price paid by the utility for that supply, plus any just and reasonable costs that the utility incurs in arranging and providing for the supply of electric power and energy.*

*The formula rate or charge shall also contain provisions that ensure that its application does not result in over or under recovery due to changes in customer usage and demand patterns, and that provide for the correction, on at least an annual basis, of any accounting errors that may occur.*

Finally, Section 16-111.5(l) of the Act concludes with additional language meant to guarantee complete cost-recovery for the utilities:

*A utility shall recover through the tariff all reasonable costs incurred to implement or comply with any procurement plan that is developed and put into effect pursuant to Section 1-75 of the Illinois Power Agency Act and this Section, including any fees assessed by the Illinois Power Agency, costs associated with load balancing, and contingency plan costs. The electric utility shall also recover its full costs of procuring electric supply for which it contracted before the effective date of this Section in conjunction with the provision of full requirements service under fixed-price bundled service tariffs subsequent to December 31, 2006. All such costs shall be deemed to have been prudently incurred. The pass-through tariffs that are filed and approved pursuant to this Section shall not be subject to review under, or in any way limited by, Section 16-111(i) of this Act.*

Nowhere in the text is there any temporal limitation, or any suggestion that costs mistakenly under-recovered in one year are not recoverable in the next. To the contrary, each provision suggests that all costs are recoverable: “[a]n electric utility shall recover its costs ... including, but not limited to ...”; “[a] utility shall recover through the tariff all reasonable costs incurred ...”; “[t]he electric utility shall also recover its full costs of procuring electric supply ...” (emphasis added). No court or administrative body is “free to construe a statute in a manner that alters the plain meaning of the language adopted by the legislature.” Murray v. Chi. Youth Ctr., 864 N.E.2d 176, 189 (Ill. 2007). But reading a current-year limitation into the text would do just that.

Ameren Illinois’ Riders PER/HSS do include a provision for the correction of any accounting errors that may occur: Factor A, the provision invoked by Ameren Illinois in

this very proceeding. The Act requires that a Factor A-type input exist and that it be capable of calculation and application on at least an annual basis, but it does not impose any limit on the time from which an error or adjustment used in the Factor A calculation might be drawn.

As a practical matter, moreover, it could be argued that the Commission already operates without any temporal limitation in reconciliation dockets. Under- or over-recovered reconciliation balances from prior years are often carried forward for various reasons (including rate-impact concerns), and those pre-existing balances are reconciled along with marginal revenues and costs in order to arrive at a new reconciliation balance each year. See, e.g., Ill. Commerce Comm'n v. Ameren Illinois, Final Order, No. 12-0548, 6/17/2014 Apps. A, B, and C (each power procurement reconciliation table begins with the "PER Under/(Over) Recovery From Prior Years").

Consistent with this approach, the Company requests in this docket to include and bring forward an under-recovered balance from past years to be included with the additional inputs identified, if any, from the reconciliation period identified in this docket. The Commission permitted analogous relief in Docket No. 12-0548, when Ameren Illinois discovered that it had over-recovered for several years due to an accounting error. See Docket No. 12-0548, Ameren Ex. 3.0, lines 163–172; see also Ill. Commerce Comm'n v. Ill. Power Co., Docket No. 01-0701, Final Order, 2/19/2004 (carrying over a prior year unamortized balance in a PGA reconciliation proceeding, due in part to a late-discovered metering error at a gas field); see also Ill. Commerce Comm'n v. Ill. Power Co., Docket No. 94-0137, Final Order, 1/26/1996, 1996 Ill. PUC LEXIS 53 at 7-9, 13-14 (permitting Illinois Power Company to adjust for prior year accounting errors that led to

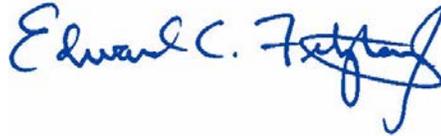
an under-recovery in a Rider EEA and GEA reconciliation). There is no good reason to treat this case differently.

In short, the legal authority for the Commission to make adjustments for accounting errors that occurred outside the reconciliation period is the same as the legal authority for the Commission's obligation to permit cost-recovery in the first place; there is no temporal limitation. And, as prior proceedings involving a carried-forward balance or a prior year under- or over-recovery show, the Commission's reconciliation proceedings already operate as a forum for balancing the books with respect to all that came before - not just with respect to the 12 preceding months. In addition to being permissible under the statute, Ameren Illinois' request, therefore, should not be viewed as something new.

Dated: December 17, 2014

Respectfully submitted,

AMEREN ILLINOIS COMPANY  
d/b/a Ameren Illinois



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**CERTIFICATE OF SERVICE**

I, Edward Fitzhenry, counsel for Ameren Illinois Company, hereby certify that a copy of the foregoing *Initial Brief* was filed on the Illinois Commerce Commission's e-Docket and was served to all parties of record in Docket No. 13-0527 on this 17th day of December, 2014.

A handwritten signature in blue ink that reads "Edward C. Fitzhenry". The signature is written in a cursive style with a large, stylized "F" and "H".

Edward C. Fitzhenry