

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

Ameren Illinois Company)	
d/b/a Ameren Illinois)	
)	ICC Docket No. 14-0317
)	
Rate MAP-P Modernization Action Plan-)	
Pricing Annual Update Filing)	

**THE PEOPLE OF THE STATE OF ILLINOIS’
APPLICATION FOR REHEARING**

The People of the State of Illinois, by and through Lisa Madigan, Attorney General of the State of Illinois (“the People” or “AG”), pursuant to Part 200.880 of the Commission’s Rules of Practice, 83 Ill.Admin.Code § 200.880, hereby file their Application for Rehearing in the above-captioned proceeding concerning the annual formula rate update under the Energy Infrastructure Modernization Act (“EIMA”) applicable to Ameren Illinois Company (“Ameren” or “AIC” or the “Company”).

I. Introduction

On December 10, 2014, the Commission entered its final Order (“Order”) in this proceeding. In that Order, the Commission rejected the recommendation made by the People, and by the Citizens Utility Board (“CUB”) acting with the Illinois Industrial Energy Consumers (“IIEC”) (the latter two parties acting together, “CI”), that the reconciliation balance associated with Ameren’s 2013 revenue requirement be reduced by associated deferred income tax for purposes of calculating interest thereon, pursuant to Section 16-108.5(d) of the Act.

The People request that the Commission reconsider its rejection of the AG/CI-proposed adjustment which would apply interest to the “net-of-tax” reconciliation balance. Reconsideration is particularly relevant in light of the Fourth District Appellate Court ruling in

Ameren Ill. Co. v. Ill. Comm. Comm'n, 2013 IL App (4th) 121008, dated December 11, 2013 and modified upon denial of rehearing January 28, 2014 (the “Fourth District Opinion” or “*Ameren*”), which the People cited at pages 4 and 21 of their Initial Brief¹ and pages 10, 18, and 19 of their Reply Brief. That opinion presents controlling law that specifically authorizes the Commission to apply relevant ratemaking principles and treat deferred income taxes as non-shareholder funds that should not receive interest as shareholder funds. Consistent with the Court’s holding, established regulatory principles, and the Public Utilities Act (“PUA” or the “Act”), the Commission should deduct deferred taxes from the reconciliation balance for purposes of calculating interest on that balance.

This error subjects the Order to judicial review and reversal as not supported by substantial evidence, as beyond the Commission’s jurisdiction, and as in violation of Illinois law and regulatory principles (220 ILCS 5/10-201(e)(iv)(A), (B), and (C), as discussed further below.

II. The Commission Should Deduct Deferred Income Tax From the Annual Reconciliation Balance Before Calculating Interest Thereon.

A. Recent Commission Treatment of the AG/CI Proposed Reconciliation Interest Adjustment Has Found It Complies with GAAP and Standard Ratemaking

In Docket Nos. 13-0501/0517 (cons.), a Section 9-250 investigation running contemporaneously with Docket No. 13-0301, last year’s formula rate update proceeding, the People and CUB both proposed that, in light of EIMA’s emphasis on allowing utilities to recover their “actual costs,” and in light of the statute’s silence² on how interest on the annual

¹ References herein to the People’s “Initial Brief” shall refer to their Corrected Initial Brief, filed October 14, 2014.

² “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

reconciliation balance should be calculated, the Commission recognize the tangible monetary benefit of accumulated deferred income tax (“ADIT”) and calculate interest only on the “net-of-tax” reconciliation balance under Section 16-108.5(d)(1) of EIMA. In its Interim Order in that proceeding, the Commission found:

merit in the AG’s position, supported by CUB. This approach conforms to GAAP, would capture deferred tax benefits, and is likely a more accurate accounting for all of the economic impacts caused by revenue requirement reconciliation.³

However, the Commission declined to adopt the AG/CUB proposal for the stated reason that the AG/CUB proposed adjustment to the reconciliation interest calculation is not specifically mentioned in EIMA, and “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.”⁴ The Commission also invited “further arguments” on the issue from the parties in future cases.⁵ The People applied for rehearing as to the Commission’s Docket Nos. 13-0501/0517 Interim Order on September 18, 2014, and the Commission denied the application on September 30, 2014. The People filed a Notice of Appeal with the Appellate Court, Fourth District on October 30, 2014 as to the Commission’s decision on the reconciliation interest calculation issue in its Docket Nos. 13-0501/0517 (cons.) Interim Order. That appellate proceeding is docketed as number 4-14-0950 and is still pending today.

The People also appealed a nearly identical decision on the same issue in Docket No. 13-0553, a Commission investigation on the same reconciliation interest issue running

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).

³ Interim Order, Docket Nos. 13-0501/0517 (cons.), November 26, 2013, at 26.

⁴ *Id.*

⁵ *Id.*

contemporaneously with Docket No. 13-0318, last year's formula rate update proceeding for Commonwealth Edison Company ("ComEd"). The People's Notice of Appeal of the Commission's decision on that issue in Docket No. 13-0553 was filed January 30, 2014. That appeal is still pending today as Appellate Court case numbers 1-14-0114, 1-14-0275, and 1-14-0403 (cons.) and is fully briefed.

The People and CI proposed the same adjustment to the calculation of interest on the reconciliation balance of 2013's revenue requirement in *this* year's instant formula rate update proceeding. The People and CI each presented expert witnesses in support of their proposal⁶, and Ameren presented witnesses against the proposal.

In its Order in this instant proceeding, the Commission found at page 67, just as it did in Docket No. 13-0501/0517 (cons.), that the AG/CI proposed "approach conforms to GAAP, would capture deferred tax benefits, and is likely a more accurate accounting for all of the economic impacts caused by the revenue requirement reconciliation." The Order also reiterates its finding from the Docket Nos. 13-0501/0517 (cons.) Interim Order that "it is difficult for the Commission to support an interpretation of the EIMA which reads into it exceptions, limitations, or conditions the legislature did not express" and thus declines to adopt the AG/CI proposal. *Id.*

B. The Fourth District Opinion Authorizes Deduction of ADIT in Ratemaking

The People request that the Commission reconsider its December 10, 2014 decision on this issue in light of the Fourth District Appellate Court ruling in *Ameren Ill. Co. v. Ill. Comm. Comm'n*, 2013 IL App (4th) 121008, previously cited above (the "Fourth District Opinion or *Ameren*"). That opinion specifically authorizes the Commission to deduct deferred income tax consistent with established regulatory principles.

⁶ AG Ex. 1.0 at 10-21; AG Ex. 2.0 at 9-12; CI Ex. 1.0 at 2-8.

The Court emphasized that a failure to deduct ADIT from the plant balances at issue in Ameren’s annual formula rate proceedings would provide the Company a significant windfall at the expense of ratepayers. The Court held that deducting deferred income tax from projected plant additions is correct as a matter of prudent accounting: “[o]mitting [deferred income tax] from the rate base calculation would allow Ameren what amounts to an interest-free loan at the ratepayers’ expense that would artificially increase Ameren’s rates until the next reconciliation process, a result which is neither just nor reasonable for ratepayers.”⁷ Thus, the Fourth District Opinion held that “[a]s it was consistent with the common practice of the Commission to include [deferred income tax] in the ratemaking process, the Commission did not err by including the [deferred income tax] adjustment for projected plan[t] additions in its ratemaking calculation.”⁸

C. Implication of the Fourth District Opinion For This Proceeding

Addressing a slightly different aspect of the annual electric formula ratemaking process, Section 16-108.5(d)(1) of the PUA states that “[a]ny over-collection or under-collection indicated by [the annual] 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.” Section 16-108.5(d)(1) says nothing about deducting deferred income tax from the reconciliation over-collection or under-collection for purposes of calculating interest thereon. It is important to note, however, that despite the lack of express statutory authorization in Sections IX or XVI of the PUA to deduct deferred income tax from projected plant additions

⁷ Fourth District Opinion at ¶ 39.

⁸ Fourth District Opinion at ¶ 40.

or plant in general for purposes of calculating rate base, the Appellate Court in the Fourth District Opinion held that the Commission did not err in making such deduction.

Although the Commission specifically recognized in its November 26, 2013 Interim Order in Docket Nos. 13-0501/0517 (cons.) that it found “merit” in the AG/CUB proposal and that the proposal conformed to GAAP and standard regulatory practice, the Commission rejected the proposed ADIT adjustment in that order based on the Act’s failure to specifically require the deduction, noting that “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. *Davis v. Toshiba Machine Co.*, 186 Ill.2d 181, 184-185 (1999).”⁹

However, as the Illinois Supreme Court has stated:

it is not sufficient to read a portion of the statute in isolation. We must, instead, read the statute in its entirety, keeping in mind the subject it addresses and the legislature's apparent objective in enacting it. *Gill v. Miller*, 94 Ill.2d 52, 56, 67 Ill.Dec. 850, 445 N.E.2d 330 (1983). Where the language of the statute is clear and unambiguous, we must apply it as written, without resort to other tools of statutory construction. *Raintree Homes, Inc. v. Village of Long Grove*, 209 Ill.2d 248, 255, 282 Ill.Dec. 815, 807 N.E.2d 439 (2004). Generally, the language of a statute is considered ambiguous when it is capable of being understood by reasonably well-informed persons in two or more different senses. *In re B.C.*, 176 Ill.2d 536, 543, 223 Ill.Dec. 919, 680 N.E.2d 1355 (1997).

Mid Electrical Contractors, Inc. v. Abrams, 228 Ill.2d 281, 287-288 (2008). The overall purpose of EIMA is to reconcile the utility’s revenue requirement every year so that the utility recovers revenues sufficient to cover its *actual costs* during each annual formula rate cycle. Allowing interest on cash that is *not* foregone does not meet the statutory goal of matching the reconciliation to actual costs and applying interest to the actual cash under- or over-collection.

⁹ Interim Order, Docket Nos. 13-0501/0517 (cons.), November 26, 2013, at 26.

The Commission has made clear, in both its Docket Nos. 13-0501/0517 (cons.) Interim Order and again in this proceeding's Order, that it finds "merit," as a matter of prudent regulatory accounting, in the AG/CI proposal to deduct deferred income tax from the reconciliation balance for purposes of calculating interest thereon. The guidance provided by the Fourth District Opinion provides the Commission with assurance that it may implement this adjustment, despite the lack of express statutory authorization to do so in Section 16-108.5(d)(1) of the PUA.

Failure to adopt the AG/CI proposal to deduct ADIT from the 2013 reconciliation under-collection for purposes of calculating interest thereon would be contrary to law, not supported by substantial evidence, and arbitrary and capricious, and it would subject the Order to judicial review and reversal under Section 10-201(e)(iv)(A-D) of the Act. The Commission's interpretations of statutory authority are not subject to deference by the Court, as questions of law are reviewed *de novo*. *A. Finkl & Sons Co. v. Illinois Commerce Comm'n*, 250 Ill.App.3d 317, 323 (1st Dist. 1993). ("[T]he Commission's interpretation of questions of law is not binding on a reviewing court.")

In support of this request for rehearing, the People incorporate by reference the arguments they presented at pages 19-24 and 30-34 of their Initial Brief; pages 15-20 and 27-36 of their Reply Brief; and pages 7-12 of their Brief on Exceptions. Accordingly, the People request that the Commission grant rehearing on this matter.

IV. The Motion for Partial Collection of Revenues Subject to Refund

Contemporaneously with this Application for Rehearing, the People are also filing a Motion for Partial Collection of Revenues Subject to Refund relating to the incremental contribution to Ameren's 2015 net revenue requirement effected by the Commission's decision

to reject the AG/CI proposed treatment of the reconciliation balance interest calculation. That Motion is attached as **Appendix A** to this Application for Rehearing. The Motion asks that the Commission order Ameren to collect and earmark certain identifiable portions of 2015 rates as refundable dating from January 1, 2015 for the potential event that (i) the Commission deny the People's Application for Rehearing as to the disputed reconciliation interest issue and then (ii) the Appellate Court reverses the Commission's decision as to the issue.

V. Conclusion

WHEREFORE, the People of the State of Illinois request that the Commission revisit the issue discussed above, grant rehearing, and modify its Order of December 10, 2014 in accordance with the arguments presented above.

Respectfully submitted,

The People of the State of Illinois
by LISA MADIGAN, Attorney General

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