

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

Illinois Commerce Commission	:	
On Its Own Motion	:	
	:	13-0527
-vs-	:	
	:	
Ameren Illinois Company d/b/a Ameren Illinois	:	
	:	
Reconciliation of revenues collected under power procurement riders with actual costs associated with power procurement expenditures.	:	
	:	

DRAFT PROPOSED ORDER

By Order of the Illinois Commerce Commission (“Commission”):

I. INTRODUCTION AND PROCEDURAL HISTORY

On September 18, 2013, the Commission entered an Order (“Initiating Order”) directing Ameren Illinois Company, d/b/a Ameren Illinois (“Ameren Illinois”) to present evidence showing the reconciliation of revenues collected under power procurement riders with the actual costs incurred in connection with procurement activities as defined in the tariffs of each of Ameren Illinois’ three rate zones. The reconciliation period was the 12 months beginning June 1, 2011 and ending May 31, 2012. Appearances were entered by counsel for Ameren Illinois and for the Staff of the Illinois Commerce Commission. No petitions to intervene were filed.

Pursuant to due notice given in accordance with the law and the rules and regulations of the Commission, pre-hearing conferences were held before a duly authorized Administrative Law Judge (“ALJ”) of the Illinois Commerce Commission (“Commission”) at its offices in Springfield, Illinois. On July 16, 2014, Ameren Illinois filed the direct testimony of Richard L. McCartney (Ameren Ex. 1.0), David J. Brueggeman (Ameren Ex. 2.0), and Dominic S. Perniciaro (Ameren Ex. 3.0, 3.1-3.10). On November 12, 2014, Ameren Illinois filed the supplemental direct testimony and exhibits of Mr. Perniciaro (Ameren Exs. 4.0-4.06). On November 24, 2014, Staff filed the direct testimony of Daniel Kahle (ICC Staff Ex. 1.0) with Schedules 1.01 and 1.02. On December 10, 2014, Ameren Illinois filed the affidavits of Mr. McCartney (Ameren Ex. 1.1), Mr. Brueggeman (Ameren Ex. 2.1), and Mr. Perniciaro (Ameren Ex. 4.7). On December 31, 2014, Staff filed the affidavit of Mr. Kahle (ICC Staff Ex. 2.0). ICC Staff Exhibits 1.0,1.1 (RZ I, II, III), 1.2, and Ameren Exhibits 1.0-4.7 were entered into evidence without objection. At the hearing it was confirmed that there were no

contested issues and the parties were in agreement on the reconciliation statements at issue in this docket. The record was marked heard and taken on _____. An agreed draft proposed order was filed.

II. AMEREN ILLINOIS DIRECT TESTIMONY

As noted above, Ameren Illinois filed testimony in response to the Initiating Order and in support of approval of the reconciliations. Mr. McCartney provided an overview of Ameren Illinois' planning process prior to the supply procurement activities for customers taking supply on the Company's fixed price tariff (Rider BGS - Basic Generation Service ("Rider BGS")) during the reconciliation period, or June 1, 2011 through May 31, 2012. Mr. McCartney explained that the Company submitted a five-year hourly forecast to the IPA on July 15, 2010, followed by a clarifying letter to the IPA on July 28, 2010. The IPA subsequently used this forecast to determine quantities of energy, capacity and renewable energy credits to be pursued in the IPA Procurement Plan ("the Plan"). He explained that the Plan also included a description of how Ameren Illinois would procure services such as network transmission service, ancillary services and auction revenue services. Mr. McCartney testified that the Commission approved these services, approved the Plan in Docket No. 09-0373 and that the Company abided by the Plan.

Mr. McCartney testified about the planning process and the energy and capacity procurement process for customers taking supply under the Company's real-time pricing tariffs (Rider RTP – Real Time Pricing ("Rider RTP") and Rider HSS – Hourly Supply Service ("Rider HSS")). He testified that forecasts were created prior to and during the reconciliation period using three primary sources, which were used to estimate monthly capacity requirements and daily energy requirements for customers: (1) billing data for those customers actively taking service on Rider RTP and Rider HSS, and those customers who were pending to take such supply in the next billing cycle; (2) historical hourly consumption data associated with the Midcontinent Independent Transmission System Operator ("MISO") settlement process; and (3) letters of intent associated with the summer notification process identified in Rider HSS and/or other less formal types of communications between customers and personnel working in the Key Accounts Department for Ameren Illinois.

Mr. McCartney also testified about the procurement process for Rider RTP and Rider HSS. Mr. McCartney further testified that Ameren Illinois' tariff for Rider RTP and Rider HSS defines the general parameters for procuring the capacity and energy required to service the Company's real time pricing customer load, and that the capacity and energy purchases were made consistent with the parameters included in this tariff. Specifically, Mr. McCartney explained that all energy associated with Rider RTP and Rider HSS was priced based on MISO's Locational Marginal Pricing ("LMPs") methodology. Mr. McCartney further explained that for each operating day during the reconciliation period at issue in this docket, Ameren Illinois submitted an hourly megawatt forecast to MISO the day prior to the operating day pertaining to the applicable Rider RTP and Rider HSS load. Once submitted to MISO, Mr. McCartney

explained, this forecast became a financially binding "Demand Bid," which subsequently was priced at the MISO hourly day ahead LMPs. Any difference between the day ahead forecast and the actual energy used by customers was settled at hourly real time LMPs. Mr. McCartney stated that, consistent with the requirements of MISO, capacity gave the right of the buyer (here, Ameren Illinois) to designate the source as a Planning Resource Credit ("PRC") that satisfied the resource adequacy requirement obligation of the MISO Transmission and Energy Markets Tariff. Mr. McCartney further testified that the vast majority of summer capacity (June 2011 through September 2011) was procured via a Request for Proposals ("RFPs") that was administered by Burns and McDonnell on behalf of Ameren Illinois. The quantities procured via this RFP were based on the Ameren Illinois' forecast of monthly capacity requirements in the MISO Voluntary Capacity Auction ("VCA") to meet the requirements of incremental load electing hourly supply after the Burns and McDonnell procurement event. In addition, 100% of the non-summer capacity for load electing hourly supply was procured by the Company each month via the MISO VCA. Mr. McCartney testified that Ameren Illinois complied with the terms and conditions of the riders and all purchases were made prudently.

Mr. McCartney testified about the administrative and operational costs associated with the reconciliation period. He explained that the costs at issue include, but are not limited to, short and long term forecasting of load, active participation in the IPA procurement plan docket and the planning stages leading up to the procurement process, assisting in the development of bilateral contract terms associated with the IPA procurement, development of the Rider BGS supply price for the upcoming planning year, procurement of capacity for customers on real time pricing tariffs not procured by the IPA, on-going contract administration, invoice check-out and payment to bilateral suppliers under contract, submission of daily demand bids (forecasts) to MISO each day of the year, MISO settlement check-out and invoice payment, nomination of auction revenue rights which offset customer costs, participation in MISO initiatives, implementation of changing MISO business practices and feedback to various interested parties (e.g., IPA, Commission Staff, Procurement Administrator, Procurement Monitor) regarding a variety of MISO issues throughout the course of the year, responding to data requests from regulatory parties, and participation in legislative initiatives that may impact the future IPA procurement process. Mr. McCartney concluded that the costs incurred during the reconciliation period were necessary and reasonable because they were consistent with the requirements under the IPA procurement plan and the Commission-approved Ameren Illinois power supply tariffs.

Mr. Brueggeman testified about the power supply procurement process and the products that were purchased in order to satisfy the power supply needs of Ameren Illinois' retail customers taking service under Rider BGS for the reconciliation period. He explained that the power supply products obtained through the IPA purchases consisted of capacity, energy and Renewable Energy Credits. He explained that the IPA procurement process utilizes a portfolio of standard wholesale products which are then supplemented by spot market energy purchases and other services that make up the full requirement product, and the process requires a procurement plan that

specifically identifies the wholesale products to be procured following Commission approval of the plan. Mr. Brueggeman explained that under the procurement process the IPA was responsible for hiring the Procurement Administrator and Levatin Associates, Inc. ("LAI") was selected to serve as the Procurement Administrator for the 2011 procurement cycle associated with Ameren Illinois solicitations. Mr. Brueggeman testified that LAI implemented a process to procure the wholesale energy products identified in the Commission-approved procurement plan for this Reconciliation Period. Following the conclusion of each RFP issued by LAI, Ameren Illinois entered into contracts with winning suppliers identified in LAI's recommendation made to, and approved by, the Commission. Mr. Brueggeman further testified that Ameren Illinois made spot market purchases during the Reconciliation Period. The Commission-approved procurement plan identified physical transactions as the mechanism to hedge the cost of energy and these purchases combined with legacy financial swaps approved in prior periods equaled the energy hedges. Any shortfall between the hedges and actual load, as a result of energy purchases done in blocks, was supplied through additional spot purchases from the MISO energy markets.

Mr. Brueggeman discussed the legislative provisions related to the prudence of purchases that result from the IPA procurement process; explained that purchases made via the IPA procurement process were made in a manner consistent with the procurement provisions of the PUA, and the Company performed all prudent acts in a manner consistent with the law and the Commission's order approving the Plan in Docket No. 09-0373; and that Ameren Illinois recovers costs incurred for power procurements pertaining to Rider BGS through Rider PER – Purchased Electricity Recovery ("Rider PER"). Mr. Brueggeman concluded that the costs incurred under Rider PER were reasonable because the purchases made via the IPA procurement process were consistent with the procurement provisions of the PUA, and that Ameren Illinois has reasonably performed all acts consistent with the law, including the Commission's prior orders.

Mr. Perniciaro testified about the way revenues for each Ameren Illinois rate zone were collected, how they were accounted for, any accounting adjustments made during the course of the reconciliation period, and the costs attributable to the relevant procurement activities. He also provided a summary schedule detailing the internal administrative and operational costs associated with the procurement of electric power and energy for retail customers during the period under review.

Mr. Perniciaro's testimony included the following exhibits, which provided the information set forth below:

- Ameren Exhibit 3.01 - Rate Zone I Rider PER reconciliation of costs and revenues for the period ending May 31, 2012
- Ameren Exhibit 3.02 - Rate Zone II Rider PER reconciliation of costs and revenues for the period ending May 31, 2012
- Ameren Exhibit 3.03 - Rate Zone III Rider PER reconciliation of costs and revenues for the period ending May 31, 2012

- Ameren Exhibit 3.04 - Rate Zone I Rider HSS reconciliation of costs and revenues for the period ending May 31, 2012
- Ameren Exhibit 3.05 - Rate Zone II Rider HSS reconciliation of costs and revenues for the period ending May 31, 2012
- Ameren Exhibit 3.06 - Rate Zone III Rider HSS reconciliation of costs and revenues for the period ending May 31, 2012
- Ameren Exhibit 3.07 - Rate Zone I Summary reconciliation of costs and revenues for the period ending May 31, 2012
- Ameren Exhibit 3.08 - Rate Zone II Summary reconciliation of costs and revenues for the period ending May 31, 2012
- Ameren Exhibit 3.09 - Rate Zone III Summary reconciliation of costs and revenues for the period ending May 31, 2012
- Ameren Exhibit 3.10 - Internal Administrative and Operational Costs Associated with Procurement ending December 31, 2012

According to Mr. Perniciaro, these exhibits: show the recovery of the Company's total allowable costs over the 12-month Reconciliation Period ending May 31, 2012 for the BGS-FP fixed price and hourly price for small customer products ("RTP") under Rider PER (Ameren Exs. 3.1-3.3); show the recovery of the Company's total allowable costs over the twelve-month Reconciliation Period ending May 31, 2012 for the hourly price product for large customers under Rider HSS (Ameren Exs. 3.4-3.6); summarize the Company's total allowable costs over the twelve-month Reconciliation Period ending May 31, 2012 under Riders PER and HSS and the Factor A requested by Ameren Illinois based upon the proposed adjustments; and show the internal administrative and operational costs associated with procuring electric power and energy for retail customers over the thirty-one-month reconciliation period ending December 31, 2012 (Ameren Ex. 3.10).

III. AMEREN ILLINOIS SUPPLEMENTAL TESTIMONY

Mr. Perniciaro explained an accounting error concerning the Company Use of electricity for its facilities and its effect on an ordered reconciliation component within Factor A of Rider PER and Rider HSS. Factor A is an "Adjustment" component within the riders that states:

"Adjustment, in dollars, equal to an amount (a) ordered by the ICC or (b) determined by the Company, after discussion with the Staff, that is to be refunded to or collected from Customers to correct for accounting errors associated with the computation of previously applied adjustments under this Rider. Such amount includes interest charged at the rate established by the ICC in accordance with 83 Ill. Adm. Code 280.70(e)(1). Such interest is calculated for the period of time beginning on the first day of the Effective Period during which such adjustment was applied and extending through the day prior to the start of the Effective Period in which the A is

applied. Such amount may be amortized over multiple Effective Periods with interest.”

Mr. Perniciaro’s supplemental testimony included the following exhibits which provided the referenced information:

- Ameren Exhibit 4.01 – Company Use Detail
- Ameren Exhibit 4.02 – Revised Rate Zone I Rider PER/HSS reconciliation of costs and revenues for the period ending May 31, 2012
- Ameren Exhibit 4.03 – Revised Rate Zone II Rider PER/HSS reconciliation of costs and revenues for the period ending May 31, 2012
- Ameren Exhibit 4.04 – Revised Rate Zone III Rider PER/HSS reconciliation of costs and revenues for the period ending May 31, 2012
- Ameren Exhibit 4.05 – Company Use Interest Calculation
- Ameren Exhibit 4.06 – Pro-forma Rider PER Work Papers

Mr. Perniciaro describes these exhibits as: a summary of details for the Company Use accounts from the Ameren Illinois customer billing system (Ameren Ex. 4.01); revisions to Ameren Exhibits 3.07, 3.08 and 3.09, respectively, and a summary of the Company’s total allowable costs over the twelve-month reconciliation period ending May 31, 2012, under Riders PER and HSS and the Factor A requested by Ameren Illinois based upon the proposed adjustments (Ameren Exs. 4.02-4.04); the calculation of the interest for the Company Use issue (Ameren Ex. 4.05); and a pro-forma work paper proposed to reduce the impact to customer rates until the Factor A in each docket for this issue is ordered.

Mr. Perniciaro summarized the Company Use of electricity issue. Ameren Illinois’ Rider PER and Rider HSS customers benefited from recording the impact of Company Use (power used by its own facilities) twice in the over/under calculation, resulting in Ameren Illinois under-recovering its recoverable costs. He described how Company Use normally affects Riders PER/HSS (how customers are properly credited for the Company Use costs included in the Rider PER over/under calculation the first time) and how the customers benefited a second time. Mr. Perniciaro described Ameren Illinois’ cumulative under recovery in the amount of \$17,985,829 from Rider PER and \$4,013,021 from Rider HSS prior to the calculation of interest. Based on the interest calculation method prescribed by the tariff and as previously administered, an additional \$578,560 is due Ameren Illinois.

Mr. Perniciaro discussed Ameren Illinois’ proposed remedy to correct the under recovery. Ameren Illinois requests Factor A adjustments in open and future dockets. He explained the future amounts will be corrected in the general ledger to correct financial and regulatory reporting for 2014. Ameren Illinois requests a Factor A adjustment of \$17,271,588 in this Docket No. 13-0527. With respect to Docket No. 14-0568, Mr. Perniciaro testified that Ameren Illinois will request a Factor A adjustment in the amount of \$2,096,854; and that once the docket for June 2013 through May 2014 is initiated, Ameren Illinois will request a Factor A adjustment of \$988,550. According to

Mr. Perniciaro, Ameren Illinois proposes that the Company Use error be treated similarly to the Automatic Balancing Adjustment (“ABA”) error from Docket No. 12-0548. In that docket, Ameren Illinois identified an issue with the implementation of certain work paper calculations. The monthly filing work paper was flawed and resulted in incorrect unauthorized balances from March 2007 through February 2011.

IV. STAFF TESTIMONY

Mr. Kahle testified on behalf of Staff. He testified that he reviewed and analyzed Ameren Illinois’ reconciliations of revenues collected under Rider PER and Rider HSS with the costs incurred in connection with power procurement activities as defined in the tariffs of each of Ameren Illinois’ three Rate Zones. Mr. Kahle agrees that Ameren Illinois’ proposed adjustments were necessary and correctly calculated. Mr. Kahle recommends the Commission accept the reconciliations presented in Schedule 1.01 (RZ 1, RZ II and RZ III) as the reconciliation of Rider PER and Rider HSS for the year ended May 31, 2012 for each Ameren Illinois rate zone.

V. RESPONSE TO ALJ QUESTIONS

The parties were asked to explain by what legal authority this Commission has to make the adjustments proposed by Ameren witness Mr. Perniciaro in his supplemental direct testimony, and as supported by Mr. Kahle.

A. Ameren’s Response

In response Ameren Illinois described generally the current power supply procurement process that has been in place several years, and in particular its obligations to 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). The Illinois Power Agency prepares a procurement plan and identifies the power supply products it recommends the 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 them and those contracts become the source of the power supplied to customers. The utility - Ameren Illinois asserts - relies on two state agencies to effectively manage and oversee the power supply contracts that will serve its 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 utility shall recover the costs it incurs as a result of this 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 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 incurred 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).

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 or require 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 Ameren Illinois argues, but as stated is required to do so under the Act. Section 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].” 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 (its predecessor was Rider MV (Market Value of Power and Energy) and 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”). Ameren Illinois explains 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 Ameren Illinois that caused an under-recovery in prior years should not disqualify Ameren Illinois 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). A “reasonable person” sometimes makes a mistake, Ameren Illinois offers. 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, 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 Ameren Illinois argues 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.

The parties were also asked to explain by what legal authority this Commission has to make adjustments for accounting errors that occurred outside the reconciliation period. Ameren Illinois responded by again restating the Commission has the authority to allow recovery of the requested amounts under Riders PER/HSS. The next inquiry it suggests, 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.

Ameren Illinois explains 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 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. Section 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."

The statute 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 Ameren Illinois asserts.

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.

B. Staff's Response

Staff relies upon the rules of statutory interpretation to answer the questions posed by the ALJ. The cardinal rule of statutory interpretation is to determine and give effect to the legislature's intent. *Hernon v. E.W. Corrigan Constr. Co.*, 149 Ill. 2d 190, 195 (1992); *Sulser v. Country Mutual Ins. Co.*, 147 Ill. 2d 548, 555 (1992). Where the statutory language is clear and unambiguous, the plain language as written must be given effect without reading into it exceptions, limitations or conditions that the legislature did not express and without resorting to other aids of statutory construction. *Davis v. Toshiba Machine Co.*, 186 Ill. 2d 181, 184-85, 710 N.E.2d 399 (1999); *Philip v. Daley*, 339 Ill. App. 3d 274, 280, 790 N.E.2d 961, 965-66 (2nd Dist. 2003) ("when a statute is unambiguous, it must be applied without resort to further aids of construction, and there is no need to rely upon an [administrative] agency's interpretation").

Moreover, the interpretation of a statute by means of construction aids to divine the intent of the legislature is only necessary if the language of the statute is ambiguous. *In re Consolidated Objections to Tax Levies of School Dist. No. 205*, 193 Ill. 2d 490 (2000). Where the language of a statute is plain and unambiguous, there is no occasion for construction to ascertain the meaning of a statute, although the language may be considered unwise and to impair seriously the statute as a whole. *Bridgestone/Firestone, Inc. v. Aldridge*, 179 Ill. 2d 141 (1997). As the U.S. Supreme Court has explained: "[I]n interpreting a statute a court should always turn to one cardinal canon before all others... [C]ourts must presume that a legislature says in a statute what it means and means in a statute what it says there." *Connecticut Nat'l Bank v. Germain*, 112 S. Ct. 1146, 1149 (1992). Indeed, "[w]hen the words of a statute are unambiguous, then, this first canon is also the last: `judicial inquiry is complete.'" *Id.*

The language of the statute must be afforded its plain, ordinary and popularly understood meaning (*In re Detention of Lieberman*, 201 Ill. 2d 300, 308 (2002); *Bubb v. Springfield School District 186*, 167 Ill. 2d 372, 381 (1995)), and statutory language is to be given its fullest, rather than narrowest, possible meaning to which it is susceptible (*Lake County Board of Review v. Property Tax Appeal Board*, 119 Ill. 2d 419, 423 (1988)). Courts will not depart from the plain language of a statute by reading into it exceptions, limitations or conditions that conflict with the express legislative intent. *Petersen v. Wallach*, 198 Ill. 2d 439, 446 (2002); *Yang v. City of Chicago*, 195 Ill. 2d 96, 103 (2001). All provisions of a statutory enactment must be viewed as a whole. *Michigan Ave. Nat. Bank v. County of Cook*, 191 Ill. 2d 493, 504 (2000); *Bubb*, 167 Ill. 2d at 382. Lastly, in construing a statute, we presume that the General Assembly, in its enactment of legislation, did not intend absurdity, inconvenience or injustice. *In re*

Lieberman, 201 Ill. 2d at 309; Burger v. Lutheran General Hospital, 198 Ill. 2d 21, 40 (2001).

Staff maintains that Section 16-111.5(l) is clear and unambiguous when it states that:

(l) 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.

220 ILCS 5/16-111.5(l) (emphasis added).

Because this provision of Section 16-111.5(l) is clear and unambiguous, the analysis of its meaning is essentially finished.

Section 16-111.5(l) also clearly and unambiguously clearly states that electric utilities shall recover such costs through a tariff filing:

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.

Id.

Staff further opines that Section 16-111.5(l) also clearly and unambiguously states that:

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.

Id.

Accordingly, Staff states that not only does the Commission have the express legal authority to make the adjustments proposed by Ameren witness Mr. Perniciaro that provide for adjustments for accounting errors that occurred outside the reconciliation period, but it must do so. Section 16-111.5 does not provide any guidelines or limitations as to whether adjustments for costs that occur outside of the reconciliation period may be approved, and the rules of statutory interpretation require that none be inferred. See, e.g., Peterson, 198 Ill. 2d at 446; Yang, 195 Ill. 2d at 103. In light of this and in conjunction with the language on the correction of accounting errors, the “fullest possible meaning” of the statute is that adjustments from outside of the reconciliation year are authorized. Furthermore, any interpretation of the statute

that would permit only adjustments from within the reconciliation year would lend itself to the absurd result that accounting errors from previous reconciliation periods, which are specifically recoverable under the statute, would in fact, not be recoverable, as they fall outside the reconciliation period.

Staff points out that the General Assembly specifically chose the word “shall” in directing the Commission on how to proceed regarding the recovery of these costs. Each word, clause and sentence of the statute, if possible, must be given reasonable meaning and not rendered superfluous. *Sylvester v. Industrial Com’n*, 197 Ill. 2d 225, 232 (2001). The mandatory “shall,” with no further exceptions or limitations, leaves the Commission little discretion to do anything but follow the plain meaning of Section 16-111.5(l), which is exactly what the Commission has already done in previous reconciliations.

In Docket No. 12-0548, the Commission approved the reconciliation of revenues collected under power procurement riders with the actual costs incurred in connection with procurement activities as defined in the tariffs of each of Ameren’s three rate zones during the reconciliation period beginning June 1, 2010 and ending May 31, 2011. *Illinois Commerce Commission vs. Ameren Illinois Co.*, Final Order ICC Docket No. 12-0548, 6 (June 17, 2014). That Final Order notes that various accounting adjustments were made in the reconciliation. *Id.* at 5. In Docket Nos. 11-0354/0355/0356 (Cons.), the Commission approved the reconciliation of revenues collected under power procurement riders with actual costs incurred in connection with procurement activities during the reconciliation period beginning June 1, 2009 and ending May 31, 2010. *Illinois Commerce Commission vs. Ameren Illinois Co., et. al.*, Final Order ICC Docket Nos. 11-0354/0355/0356 (Cons.), 10-11 (July 31, 2013). In those consolidated Dockets, both Staff and the Company filed testimony regarding the adjustment for costs under Section 16-111.5 and the requirement that there is no over or under recovery of costs. *Id.* at 6. The Final Order notes that the Company and Staff agreed upon an approach for future adjustments, and the Commission found the approach to be reasonable. *Id.* at 7. The adjustments in the instant Docket proposed by Mr. Perniciaro on pages 4-6 of Ameren Exhibit 4.0 follow the approach approved by the Commission in Docket Nos. 11-0354/0355/0356 (Cons.). Because the Commission has previously approved this methodology, it may be bound to follow it here.

It is a well-established doctrine of administrative law that the legislature can establish broad policy guidelines and leave the detailed application of those guidelines to the administrative agency charged with carrying them out. *Lake County Board of Review v. Illinois Property Tax Board of Appeal*, 119 Ill. 2d 419, 427 (1988). When an administrative agency legally undertakes to do so, the agency may be bound by the resulting construction. *Gatica v. Illinois Dept. of Public Aid*, 98 Ill. App. 3d 101, 106 (1st Dist. 1981). An agency may not abruptly deviate from such prior rulings without prior notice of its intended change. *Id.* While deference is generally accorded to the decision of an agency, the courts do not hesitate to intervene when the decision is against the manifest weight of the evidence or is arbitrary, unreasonable or capricious. *Id.*

In this Docket, Staff states Ameren is following the proscribed manner for recovery of these costs under the Commission's own orders in Docket Nos. 12-0548 and 11-0354/0355/0356 (Cons.). The Commission has authority to allow the recovery under the clear and unambiguous language of Section 16-111.5 of the Public Utilities Act. Given that the Commission has previously undertaken an interpretation of Section 16-111.5, it may be bound by that interpretation, as no notice was given of an intended change.

V. COMMISSION CONCLUSIONS, FINDINGS AND ORDERING PARAGRAPHS

The Commission notes that Staff and Ameren Illinois are in agreement on the issues in this docket. Based on the evidence submitted, the record establishes that Ameren Illinois discovered an accounting error dating back to January 2007-May 2008 reconciliation concerning its Company Use of electricity. As a result of this accounting error, Ameren Illinois' Rider PER and Rider HSS customers benefited from recording the impact of Company Use twice in the over/under calculation, resulting in Ameren Illinois under recovering its recoverable costs. The record supports, and Staff and Ameren Illinois agree, that a Factor A collection adjustment shall be applied in open and future dockets. For the 12-month reconciliation period beginning June 1, 2011 and ending May 31, 2012, a Factor A adjustment of \$17,288,085 plus applicable interest shall be applied. This includes the additional Factor A adjustment as a result of the Company Use error and related interest. Further, the record supports a finding that the reconciliation of costs and revenues collected pursuant to these riders and including the Factor A adjustment for this reconciliation period, as set forth in ICC Staff Exhibit 1.0, Schedule 1.01 (RZ 1, RZ II and RZ III) (attached collectively hereto as Appendix A) and Schedule 1.02 (attached hereto as Appendix B) should be approved. Finally, the record supports a finding that Ameren Illinois has fully complied with the requirements set forth in the Initiating Order.

The Commission, being fully advised in the premises, is of the opinion and finds that:

- (1) The Commission has jurisdiction over the subject matter and the parties in this proceeding;
- (2) The recitals of fact set forth in the prefatory portion of this Order are supported by the record and are hereby adopted as findings of fact;
- (3) For the 12-month reconciliation period beginning June 1, 2011 and ending May 31, 2012, a Factor A collection adjustment of \$17,288,085 plus applicable interest shall be applied; and
- (4) The revenues collected under Ameren Illinois' power procurement riders were properly reconciled with costs prudently incurred for the 12-month reconciliation period, as shown in the Appendices attached hereto.

IT IS THEREFORE ORDERED that for the reconciliation period of June 1, 2011 through May 31, 2012, the reconciliations of revenues collected under Ameren Illinois' power procurement riders with costs prudently incurred in connection with procurement activities as defined in the tariffs of each of Ameren Illinois' three rate zones, as shown on Staff's Schedule 1.01 (RZ 1, RZ II and RZ III) and which is attached as an Appendix A and Schedule 1.02 which is attached as Appendix B to this Order, are hereby approved.

IT IS FURTHER ORDERED that, subject to the provisions of Section 10-113 of the Public Utilities Act and 83 Illinois Administrative Code 200.880, this Order is final; it is not subject to the Administrative Review Law.

By Order of the Commission this ____ day of _____, 2015.

(SIGNED) Douglas P Scott Chairman