

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

AMEREN ILLINOIS COMPANY)	
d/b/a Ameren Illinois,)	
Petitioner)	
)	Docket 15-0432
Verified Petition for a Waiver or)	
Determination of No Liability)	
Associated with Outages Resulting)	
From the June 20-21, 2015 Storm(s) or,)	
In the Alternative, a Request for a)	
Declaration that Sections 16-125(e))	
And (f) of the Public Utilities Act)	
Do not Apply.)	

JOINT DRAFT PROPOSED ORDER

March 18, 2016

By the Commission:

Procedural History

On July 22, 2015, Ameren Illinois Company d/b/a Ameren Illinois (Ameren Illinois or Petitioner) filed a Verified Petition with the Illinois Commerce Commission (the Commission) pursuant to Sections 16-125(e) and (f) of the Public Utilities Act (the Act) and 83 Ill. Admin. Code §§ 411.220 and 200.220, requesting a waiver or determination of no liability associated with certain electrical outages, surges and/or fluctuations resulting from a storm or series of storms that occurred in Ameren Illinois' service territory on June 20-21, 2015 (the June 20-21 Storm(s)). In the alternative, Ameren Illinois requested a finding that the June 20-21 Storm(s) did not trigger the claim processes associated with Sections 16-125(e) and (f) of the Act.

No petitions to intervene were filed. In accordance with the agreed-upon schedule, Ameren Illinois filed direct testimony on November 10, 2015. On February 3, 2016, Commission Staff (Staff) filed its direct testimony. Pursuant to notice given in accordance with Commission rules and regulations, an evidentiary hearing was held on February 18, 2016. At the conclusion of the evidentiary hearing, the record was marked "Heard and Taken."

June 20-21 Storm(s)

As described in Ameren Illinois' Verified Petition and direct testimony, on June 20, and early on June 21, 2015, a large storm or series of storms passed through Ameren Illinois' service territory resulting in electric service interruptions in several communities across central and southern Illinois. The majority of the customers affected were in the Peoria, Springfield and Galesburg areas; however, some Ameren

Illinois customers in other areas were also affected, including customers in Division II (Beardstown, Carthage, Pittsfield, and Quincy) and Division V (Hillsboro and Maryville).

Although restoration efforts were timely, and ultimately successful, many customers were without power for four or more hours. In all, approximately 21,891 customers were without power during some portion of the period immediately following the June 20-21 Storm(s). Not all of these customers were, however, without power for four or more hours – a threshold relevant to this proceeding. As part of its Verified Petition and direct case, Ameren Illinois sought clarification on how to calculate the appropriate statutory claims “trigger,” i.e., how to determine which of the customers referenced above should be aggregated together for purposes of triggering potential liability under Sections 16-125(e) and (f) of the Act. To the extent the outages suffered as a result of the June 20-21 Storm(s) exceeded the statutory threshold, Ameren Illinois argued that it should bear no liability in that the majority of those outages were beyond its control.

Ameren Illinois’ Position

In its Verified Petition, Ameren Illinois explains that Section 16-125 of Act provides that Ameren Illinois may be liable in the event that 0.8% of its customers are without power for four or more hours. At the time of the June 20-21 Storm(s), this 0.8% threshold equated to 9,876 Ameren Illinois customers.

Ameren Illinois also explains that a waiver or determination of no liability under the above-described circumstances may be granted by the Commission in instances where the utility can show that the power interruption, surge, or fluctuation was a result of any one or more of the following causes:

- Unpreventable damage due to weather events or conditions;
- Customer tampering;
- Unpreventable damage due to civil or international unrest or animals; or
- Damage to utility equipment or other actions by a party other than the utility, its employees, agents or contractors.

220 ILCS 5/16-125(e) and (f).

Ameren Illinois also explains that Section 16-125 of the Act further provides that customers with respect to whom a waiver has been granted by the Commission pursuant to causes listed above shall not count toward meeting the statutory threshold for potential liability. 220 ILCS 5/16-125(f). As applied to Ameren Illinois, if after subtracting the number of customers affected by outages resulting from the above-identified causes the remaining number of affected customers is less than the 9,876 threshold, then the Commission may grant Ameren Illinois a waiver or determination of no liability from all claims arising from the storm or outage event(s) in question.

In support of its Verified Petition, Ameren Illinois submitted the direct testimony of two witnesses, Mr. Jeffrey L. Hartenberger, Supervising Engineer – Distribution Standards for Ameren Illinois, and Mr. Rick E. Welton, Director – Distribution Operating. Mr. Hartenberger's direct testimony (Ameren Exhibit 1.0) describes certain elements related to the design and construction of Ameren Illinois' electric distribution system, and confirms that said system was designed and constructed in accordance with good utility practice and applicable standards on and around the June 20-21 Storm(s). Mr. Hartenberger testifies that from a design and construction perspective, any outages caused by the June 20-21 Storm(s) were unpreventable in that Ameren

Illinois could not have reasonably or prudently designed or constructed its electric distribution system in a way that could have avoided such damage.

In his direct testimony, (Ameren Exhibit 2.0), Mr. Welton describes the service interruptions caused by the June 20-21 Storm(s) and addresses Ameren Illinois' restoration efforts. Mr. Welton testifies that the June 20-21 Storm(s) produced high levels of cloud-to-ground lightning strikes, high winds, and thunderstorms, which directly damaged Ameren Illinois' electric distribution system and caused indirect damage from causes such as fallen trees and limbs, flying debris, etc.

As a threshold matter, Mr. Welton argues that despite this damage and the related outages, the June 20-21 Storm(s) did not trigger Sections 16-125(e) and (f) of the Act. Although Mr. Welton indicates that approximately 21,893 customers were without power during some portion of a period spanning 4 or more hours following the storm(s), that not all of those customers would or should be counted for purposes of determining Section 16-125(e) and (f) applicability. Mr. Welton argues that each customer eligible to be aggregated together for purposes of determining Section 16-125 applicability must have been affected for 4 or more hours and that Section 16-125 of the Act should only apply in situations where 9,876 of the same customers are without power for the same 4 or more hour period. Applying this test, Mr. Welton explains that the June 20-21 Storm(s) failed to trigger Section 16-125 of the Act. In any event, Ameren Illinois seeks clarity with respect to calculating this statutory standard.

Assuming that the June 20-21 Storm(s) did in fact exceed the applicable statutory claims threshold, which Ameren Illinois argues it did not, Mr. Welton indicates why, in his opinion, the vast majority of the service interruptions were not preventable,

and explains why Ameren Illinois could not have reasonably or prudently designed, constructed or maintained its electric distribution in a way that could have prevented the outages at issue. Mr. Welton concludes that after subtracting the number of unpreventable outages from for the total number of outages resulting from the June 20-21 Storm(s), the resulting number of outages is less than the 9,876 customer threshold, meaning that the Commission may grant Ameren Illinois a waiver and determination of no liability in the event that Section 16-125 is found to apply to the events at issue.

Mr. Welton also discusses Ameren Illinois' response to the interruptions resulting from the June 20-21 Storm(s). Mr. Welton testifies that Ameren Illinois was prepared and able to dispatch the resources required to support a timely and effective restoration effort which resulted in Ameren Illinois having restored service to nearly all of the customers affected by the June 20-21 Storm(s) by 5:00 PM on June 21, 2015.

In sum, Mr. Welton concludes that the June 20-21 Storm(s) did not trigger Section 16-125 of the Act. In the alternative, Mr. Welton explains that the damage to Ameren Illinois' electric distribution system incurred during the June 20-21 Storm(s) was unpreventable and that Ameren Illinois should receive a waiver from any resulting liability.

Staff's Position

Staff submitted the direct testimony of Mr. Greg Rockrohr, Senior Electrical Engineer in the Safety and Reliability Division. As a threshold matter, Mr. Rockrohr testifies as to the methodology that should be used to determine whether Ameren Illinois exceeded the statutory claims threshold. Mr. Rockrohr confirms that AIC had 1,234,473 electric customers during June 20-21 Storm(s), resulting in a statutory claims

trigger of 9,876 customers. Mr. Rockrohr explains that AIC's potential liability for damages would be triggered if more than 9,876 of its customers experienced a continuous power interruption lasting 4 hours or more. Staff Ex. 1.0 at 4. Mr. Rockrohr further clarifies that interruptions that are shorter than 4 hours should not be included when determining the applicability of Section 125(e). Id. at 4 (fn 3).

Applying this standard, Mr. Rockrohr testifies that his analysis revealed that as many as 7,601 of AIC's customers simultaneously experienced a continuous power interruption during the same 4 hour period during the June 20-21 Storm(s). Mr. Rockrohr concludes that since Sections 16-125(e) and (f) of the Act would only apply in instances where more than 9,876 customers simultaneously experience a continuous interruption lasting 4 hours or more, and a maximum of 7,601 customers simultaneously experienced a continuous interruption lasting 4 hours or more during the June 20-21 Storm(s), that Sections 16-125(e) and (f) of the Act simply do not apply under these circumstances. Id. at 5.

Mr. Rockrohr concludes that the Commission does not need to grant Ameren Illinois a waiver from liability for damages under Section 16-125 of the Act because the threshold numbers of customers identified in Sections 16-125(e) and (f) were not reached. Id. at 8. Mr. Rockrohr testifies that while some of the interruptions that occurred during the June 20-21 Storm(s) likely could appropriately be included in a waiver (i.e., unpreventable interruptions), a waiver is wholly unnecessary because only a maximum of 7,601 of Ameren Illinois' customers simultaneously experienced a continuous interruption lasting 4 or more hours during the June 20-21 Storm(s). Thus

Ameren Illinois' 9,876 customer threshold for determining potential liability under Section 16-125 was not reached. *Id.* at 9.

Mr. Rockrohr recommends that the Commission determine that Ameren Illinois has no liability under Sections 16-125(e) and (f) of the Act for interruptions that occurred during the June 20-21 Storm(s) because the maximum number of Ameren Illinois' customers who simultaneously experienced a continuous interruption of 4 or more hours was fewer than Ameren Illinois' liability threshold of 9,876 customers. *Id.*

Commission Analysis & Conclusion

Section 16-125 of the Act provides that in the event more than either (i) 30,000 or (ii) 0.8% of an electric utility's customers, whichever is less, are subject to power surges or fluctuations or continuous power interruptions of four hours or more, the utility shall be responsible for compensating customers affected for four hours or more for all actual damages suffered as a result of the power interruption. 220 ILCS 5/16-125. These actual damages shall not include consequential damages. *Id.* In the case of Ameren Illinois, the 0.8% threshold applies. At the time of the June 20-21 Storm(s) this threshold equated to 9,876 customers.

Section 16-125 of the Act also provides that the utility shall reimburse the affected municipality, county, or other unit of local government in which the power interruption has taken place for all emergency and contingency expenses incurred by the unit of local government as a result of the interruption. *Id.*

A waiver or determination of no liability under the above-described circumstances may be granted by the Commission in instances in which the utility can show that the

power interruption, surge, or fluctuation was a result of any one or more of the following causes:

- Unpreventable damage due to weather events or conditions;
- Customer tampering;
- Unpreventable damage due to civil or international unrest or animals; or
- Damage to utility equipment or other actions by a party other than the utility, its employees, agents or contractors.

220 ILCS 5/16-125(e) and (f).

In determining whether the 0.8% statutory threshold has been met, the Commission agrees with Staff and Ameren Illinois that it is necessary to determine the number of customers subject to service interruptions for the same continuous 4-hour period. The Commission also agrees that interruptions that are shorter than 4 hours should not be included when determining the applicability of Section 125(e).

Applying this test and based on the evidence of record, the Commission finds that Ameren Illinois did not exceed the statutory outage threshold as a result of the June 20-21 Storm(s) and thus that a waiver of liability is not necessary. The maximum number of Ameren Illinois customers who simultaneously experienced a continuous interruption of 4 or more hours was fewer than the Section 16-125 threshold of 9,876 customers. The Commission concludes that Section 16-125 of the Act simply does not apply to the facts at bar and that Ameren Illinois has no liability under Sections 16-125(e) and (f) of the Act for interruptions that occurred during the June 20-21 Storm(s).

FINDINGS AND ORDERING PARAGRAPHS

The Commission, having given due consideration to the entire record herein and being fully advised, is of the opinion and finds that:

- (1) Ameren Illinois Company, an Illinois corporation engaged in the business of furnishing electric service, is a public utility within the meaning of Section 3-105 of the Public Utilities Act;
- (2) The Commission has jurisdiction over Ameren Illinois and the subject matter herein;
- (3) On June 20-21, 2015, a large storm or series of storms passed through Ameren Illinois' service territory causing outages in several communities across central and southern Illinois;
- (4) That maximum number of Ameren Illinois' customers who simultaneously experienced a continuous interruption of 4 or more hours as a result of the June 20-21 Storm(s) was less than the threshold needed to trigger Sections 16-125(e) and (f) of the Act;
- (5) That, as a result, Ameren Illinois has no liability for damages under Sections 16-125 (e) and/or (f) of the Act and any further waiver of or from liability is not necessary;
- (6) The recitals of fact heretofore set forth are supported by the evidence in the record and are hereby adopted as findings of fact herein; and,
- (7) All motions, petitions and objections made in this proceeding that remain undisposed of should be disposed of consistent with the ultimate conclusions herein stated.

IT IS THEREFORE ORDERED by the Illinois Commerce Commission that Ameren Illinois bares no liability with respect to Section 16-125(e) and (f) of the Public Utilities Act (220 ILCS 5/16-125(e) and (f)) as to the interruptions that occurred as a result of the June 20-21 Storm(s).

IT IS THEREFORE ORDERED that all motions petitions, objections and other matters in this proceeding which remain undisposed of should be disposed of consistent with the ultimate conclusions herein.

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

By Order of the Commission this _____ day of _____, 2016.

(SIGNED) BRIEN SHEAHAN
Chairman

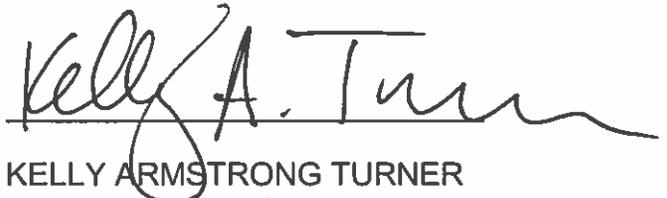
Respectfully submitted,

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