STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

Ameren Illinois Company d/b/a Ameren Illinois

Rate MAP-P Modernization Action Plan - Pricing Annual Update Filing.

ORDER

December 16, 2019
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Ameren Illinois Company d/b/a Ameren Illinois:
Rate MAP-P Modernization Action Plan - Pricing Annual Update Filing.

ORDER

By the Commission:

I. INTRODUCTION

Section 16-108.5 of the Public Utilities Act ("Act"), the Energy Infrastructure Modernization Act ("EIMA"), provides that an electric utility or combination utility (providing electric service to more than one million customers in Illinois and gas service to at least 500,000 customers in Illinois) may elect to become a “participating utility” and voluntarily undertake an infrastructure investment program described in that section. 220 ILCS 5/16-108.5(b). A participating utility is allowed to recover its expenditures made under the infrastructure investment program through the ratemaking process, including, but not limited to, the performance-based formula rate and process set forth in Section 16-108.5. Id.

Section 16-108.5(d) of the Act requires a participating utility to file, on or before May 1 of each year, with the Chief Clerk of the Illinois Commerce Commission ("Commission"), its updated cost inputs to the performance-based formula rate for the applicable rate year and the corresponding new charges, based on final historical data reflected in the utility’s most recently filed annual Federal Energy Regulatory Commission ("FERC") Form 1, plus projected plant additions and correspondingly updated depreciation reserve and expense for the calendar year in which the inputs are filed. 220 ILCS 5/16-108.5(d).

On January 3, 2012, the Ameren Illinois Company d/b/a Ameren Illinois ("AIC" or the "Company") filed with the Commission its performance-based formula rate tariff, Rate MAP-P Modernization Action Plan—Pricing Tariff ("Rate MAP-P"), initiating Docket No. 12-0001. That docket established the terms of the formula.

On April 18, 2019, AIC filed its eighth annual update of cost inputs pursuant to Section 16-108.5(d) of the Act, initiating this docket. In this docket, the Commission will establish a new revenue requirement to take effect on January 1, 2020, based on the historical FERC Form 1 reports for 2018 and projected plant additions for 2019, and reconcile the revenue requirement in effect for 2018 with actual costs for 2018. The reconciliation balance will be added to the new revenue requirement and collected in rates
beginning on the first billing day of the January billing period following the date of the Order in this proceeding.

In addition to AIC, Commission Staff ("Staff"), the Office of the Illinois Attorney General ("AG"), the Illinois Industrial Energy Consumers ("IIEC"), and the Citizens Utility Board ("CUB") participated in this proceeding.

An evidentiary hearing was held before duly-appointed Administrative Law Judges ("ALJs") in this matter on September 4, 2019. AIC, Staff, AG, and, jointly, IIEC and CUB ("IIEC/CUB") submitted testimony and other evidence at the evidentiary hearing. After the evidentiary hearing, the record was marked "Heard and Taken."

On September 19, 2019, AIC, Staff, AG, and IIEC/CUB filed Initial Briefs on the issues, and on October 1, 2019, each filed their Reply Briefs on the issues. Also, on October 4, 2019, AIC, Staff, AG, and IIEC/CUB had the option of filing Statements of Position and Suggested Conclusions on the contested issues, and jointly filed an Agreed Draft Order on all other issues, for the ALJs’ consideration.

A Proposed Order was served on the parties on October 30, 2019. Briefs on Exceptions were filed by the AG and IIEC/CUB on November 15, 2019. AIC filed its response to the ALJs’ Post-Record Data Request on November 15, 2019. The AG also filed a Request for Oral Argument on that date. Due to the deadline in this proceeding, the schedule did not allow for the filing of Reply Briefs on Exceptions.

II. LEGAL STANDARD

The provisions of EIMA, specifically, Section 16-108.5(d) of the Act, provides in relevant part:

Subsequent to the Commission’s issuance of an order approving the utility’s performance-based formula rate structure and protocols, and initial rates under subsection (c) of this Section, the utility shall file, on or before May 1 of each year, with the Chief Clerk of the Commission its updated cost inputs to the performance-based formula rate for the applicable rate year and the corresponding new charges.

220 ILCS 5/16-108.5(d). Section 16-108.5(d) of the Act further specifies the requirements for this annual filing as follows:

Within 45 days after the utility files its annual update of cost inputs to the performance-based formula rate, the Commission shall have the authority, either upon complaint or its own initiative, but with reasonable notice, to enter upon a hearing concerning the prudence and reasonableness of the costs incurred by the utility to be recovered during the applicable rate year that are reflected in the inputs to the performance-based formula rate derived from the utility’s FERC Form 1. During the course of the hearing, each objection shall be stated with particularity and evidence provided in support thereof, after which the utility shall have the opportunity to rebut the evidence. Discovery shall be
allowed consistent with the Commission's Rules of Practice, which Rules shall be enforced by the Commission or the assigned hearing examiner. The Commission shall apply the same evidentiary standards, including, but not limited to, those concerning the prudence and reasonableness of the costs incurred by the utility, in the hearing as it would apply in a hearing to review a filing for a general increase in rates under Article IX of this Act.

... In a proceeding under this subsection (d), the Commission shall enter its order no later than the earlier of 240 days after the utility’s filing of its annual update of cost inputs to the performance-based formula rate or December 31.

... A participating utility's first filing of the updated cost inputs, and any Commission investigation of such inputs pursuant to this subsection (d) shall proceed notwithstanding the fact that the Commission's investigation under subsection (c) of this Section is still pending and notwithstanding any other law, order, rule, or Commission practice to the contrary.

Id. Section 16-108.5(d) of the Act further specifies the requirements for the reconciliation filing as follows:

.... The filing shall also include a reconciliation of the revenue requirement that was in effect for the prior rate year (as set by the cost inputs for the prior rate year) with the actual revenue requirement for the prior rate year (determined using a year-end rate base) that uses amounts reflected in the applicable FERC Form 1 that reports the actual costs for the prior rate year. Any over-collection or under-collection indicated by such reconciliation shall be reflected as a credit against, or recovered as an additional charge to, respectively, with interest calculated at a rate equal to the utility's weighted average cost of capital approved by the Commission for the prior rate year, the charges for the applicable rate year. Provided, however, that the first such reconciliation shall be for the calendar year in which the utility files its performance-based formula rate tariff pursuant to subsection (c) of this Section and shall reconcile (i) the revenue requirement or requirements established by the rate order or orders in effect from time to time during such calendar year (weighted, as applicable) with (ii) the revenue requirement determined using a year-end rate base for that calendar year calculated pursuant to the performance-based formula rate using (A) actual costs for that year as reflected in the applicable FERC
Form 1, and (B) for the first such reconciliation only, the cost of equity, which shall be calculated as the sum of 590 basis points plus the average for the applicable calendar year of the monthly average yields of 30-year U.S. Treasury bonds published by the Board of Governors of the Federal Reserve System in its weekly H.15 Statistical Release or successor publication. The first such reconciliation is not intended to provide for the recovery of costs previously excluded from rates based on a prior Commission order finding of imprudence or unreasonableness. Each reconciliation shall be certified by the participating utility in the same manner that FERC Form 1 is certified. The filing shall also include the charge or credit, if any, resulting from the calculation required by paragraph (6) of subsection (c) of this Section.

Notwithstanding anything that may be to the contrary, the intent of the reconciliation is to ultimately reconcile the revenue requirement reflected in rates for each calendar year, beginning with the calendar year in which the utility files its performance-based formula rate tariff pursuant to subsection (c) of this Section, with what the revenue requirement determined using a year-end rate base for the applicable calendar year would have been had the actual cost information for the applicable calendar year been available at the filing date.

Id.

III. AIC’S PROPOSED REVENUE REQUIREMENT

AIC and Staff agree that AIC’s net revenue requirement for AIC’s electric formula rate (after consideration of the filing year and reconciliation year revenue requirements, with interest and the return on equity collar) is $1,009,912,000. AIC’s proposed update to its formula rate delivery service revenue requirement results in a decrease of $60,142,000 (-5.62%) from the electric revenue requirement ordered by the Commission in Docket No. 18-0807. The net revenue requirement calculations use a rate of return of 6.713% for the filing year and reconciliation year. The net revenue requirement calculations reflect the revenue requirement for the filing year, $991,645,000, the reconciliation adjustment, $36,974,000, and the ROE collar adjustment, ($18,707,000). Staff and AIC agree that this updated revenue requirement reflects costs of delivery services that are prudently incurred and reasonable in amount and should be approved by the Commission.

IV. RATE BASE

A. Uncontested or Resolved Issues

1. Cash Working Capital (“CWC”)

Staff and AIC agree on the methodology to calculate CWC for the final revenue requirements ordered by the Commission in the instant case, and for all leads and lags.
On rebuttal, AIC agreed to Staff’s proposed level of operating expense, and has reflected the agreed-upon amount in the proposed net revenue requirement.

The Commission finds that Staff’s and AIC’s agreed amount of CWC is reasonable and uncontested, and therefore adopts the parties’ agreed amount of CWC.

2. **Land Purchase**

Staff proposed an adjustment to certain costs related to Transmission-related land purchases that should not be recovered in Distribution rate base. On rebuttal, AIC agreed to this adjustment, and has reflected the agreed-upon amount in the proposed net revenue requirement.

The Commission finds that Staff’s proposed adjustment to land purchases is reasonable and uncontested, and therefore approves it.

3. **Construction Work in Progress ("CWIP") Not Subject to Allowance for Funds Used During Construction ("AFUDC")**

Staff proposed an adjustment to CWIP not subject to AFUDC, reflecting the cancellation of Project J06F4 Normal East – Land. On rebuttal, AIC agreed to this adjustment, and has reflected the agreed-upon amount in the proposed net revenue requirement.

The Commission finds that Staff’s proposed adjustment to CWIP not subject to AFUDC is reasonable and uncontested, and therefore approves it.

**B. Contested Issues**

1. **CWIP-related Accumulated Deferred Income Tax ("ADIT")**

   a) **AIC’s Position**

   AIC explains that CWIP includes the total balance of work orders for electric distribution and general and intangible plant that has not yet been placed in service. AIC states that these capital project costs are typically excluded from rate base until the project is placed into service but accrue an AFUDC to reflect the cost of debt and equity funds used to finance construction. AIC further asserts that when the project is complete, the asset is transferred from CWIP to Plant in Service, at which time the assets (including the related AFUDC) are included in rate base and earn a cash return. AIC notes that prior to the in-service date, tax law permits a company to deduct all or a portion of the costs incurred to invest in utility plant assets, while the assets must be capitalized and depreciated over time for financial statement purposes. This results in a book-tax timing difference and related ADIT produced by expenditures that, as of the end of the test period, remain in CWIP.

   AIC states that its rate base includes approximately $3,110,000 of CWIP on which AFUDC is not capitalized, or approximately 1% of the Company’s total CWIP, at December 31, 2018. For this small amount of CWIP in rate base, AIC has included the related ADIT in rate base as well.

   AIC states that because it is not in rate base, AIC’s customers provide neither a return on, nor a return of, the investment on the remaining 99% of the total electric CWIP balance at December 31, 2018. AIC explains that because this 99% of AIC’s CWIP is
excluded from rate base, AIC has similarly excluded the CWIP-related ADIT for those projects from rate base. This approach, which AIC claims provides a consistent ratemaking treatment of ADIT and its related cost items, was approved by the Commission in Docket No. 14-0317.

AIC observes that although AG witness Brosch recognizes the general practice of matching the element of ADIT to related assets and liabilities in rate base, the AG proposes to abandon that practice here. The AG’s proposed adjustment would include CWIP-related ADIT within rate base regardless of whether the underlying CWIP costs were included, resulting in a reduction to rate base by $2,039,202. AIC notes that the AG’s argument for its deviation from the general practice is that CWIP assets are afforded a “compensatory” AFUDC return at ratepayers’ expense, resulting in a deferred return on CWIP investments and accrued AFUDC that increases the final cost of new Plant in Service that is later included in rate base. AIC argues that the AG’s position ignores the practical application of AFUDC, is inconsistent with the Commission’s Order in Docket No. 14-0317, would result in an inequitable treatment of ADIT and its related cost items, and therefore should be rejected.

AIC states that because CWIP projects earn AFUDC until they are placed into service, the AG assumes that this results in an unfair benefit to AIC’s shareholders. AIC argues that this conclusion is incorrect – AFUDC is simply an accounting entry that has no effect on AIC’s revenue requirement during the construction period, and does not result in a cash return on, or the return of, the CWIP investment during construction. AIC states that it is undisputed that in accordance with AIC accounting policies, CWIP that is not included in rate base accrues an AFUDC to reflect the cost of debt and equity funds used to finance construction. AIC explains that when those CWIP projects are completed and added to rate base as Plant in Service, at some point in the future, the value of the AFUDC is included with the cost of the asset in rate base; at that time, AIC also includes the ADIT related to those CWIP investments as a liability that offsets rate base. Thus, AIC explains, ratepayers receive CWIP-related tax benefits at the same time that AIC receives a return on the investments that generated those benefits.

AIC emphasizes that AIC does not earn a return related to the accrued AFUDC until those assets are placed into service; because the CWIP assets do not earn an immediate return via rate base inclusion, AIC is permitted to credit the AFUDC funds on the income statement and charge the funds to CWIP on the balance sheet. AIC further explains that AFUDC is considered a permanent difference for tax purposes where the tax benefit is flowed through to customers.

AIC notes that while the AG does not dispute that AIC does not earn an immediate cash return on its CWIP assets until they are placed into service, Mr. Brosch argues that reducing AIC’s rate base now is justified by the fact that customers will pay a return on AFUDC at some later date, over the useful life of the asset. AIC argues that this approach disregards the balancing that occurs on AIC’s books, and that the AG does not acknowledge that its proposal to include CWIP-related ADIT in rate base suggests that property held for future use and non-utility property assets not earning a return should now be added to rate base because they might be included in rate base in some future period, or that the other 99% of AIC’s jurisdictional December 31, 2018 CWIP balance that is the basis of AG’s adjustment should now be added to rate base. AIC argues that
while the AG has not suggested that such a broad approach is required or advisable, the AG has also not explained why a divergent approach is appropriate for the CWIP-related ADIT at issue here.

AIC furthermore argues that the AG’s position would benefit current customers by lowering their rates for investments that they are not paying for and that would be financed by future generations of ratepayers. AIC explains that under the AG’s proposal, the Company’s revenue requirement would provide the benefit of a rate base deduction for CWIP-related ADIT to ratepayers today, in advance of the CWIP assets being placed in service and the Company receiving any cash return on the investment that generated these tax benefits. AIC asserts that the evidence demonstrates that it includes CWIP-related ADIT in rate base at the time that the underlying assets are placed into service and included in rate base. Thus, AIC argues, ratepayers receive CWIP-related tax benefits at the same time that AIC receives a return on the investments that generated those benefits. AIC further notes that the AG acknowledges that the general practice of matching the element of ADIT to related assets and liabilities to determine rate base inclusion is valid.

AIC argues that its proposal to include CWIP-related ADIT in rate base once those underlying assets are placed into service is consistent with the Commission’s Order in Docket No. 14-0317, where the Commission examined Staff and the AG’s proposal to remove certain ADIT assets and liabilities from rate base “where the underlying item is not also in rate base.” *Ameren Ill. Co. d/b/a Ameren Ill.*, Docket No. 14-0317, Order at 4-5 (Dec. 10, 2014). AIC explains that in that proceeding, the Commission ultimately concluded that it was appropriate to remove ADIT from rate base when the underlying cost item was not also in rate base, in order to ensure consistency between the ratemaking treatment of the ADIT and the related cost items.

In addition to excluding CWIP-related ADIT associated with those CWIP projects that are not in rate base, AIC explains that it has also identified an adjustment in its rebuttal testimony to include in rate base the small portion of ADIT produced by the 1% of CWIP that was included in rate base. AIC argues that the AG and its witness fail to acknowledge this adjustment while insisting that ratepayers are “burdened” with the rate base inclusion of minor CWIP projects. AIC argues that it is treating ADIT consistently – removing it from rate base when the underlying items are excluded, and conversely including it in rate base when those costs are included.

Finally, AIC argues that the Missouri Public Service Commission (“MPSC”) Case No. 2012-0166 is not relevant to this proceeding and should not be considered by the Commission. AIC argues that the facts of the MPSC proceeding were entirely different; the Order was issued for a vertically integrated electric utility providing electric service in a different state, subject to different laws, and under the jurisdiction of a different Commission. AIC next notes that the MPSC Order was concerned with the overstatement of AFUDC and future rate base. In contrast, AIC explains, those concerns are not applicable here where the Commission is establishing year-end 2018 rate base. AIC notes that none of the CWIP that is the basis of the AG’s proposed adjustment (approximately 99% of AIC’s CWIP) is in year-end rate base in this proceeding. And finally, AIC notes that while both AIC and Ameren Missouri comply with FERC accounting instructions, the Commission has approved certain modifications to the FERC accounting
instructions that apply specifically to Illinois utilities. AIC asserts there is no evidence in this proceeding demonstrating whether the MPSC has approved similar modifications to the FERC accounting rules, nor confirming that other, unique changes have not been made. Similarly, the Order in MPSC Case No. 2012-0166 was entered nearly seven years ago, and there is no evidence in this proceeding confirming whether the MPSC’s accounting rules in place at that time are still in place today.

AIC asserts that the AG’s proposed adjustment to include CWIP-related ADIT in rate base, independent of the underlying cost items, is improper, inconsistent with prior Commission practice, and would reduce AIC’s cash flow at the expense of investment in assets under construction. AIC further points out that the AG’s proposal would result in inconsistent ratemaking treatment of ADIT and its related cost items and would unfairly benefit AIC’s current customers at the expense of those ratepayers that fund the CWIP assets once they are placed into service. AIC states the Commission has recognized the importance of consistency in the ratemaking treatment of ADIT and its related cost items and asks the Commission to find that AIC’s exclusion from rate base of CWIP-related ADIT for the 99% of CWIP projects that are not included in rate base is appropriate and should be approved.

b) AG’s Position

The AG notes that in response to discovery requests, AIC indicated that it “proposes to exclude [CWIP-related ADIT] from the ADIT balance that reduces rate base because CWIP has not been included in the rate base in this proceeding.”

The AG further notes that the Commission’s regulatory treatment of CWIP assets allows a utility to either put (generally) smaller projects into rate base that immediately begin to earn a return of (via depreciation expense) and on (via the Company’s weighted average cost of capital) invested capital or, for larger projects, accrue the return on invested capital in an AFUDC account prior to being included in rate base. AFUDC is the return on project construction costs that accrues before the plant is added to rate base, and therefore increases the final cost of new Plant in Service by the amount of AFUDC. The AG explains that once in service, the project’s costs (the direct investment plus the AFUDC or cost of capital during construction) will be recovered over the useful life of the asset. The AG stresses that once in service, consumers pay both the AFUDC amount added to CWIP and a return on this total amount.

The AG explains that while under construction, CWIP projects generate deferred taxes, however, the AFUDC return is allowed on all CWIP investment irrespective of ADIT associated with CWIP investment. As a result, the cost of the projects added to rate base once in service does not include an offset for ADIT, causing consumers to provide a return on both the ADIT and the AFUDC. Under established regulatory accounting, consumers do not pay a return on ADIT because it is not investor supplied capital.

The AG highlights Mr. Brosch’s recommendation that the Commission direct AIC to apply the CWIP related ADIT to rate base so that consumers realize the benefit of the ADIT adjustment. The AG argues that because CWIP accounting puts the gross cost (including AFUDC) into rate base without an offset for ADIT generated by CWIP investment, it is crucially important that the Commission reduce the Company’s rate base by the amount of CWIP-related ADIT during this formula rate update or the ADIT benefit
will be lost. If the Commission does not, the AG argues that ratepayers will never see reduction to rate base that they are entitled to for ADIT generated by CWIP projects and rates will include a return on ADIT despite the fact that ADIT is not investor money.

The AG states that Ameren Missouri was directed to utilize this approach by the MPSC, which recently entered an order that Ameren Missouri reduce current rate base by CWIP-related ADIT. The MPSC noted in Case No. 2012-0166 that CWIP related ADIT balances must be accounted for in rate base because AFUDC is applied to Ameren Missouri’s gross investment in CWIP, with no recognition given to the CWIP-related ADIT amounts that serve to reduce the company’s actual net capital requirements for CWIP due to the deferral of taxes by virtue of investment in CWIP. The MPSC held that failing to recognize the CWIP-related ADIT balance in the company’s rate base would overstate the AFUDC costs and future rate base, essentially allowing the company to earn AFUDC and a return on capital supplied by ratepayers.

The AG argues that the Commission should here adopt the rationale applied by the MPSC and should not permit AIC’s proposed exclusion of CWIP-related ADIT because this proceeding is the only opportunity to protect ratepayers from paying a return on the ADIT that they – not investors – supplied. The AG asks the Commission to adopt Mr. Brosch’s recommendation to reduce AIC’s rate base by $2,013,388, the amount of ADIT generated by CWIP in this proceeding.

The AG argues that AIC’s assertion that AFUDC “does not result in a cash return on, or the return of, the CWIP investment during construction” glosses over the fact that AFUDC does generate a cash return on, and return of CWIP investments, inclusive of AFUDC, after the CWIP asset is placed in service. The AG asserts that regulatory accounting for that future impact is at issue in this proceeding and will not be addressed later, requiring Commission action now. The AG argues there will be no future opportunity to recognize the ratepayer benefits of ADIT related to CWIP and the Commission should therefore flow those benefits to ratepayers in this proceeding.

The AG asserts that the question before the Commission in this proceeding is whether the ratepayer benefits of ADIT (i.e. a reduction of rate base) generated by CWIP assets that earn AFUDC during construction will be flowed through to customers. The AG explains that by operation of CWIP accounting rules prescribed by FERC, there will be no other opportunity to address this question. The AG states that if the benefits of ADIT that AIC is enjoying are not flowed through to customers as a deduction to rate base in this proceeding, then only AIC will ever benefit from the ADIT created by its CWIP projects before the Commission in this case.

The AG concedes AIC’s point that there will not be any ratepayer-funded return on or of CWIP investments until they are in service but contends that this is irrelevant and potentially misleading. The AG explains that AIC receives a “capitalized” return in the form of AFUDC on its CWIP investments, causing future rate base to be larger as CWIP projects with AFUDC added are included in rate base to earn a return and be recovered via depreciation. The AG argues that whether a cash return on CWIP investment occurs during construction in 2018 is irrelevant; once in service, CWIP-funded projects included within Plant in Service are increased by AFUDC that then accrues a return on capital for all future years after total Plant in Service is added to rate base. In other words, the return
from AFUDC is added to rate base in addition to the original capital cost of the project once CWIP is put into rate base later. The AG observes that the Commission has not denied AIC’s CWIP and AFUDC amounts in this proceeding that will be eligible for later recovery in rates. The AG asserts that while AIC does not earn an immediate cash return on its CWIP assets, when they are later placed in service, consumers are asked to pay a return on ADIT that is generated by CWIP and AFUDC projects, which accrued in the interim.

The AG argues that because projects funded by CWIP generate ADIT while under construction, but no CWIP-related ADIT adjustment is recognized as an offset to the balance of AFUDC earnings, it is necessary to include CWIP-related ADIT to rate base now, prior to when CWIP projects are completed and later added to rate base. The AG states that Mr. Brosch’s recommendation is consistent with the MPSC’s treatment of CWIP-related ADIT and is necessary to ensure that customers will see the benefit from CWIP-related ADIT that AIC enjoys during construction.

The AG argues when examining CWIP, future rate base is fully at issue in this case due to the fact that CWIP is added to rate base at a date later than the time period at issue in this proceeding. Accordingly, explains the AG, future rate base impacts of CWIP and whether ADIT is properly recognized for those projects are the focus of Mr. Brosch’s recommendation. Mr. Brosch testified that when future rate base is affected by CWIP (i.e. projects are completed and are added to rate base), accounting rules surrounding CWIP do not provide an avenue for ADIT generated by CWIP projects to be recognized. For that reason, the AG argues, the benefits of CWIP-related ADIT must flow to customers now, prior to the in-service date of AIC’s CWIP projects, or those benefits will never be realized.

The AG further argues that AIC’s proposal would result in future ratepayers paying a return that is overstated because of the missing ADIT reduction. In other words, the AFUDC applied to CWIP provides a return on plant investment without the associated ADIT reduction.

The AG contests AIC’s argument that the MPSC decision was made under different accounting rules regarding CWIP and AFUDC, noting that FERC prescribes the accounting rules for CWIP and AFUDC. The AG characterizes AIC’s reference to the fact that AIC also operates under accounting guidance from the Commission as a red herring, noting that the Commission and MPSC follow the same FERC accounting rules for CWIP and AFUDC. The AG argues that FERC’s accounting rules for CWIP and AFUDC are federal rules that apply equally in Illinois and Missouri.

The AG further argues the fact that Ameren Missouri is a vertically-integrated utility and regulated as such in Missouri has no bearing on the CWIP accounting rules at issue here. While AIC suggests this is a significant distinction between it and Ameren Missouri, the AG argues that there is no accounting, regulatory, or other meaningful distinction that would render irrelevant the concerns and remedy at issue in the MPSC case. The AG notes that Mr. Brosch testified that the FERC Uniform System of Accounts and accounting instructions are uniformly applied in all states by electric utilities subject to FERC jurisdiction and that he was not aware of any unique Illinois AFUDC rules that require a variance from FERC accounting procedures for AFUDC. The AG submits that for AIC’s
argument to have any impact, AIC would need to show that in Illinois, AFUDC is calculated on a CWIP investment that has been reduced for CWIP-related AFUDC, and no such showing has been made.

The AG argues that AIC’s reference to Docket No. 14-0317 in support of a general proposition to remove certain ADIT assets and liabilities from rate base “where the underlying item is not also in rate base” in order “to ensure consistency between the ratemaking treatment of ADIT and the related cost items” is vague and inappposite to the question before the Commission in this case. The AG explains that while the general proposition of “matching” ADIT in rate base to the related assets included in rate base may be true, and the AG does not dispute it here, the point on the question of the CWIP-related ADIT is simply this: CWIP-related ADIT is qualitatively different from ADIT generated by other types of investment and suggests the need for the Commission to act now in order to prevent the mis-application of CWIP accounting rules that would require ratepayers to provide a return on non-investor ADIT funds. The AG argues that ratepayers should not pay a return on an overstated rate base that does not reflect an adjustment for CWIP-related ADIT because the accounting instructions that govern the calculation of AFUDC do not include any recognition of such CWIP-related ADIT.

The AG argues that Mr. Brosch’s recommendation is, in fact, consistent with the principle enumerated in Docket No. 14-0317, because the rate base-reduction benefits of the ADIT associated with CWIP investments will never be realized by ratepayers if it is not applied to AIC’s rate base in this proceeding. The AG states that the alternative outcome, to erase those benefits forever when CWIP is later added to rate base (while AIC retains the benefits of CWIP-related tax deferrals), is the opposite of ensuring “consistency between the ratemaking treatment of the ADIT and the related cost items.” The AG therefore recommends that the Commission adopt the proposal to reduce AIC’s rate base by $2,013,388, the amount of ADIT generated by CWIP in this proceeding.

c) Commission’s Analysis and Conclusion

It is undisputed that 99% of AIC’s CWIP in this proceeding is not included in rate base, and thus does not currently provide a return on, nor a return of, investment. The question before the Commission is whether it is appropriate to adopt the AG’s proposal to include in rate base the ADIT associated with that CWIP. AIC contends that the AG’s proposal is inconsistent with prior Commission practice and would result in an inequitable treatment of ADIT and its related cost items. The Commission agrees with AIC.

In Docket No. 14-0317, AIC accepted Staff and the AG’s proposals to remove ADIT assets and liabilities from rate base when the underlying cost item was not also in rate base, in order to ensure consistency between the ratemaking treatment of ADIT and its related cost items. In that case, the Commission approved the adjustment, finding the parties’ treatment of the identified ADIT issues appropriate. The Commission finds that the same logic applies in this case, and the AG has not demonstrated why the Commission should treat the CWIP-related ADIT in this case differently. It is undisputed that AIC does not earn a cash return on its CWIP project costs until those projects are placed into service and included in rate base. At that time, ratepayers will begin to pay for those projects. And at that time, AIC also includes the ADIT related to those CWIP investments as a liability that offsets rate base. The accrual of AFUDC until that point is
immaterial because AFUDC does not provide a current cash return, a fact that the AG does not contest.

The AG’s proposal would reduce rates for current customers that do not fund those underlying CWIP projects and to whom the CWIP assets do not provide service. However, as the Commission recognized in Docket No. 14-0317, consistency requires that the tax benefit of ADIT should be reflected for customers when the associated plant in service is in rate base. The Commission notes that, consistent with this principle, AIC has included approximately 1% of its CWIP in rate base, and the ADIT associated with that 1% of CWIP is also included in rate base. This is equitable and provides a current tax benefit to those customers that are funding those assets.

The Commission finds the MPSC decision unpersuasive here, particularly where this Commission has examined this issue more recently and come to the opposite result. The Commission therefore rejects the AG’s proposal to include CWIP-related ADIT in rate base.

C. Original Cost Determination

Staff witness Ebrey recommended the Commission approve $7,326,201,000 as the original cost of plant in service as of December 31, 2018, which reflected her disallowance of Land purchases. Staff and AIC agree that the Commission's Order should state the following with respect to the Original Cost Determination:

(x) the Commission, based on Ameren's proposed original cost of plant in service as December 31, 2018, before adjustments, of $7,326,840,000 and reflecting the Commission's determination adjusting that figure, approves $7,326,201,000 as the composite original cost of jurisdictional distribution services plant in service as of December 31, 2018.

The Commission finds that Staff and AIC are in agreement on this uncontested issue and approves the agreed-upon original cost determination in this Order.

D. Incremental EIMA Plant Investments

AIC provided the actual and projected incremental plant investment that is included in the revenue requirement in compliance with Section 16-108.5(b)(2) of the Act, as ordered by the Commission in Docket No. 12-0292, to which Staff agrees. The Commission will therefore adopt the following agreed conclusion for use in this proceeding:

The Commission is setting a revenue requirement in this proceeding for the recovery of $82.2 Million in actual 2018 plant additions and $67.7 Million of projected 2019 plant additions in compliance with Section 16-108.5(b) of the Act. The details of these actual and projected plant additions by categories as required by Section 16-108.5(b) are as follows:
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<tr>
<td></td>
<td>2012</td>
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<tr>
<td>(A)(i) Distribution Infrastructure Improvements</td>
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<td>(A)(ii) Training Facility Construction or Upgrade Projects</td>
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<td>(A)(iii) Wood Pole Inspection, Treatment, and Replacement</td>
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<td>$5.1</td>
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<tr>
<td>(B)(i) Additional Smart Meters</td>
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<tr>
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<td>$19.9</td>
<td>$13.6</td>
<td>$102.5</td>
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**E. Recommended Rate Base**

1. **Filing Year**

   The Commission finds, based on the decisions presented earlier on the various issues, that a reasonable rate base for the filing year is shown on Appendix A, Schedule 2.
2. Reconciliation Year

The Commission finds, based on the decisions presented earlier on the various issues, that a reasonable rate base for the reconciliation year is shown on Appendix B, Schedule 2.

V. OPERATING REVENUES AND EXPENSES

A. Uncontested or Resolved Issues

1. Executive Perquisites

Staff proposed an adjustment to reduce Administrative and General ("A&G") expense for executive perquisites associated with tax and financial planning services. On rebuttal, and for the purposes of this proceeding only, AIC agreed with Staff's adjustment, and has reflected the agreed-upon amount in the proposed net revenue requirement.

The Commission finds that the proposed adjustment to A&G expenses for executive perquisites is reasonable and uncontested, and therefore approves its use in this proceeding.

2. Gas-related Payroll Expense

Staff proposed an adjustment to reduce A&G expense to remove gas-related payroll expense. On rebuttal, AIC agreed with Staff’s adjustment, and has reflected the agreed-upon amount in the proposed net revenue requirement.

The Commission finds that the proposed adjustment to A&G expenses to remove gas-related payroll expense is reasonable and uncontested and therefore approves its use in this proceeding.

3. Staff Correction – Amortization of EDIT

Staff proposed a correction to amounts for amortization of excess deferred income taxes ("EDIT"). On rebuttal, AIC agreed with the correction, and has reflected the agreed-upon amount in the proposed net revenue requirement.

The Commission finds that the correction is reasonable and uncontested and therefore approves its use in this proceeding.

4. Rate Case Expense

Section 9-229 of the Act requires the Commission to assess the justness and reasonableness of AIC's rate case expenses. 220 ILCS 5/9-229. The Commission's Part 288 Rules are intended to guide that assessment. 83 Ill. Adm. Code 288. AIC explains that consistent with that authority, it supplied for the Commission’s review extensive documentation supporting the justness and reasonableness of its 2018 formula rate case expenses. Staff and AIC agree that the Commission's Order should state the following with respect to those expenses:

The Commission has considered the costs expended by AIC during 2018 to compensate attorneys and technical experts to prepare and litigate rate case proceedings and assesses that the amount included as rate case expense in the revenue requirements of $623,564 is just and reasonable. This amount
includes the following costs: (1) $0 associated with Docket No. 17-0197; (2) $623,564 associated with Docket No 18-0807; and (3) $0 associated with Docket No. 19-0436.

The Commission finds that the total rate case expense that AIC incurred to litigate its formula rate cases in 2018 is supported by the evidence, uncontested, and is just and reasonable. The Commission, therefore, adopts Staff and AIC’s suggested language in this Order.

B. Contested Issues

1. Amortization of Excess Deferred Income Tax (“EDIT”)
   a) IIEC/CUB’s Position

IIEC/CUB witness Gorman recommends that the Commission revisit the matter of the amortization period for the return of EDIT balances to customers. IIEC/CUB note that all parties to this proceeding agreed that the EDIT balances are due to be returned to AIC customers and that all parties also agreed that the Commission has the discretion to set the amortization periods over which those amounts will be refunded. IIEC/CUB submit that while the topic of ADIT is one of significant complexity, including how such balances are funded and recorded, the issue before the Commission in this proceeding is straightforward: is it reasonable for AIC to take 35 years to refund these balances to customers, or is it more appropriate to return the funds to customers over 7 years, where the shorter timeline has no negative effect on either AIC or ratepayers? IIEC/CUB argue that the Commission should reduce the amortization period from about 35 years to 7, refunding the balances to customers over a reasonable timeline with a more equitable outcome for ratepayers.

Mr. Gorman testified that as a result of the Tax Cuts and Jobs Act of 2017 (“TCJA”), the federal corporate income tax rate decreased from 35% to 21%. IIEC/CUB point out that as a result of this 14% reduction, the Company’s income tax expense declined, and AIC identified $496.7 million of EDIT which was created by the reduction. IIEC/CUB explain that EDIT can be separated into balances that are “protected” and are limited by Internal Revenue Code (“IRC”) normalization rules, and balances that are “unprotected” for which the Commission has discretion to establish the amortization period. These unprotected EDIT balances are further distinguished as property related and non-property related balances. IIEC/CUB note that AIC proposes to amortize the non-property related unprotected balances over a seven year period, while the property related unprotected balances would be amortized over a 35-year period. IIEC/CUB confirm the Company used the Average Rate Assumption Method (“ARAM”) to determine the amortization period for the unprotected property-related balances, though it is not required by the IRC.

Mr. Gorman testified that as a result of the ARAM method to determine the normalization period for unprotected property-related balances is unreasonable and that a more appropriate amortization period will create an equitable result for both current and future ratepayers, as well as the Company. Mr. Gorman recommends the use of a seven-year amortization period across both unprotected EDIT balances, aligning the two categories. IIEC/CUB note that customer payments of income taxes which are deferred in the past are based upon the assumption that the utility will eventually remit those
deferred tax collections to a government taxing authority. IIEC/CUB argue that as a result of the 14% reduction in the federal income tax rate, a portion of past collections from customers of ADIT are now in excess of AIC's future income tax liability. IIEC/CUB suggest these EDIT balances will never be remitted to government taxing authorities, and therefore should be refunded to customers as quickly as possible. IIEC/CUB assert that the amortization of the balances does not impact AIC’s cost of service in prospective rates, nor does it affect the current income tax expense in the formula rate revenue requirement. Mr. Gorman testified that the credit of EDIT will accordingly reduce the revenue requirement measurement of cost of service but will not directly impact the cost of service itself, nor will the acceleration of the refunds to customers negatively impact AIC’s credit standing. IIEC/CUB calculate, overall, the adoption of a seven year amortization period across unprotected EDIT balances results in an additional $14.2 million reduction to AIC’s income tax expense.

IIEC/CUB note that AIC witness Weber challenged Mr. Gorman’s assertions that the Company’s credit metrics would not be negatively impacted by the adoption of a shorter amortization period for unprotected EDIT. IIEC/CUB confirm that Ms. Weber was critical that forecasted credit metrics were not considered in Mr. Gorman’s analysis, and that Moody’s credit metrics also needed to be considered. However, IIEC/CUB argue Ms. Weber's criticisms are a limited response to Mr. Gorman's review of actual 2018 credit metric data, and furthermore, the response was unfounded. IIEC/CUB assert that a review of the change in cash flow credit metrics, using both S&P and Moody’s, as Ms. Weber suggested be done, indicates that the Company’s cash flow metric is still firmly within both agency’s guidelines to maintain its current credit ratings. IIEC/CUB assert that the Company’s arguments that AIC would somehow be negatively impacted by a seven-year amortization of unprotected EDIT balances is not supported by the evidence and should be rejected accordingly.

AIC witness Stafford testified that Mr. Gorman’s proposal is unbalanced, as it does not provide the return of EDIT to customers in later years who are paying for the plant at issue through depreciation expense. IIEC/CUB note that Mr. Stafford essentially argued that a longer amortization period results in slower rate base growth, which is therefore beneficial to customers because it results in a smoother revenue requirement that does not see as large of an increase when the unprotected balances are fully amortized. Mr. Gorman countered that under Mr. Stafford’s approach, rate base growth is slower because customers are paying higher rates under a longer amortization period. As to the “rate increase” which occurs when the unprotected EDIT is fully amortized, IIEC/CUB witness Gorman pointed out that it is in fact “more accurate to say slower amortization of unprotected EDIT benefits later generations of customers at the expense of the current generation of customers who contributed to the excess balances in the first instance.” IIEC/CUB argue that the current generation of customers paid rates that created the EDIT balances, and principles of equity require that those same customers receive the credit for creating them.

IIEC/CUB maintain that not only is the adoption of a shorter amortization period a more equitable approach to both ratepayers and the Company, it is also consistent with the actions of public service commissions in neighboring jurisdictions. IIEC/CUB note that in 2018, the MPSC adopted a 10-year amortization period for Ameren Missouri’s
unprotected EDIT balances, while the Indiana Commission has twice ordered unprotected EDIT balances be amortized over periods of less than 10 years. IIEC/CUB point out that Indiana Michigan Power Company will amortize its unprotected EDIT balance over six years, while Indianapolis Power & Light will amortize its unprotected EDIT balance over seven.

IIEC/CUB recognize that the Commission is charged with determining the appropriate amortization period for the return of the EDIT to ratepayers and assert that while IRC guidelines specify the amortization period for the protected plant balances, they do not specify the period that should apply to unprotected plant balances. IIEC/CUB assert that AIC’s use of ARAM results in an extended amortization period that is neither necessary (to maintain either the Company’s cost of service or its credit rating) nor equitable. IIEC/CUB note that AIC supports its proposal to utilize the ARAM in part on the 2018 Commonwealth Edison Company Formula Rate Update proceeding, Docket No. 18-0808, in which the Commission approved the use of this extended amortization period of 39.47 years, over the objection of IIEC/CUB. See generally, Commonwealth Edison Co., Docket No. 18-0808, Order (Dec. 4, 2019). IIEC/CUB further acknowledge that Staff witness Ebrey also supports the use of ARAM to determine the amortization period for property related EDIT. In support of Staff’s position, Ms. Ebrey noted that ARAM was utilized to set amortization periods for property-related EDIT balances in AIC’s last gas rate case. Ameren Ill. Co., Docket No. 18-0463, Order at 8 (Nov. 1, 2018).

IIEC/CUB point out that all parties agree that the Commission may use its discretion to set the amortization period, and that there is no requirement that the Commission utilize ARAM method to determine the amortization period for AIC’s EDIT balances. See, e.g., Docket No. 18-0808, Order at 57 (“For unprotected plant-related EDIT, the choice of an amortization period is within the Commission’s discretion”). “The Commission is not a judicial body, and its orders are not res judicata in later proceedings before it. Miss. River Fuel Corp. v. Ill. Commerce Comm’n (1953), 1 Ill.2d 509, 513, 116 N.E.2d 394. ‘The concept of public regulation includes of necessity the philosophy that the commission shall have power to deal freely with each situation as it comes before it, regardless of how it may have dealt with a similar or even the same situation in a previous proceeding.’ 1 Ill.2d at 513.” Metro Utility Co. v. Ill. Commerce Comm’n, 262 Ill.App.3d 266, 271 (2d Dist. 1994). IIEC/CUB emphasize that there is no res judicata from Commission decisions and the Commission may utilize its discretion to depart from its prior decisions. IIEC/CUB posit the Commission should use that discretion here and reduce the amortization period to seven years. IIEC/CUB argue seven years is a reasonable recommendation, is more equitable to AIC customers than AIC’s proposal, will not have a negative impact upon the Company’s cost of service or credit rating, and is consistent with the actions taken recently by public service commissions in neighboring jurisdictions.

IIEC/CUB do not believe the Commission should give weight to the speculative testimony sponsored by Ms. Ebrey as to “how” EDIT amortization periods adopted in the instant proceeding “could” possibly affect rates in the event of a future income tax increase. IIEC/CUB note that no party provided testimony in this proceeding which concluded definitively that the corporate income tax rates will increase in the future. Therefore, IIEC/CUB suggest that it is impossible to foresee when, if, or by how much
corporate income tax rates will fluctuate in the future, as the legislative process is entirely unpredictable. IIEC/CUB note that Ms. Ebrey herself testified that “no one can predict the future.” IIEC/CUB aver that any argument based upon this premise is purely speculative, and the Commission must reject it out of hand. IIEC/CUB remind the Commission it is charged with setting just and reasonable rates in accordance with currently applicable federal and state law, not in accordance with a hypothetical tax rate which may change at some entirely unknown point in the future.

IIEC/CUB emphasize that the Commission not only has the discretion to set the amortization period for EDIT balances owed to customers, but also the ability to depart, and should depart, from its prior rulings on the topic in order to utilize a more equitable approach that balances the interests of ratepayers and AIC. IIEC/CUB urge the Commission to adopt Mr. Gorman’s recommendation to amortize all unprotected EDIT balances over seven years, resulting in an additional reduction to the Company’s income tax expense of $14.9 million and a corresponding rate base offset of $0.7 million, for a total revenue requirement impact of $14.2 million. IIEC/CUB conclude that applying the same seven-year amortization period to the other unprotected EDIT balances identified by the Company, such as the state EDIT balance, results in the $5.4 million adjustment calculated by AIC on Ameren Exhibit 9.6.

b) AG’s Position

The AG states that the issue before the Commission on the topic of amortization of EDIT involves a very simple question: how quickly should deferred taxes that were collected from ratepayers prior to 2018 and that have been now rendered “excess” by tax law changes and are “unprotected” by tax law, be returned to ratepayers? The AG points out there is no factual dispute that the amounts involved must be returned to ratepayers; the only question is how the Commission will use its discretion to set the refund period.

The AG observes that last year, pursuant to a “Unanimous Stipulation and Agreement,” Ameren Missouri agreed to return its unprotected EDIT to consumers over 10 years, considerably less time than the 35 years requested by AIC. See In the Matter of a Proceeding Under Section 393.137 (SB 564) to Adjust the Electric Rates of Union Electric Company d/b/a Ameren Mo., MPSC File No. ER-2018-0362, Order Approving Stipulation and Agreement (July 5, 2018)( available at: https://www.efis.psc.mo.gov/mpsc/commoncomponents/view_itemno_details.asp?case_no=ER-2018-0362&attach_id=2019000197). The AG further observes that last year, in Docket No. 18-0808, the Commission allowed Commonwealth Edison Company (“ComEd”) to amortize close to $500 million in unprotected EDIT over 39.5 years. Docket No. 18-0808, Order at 57. The AG notes that in this proceeding, AIC is adopting the ComEd approach and requesting a 35-year amortization for unprotected property related EDIT. The AG argues that the Commission should review the evidence in this docket independently of the prior ComEd docket and return the unprotected EDIT to ratepayers over a five-year amortization period starting January 1, 2019, so that the refunds are more likely to reach the customers who paid taxes at the higher pre-2018 tax rate of 35% that funded EDIT.

The AG states that fundamental ratemaking principles create the framework for understanding what ADIT and EDIT are and why it is reasonable, fair, and necessary to
refund EDIT to consumers over a five year, rather than over 35 years. The AG explains that consumers pay AIC’s income tax expense for each formula rate year at the statutory federal income tax rate (35% prior to 2018 and 21% in and after 2018). In each formula rate year, the government allows AIC to defer payment of some portion of the income taxes collected at the statutory rate due to various tax deductions that generally reduce taxable income.

The AG explains that although AIC is allowed to pay less tax than is included in rates due to regulatory and tax timing differences, the tax expense in the revenue requirement for the formula rate year, and for the reconciliation year, is not reduced by the deferral of taxes paid that year. The AG notes that AIC witness Stafford testified, “The cash benefit of the income tax deferral was retained by AIC, recorded as [ADIT] and reflected in ratemaking as an offset to rate base.” The AG states that this rate base offset recognizes that investors have not provided the funds for the ADIT balance. The AG argues that notwithstanding AIC’s assertions to the contrary, regulatory accounting makes it clear that ratepayers fund the ADIT (and the EDIT subset) balance through their payment of taxes at the statutory rates in each formula rate.

The AG argues that both the Commission and the courts have recognized that under regulatory accounting, the funds received by the utility to pay taxes, but that are deferred and retained by the utility during the deferral period, are ratepayer supplied funds. The AG first cites ComEd’s initial formula rate docket, wherein the Commission directed ComEd to reduce its proposed rate base by the associated ADIT. The Commission said:

If the Commission were to ignore ADIT on ComEd’s plant investments, we would be ignoring basic accounting principles and appellate precedent. (See, Ameren Ill. Co. v. Ill. Commerce Comm’n, 2012 IL. App. (4th) 100962 at 31, 2012 Ill. App. LEXIS 175 (4th Dist. 2012), determining, with regarding to an ADIT adjustment to Ameren’s rate base, that Section 9-211 of the Public Utilities Act requires that rate base cannot exceed the investment value that a utility actually uses to provide utility services.). ... Because federal tax laws regarding 2011 allow businesses like ComEd, currently, to depreciate plant additions at 100%, ComEd has use of funds now that it would not have otherwise normally have had access to without borrowing or other forms of financing. In effect, ignoring this windfall to ComEd would be to allow ComEd an interest-free loan at the ratepayers’ expense for several months. It also would artificially increase rates until the time when a final order in the 2011 reconciliation docket takes place.

Commonwealth Edison Co., Docket No. 11-0721, Order at 59-60 (May 29, 2012). The AG cites the Appellate Court’s recognition that “ADIT, for regulated entities, is treated as no-cost capital and reduces rate base.” Ameren Ill. Co. v. Ill. Commerce Comm’n, 2012 IL App. (4th) 100962, para. 12. The AG explains that the following year, upon review of the next AIC formula rate order, the Court affirmed the Commission’s order that AIC
deduct ADIT from rate base, noting that “The Commission contends it is common practice to make ADIT adjustments to a rate base.” *Ameren Ill. Co. v. Ill. Commerce Comm’n*, 2013 IL App (4th) 121008, ¶38. The Court said:

The Commission asserts that ignoring the ADIT figure would do just that—allow Ameren to recover an unjust and unreasonable rate base that has been inflated by no-cost capital for the benefit of Ameren. We agree. Omitting ADIT 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.

*Id.* at ¶38. The AG asserts that ADIT “amounts to an interest-free loan at ratepayers’ expense” because “ratepayers have paid income taxes at the full, statutory tax rate, but AIC retains the cash it received from ratepayers when it deferred payment to the taxing authorities.”

The AG states that AIC foregoes a return on the portion of rate base equal to the ADIT balance (as required by regulatory accounting rules) because ADIT represents money collected from ratepayers but not paid to the government, and therefore ADIT is not investor-supplied funds. The AG explains that ratepayers are not expected to pay the utility a return on investment dollars that investors did not supply. The AG argues this regulatory framework demonstrates that the ADIT balance is funded by rates that include AIC’s tax expense at the statutory rate even though some of that tax expense may be deferred and not paid out in the test year. As Mr. Stafford confirmed, AIC’s records show deferred taxes flow into ADIT as a reduction to rate base. The AG argues that the rate base adjustment is not the same as a credit to expense, and does not reduce, credit, or eliminate the funds customers provide in the revenue requirement to cover taxes at the statutory rate without regard to whether a portion of that tax obligation is deferred. Rather, the AG argues, the rate base adjustment simply assures that consumers do not pay the utility a return on the ADIT balance, which represents funds that consumers themselves – and not investors – provided the utility; the AG argues this proposition is made clear in the judicial opinions and Commission orders quoted above.

The AG observes that AIC’s ADIT balance in this docket is substantial: $922.457 million, out of AIC’s total rate base (total net property plant and equipment) before adjustments of $3,874 million. On December 31, 2017, when the new, lower tax rate took effect, EDIT represented approximately $497 million of that balance, and the unprotected Plant-Related EDIT subject to the amortization period approved by the Commission equals about $158 million. The AG states that customers whose rates included income tax expenses at the higher 35% rate, collected before the 2018 tax law change, should receive the refund of this excess amount currently in the ADIT balance. The AG again points out there is no dispute that ratepayers are entitled to a refund of EDIT, which represents a portion of the ADIT balance that will not have to be paid to the government due to the reduction in tax rate from 35% to 21%. The AG argues that amortizing this excess amount over 35 years as AIC requests, denies refunds to the very customers who
paid AIC’s tax expense prior to 2018 at the previously higher rate, and is fundamentally unfair to current ratepayers.

AIC and Staff believe that the refund should be matched to the average life of AIC’s plant in service, or 35 years; however, the AG suggests that this is the wrong matching, noting that the EDIT was collected from ratepayers and the refund should be matched to the pre-2018 customers who paid the income taxes at the higher rate. The AG submits that spreading the refund over 35 years does not match it to the plant in service when the pre-2018 taxes were paid and will guarantee that a substantial portion of pre-2018 customers will not see a significant portion of the refund.

In response to Staff’s argument that a 35-year period is appropriate because tax rates might again be raised, the AG argues that the Commission does not base rates on future possibilities and Staff has cited no precedent for such speculative ratemaking. The AG further states that in the event that tax rates do increase in the future, it would be appropriate to match that increase with then-current ratepayers. The AG argues that it is not equitable to expect pre-2018 customers to fund future taxes, and doing so clearly mismatches past, current, and future costs.

The AG argues that the key flaw in support of a 35-year amortization period is that it assumes that the refund of money built up over many years prior to 2018 is in fact associated with paying for AIC’s plant in the future. The AG argues that in fact, the EDIT formerly associated with existing plant have already been collected from customers and are no longer a liability – that is why they are subject to refund. The AG argues the underlying depreciation expense and lives are neither increased or decreased as a result of the change in tax rate or the existence of EDIT; rather, only the deferred taxes associated with the plant have changed, and they are substantially less than when customers paid the 35% tax rate in the pre-2018 revenue requirements. The AG suggests that it is only fair to return the excess deferred taxes, which are no longer due, to the customers who paid them in pre-2018 rates.

The AG disputes the argument that because deferred taxes are paid over a predictable schedule, excess deferred taxes should track that same schedule, noting that the mere existence of “excess” deferred taxes discredit this argument. The AG argues that if deferred taxes are, in fact, paid over a predictable schedule, there could never be any “excess” amounts to deal with. Furthermore, the AG argues, excess deferred taxes are no longer owed to the government; they are owed to and will be refunded to customers. While ADIT may follow a “predictable schedule” related to depreciation when taxes are unchanged, the AG explains, excess deferred taxes are simply that: excess. They are not expected to be paid in the future and the AG argues consumers do not benefit by allowing the utility to hold those funds for 35 years, even if there are annual rate base deductions that provide a marginal customer benefit.

The AG notes that although AIC argues that it is matching the EDIT refund with the underlying asset, AIC did not attempt to segregate assets that were subject to pre-2018 taxes from other AIC assets. The AG states that AIC has not “matched” pre- and post-2018 deferred taxes, customer benefit, and plant life, and argues the blunt instrument of applying the pre-2018 excess accumulated deferred taxes to AIC’s 35-year average plant life is inequitable to customers who have already paid the excess taxes.
The AG states that EDIT is a form of ADIT, which is ordinarily treated as a reduction to rate base. The AG observes that if AIC holds onto the EDIT for the full 35 years, AIC will be obligated to include that balance of EDIT in the ADIT that is deducted from rate base. The AG states that consumers receive a modest benefit by not paying for the cost of capital associated with the EDIT/ADIT rate base deduction, equal to about 10% of the rate base deduction. The AG argues this is a relatively small amount over 35 years and denies consumers $19.9 million per year for five years that a five year amortization would provide. The AG argues it is more equitable and better for the AIC region to provide the benefits of this $19.9 million per year to consumers and to the economy in the form of consumer spending.

The AG argues that regulatory approval of the AG’s recommended five-year amortization period will allow AIC to record the faster amortization of the EDIT refund as a reduction to annual expense and that this expense reduction will directly offset the associated reduction in revenues caused by the shortened amortization. The AG argues that because of this offsetting, the overall impact of more rapidly amortizing the refund of EDIT is income-neutral to the utility. The AG asserts that the five-year amortization provides a tangible benefit to customers and has no effect on AIC’s net income. The AG asserts this is a rare opportunity to benefit consumers without imposing financial stress upon the utility’s shareholders and urges the Commission to adopt the AG’s recommendation of a five-year amortization period of unprotected property EDIT.

The AG maintains the size of its proposed adjustment is not out of the ordinary for AIC’s formula rates. Annual rate changes have ranged from decreases up to $44.6 million and increases as much as $137 million. The AG argues that a five-year amortization period will not lead to rate shock or otherwise disrupt consumers’ or AIC’s rate expectations. The AG argues that while AIC has proposed a $7.2 million decrease in rates in this docket, a further decrease to implement a five-year amortization for unprotected EDT is not outside the historical range of revenue requirement changes under AIC’s formula rate. Mr. Brosch testified that assuming a 40-year asset life to correspond with AIC’s requested amortization period, the cost associated with the early years of the plant are driven primarily by the cost of capital associated with the undepreciated plant. The AG asserts that Mr. Brosch demonstrated that the revenue requirement cost of new assets is heavily front-loaded because most of the revenue requirement cost is due to the return on investment or cost of capital, and not due to the depreciation expense. The AG contends that in the earlier years of an asset’s life, before the asset is depreciated, the cost associated with the return on rate base is substantially higher. While the cost of the return on capital shrinks over time as the asset depreciates, the AG reasons, the depreciation expense itself remains unchanged using straight-line depreciation. The AG contends that both the cost of the return and the depreciation expense drive the cost to consumers and that AIC erred by excluding the former in its argument that it is “equitable” to hold on to EDIT for the entire life of the plant.

The AG argues that using more expedited EDIT refunds to offset the cost of capital in the early years of a depreciable asset provides a greater consumer benefit than spreading the benefit thinly over the entire depreciable life of the asset. The AG reasons that a revenue requirement offset due to the EDIT refund would moderate the high revenue requirement effect associated with undepreciated assets, and so provide more
of a consumer benefit than a 35 amortization that corresponds with the less significant straight-line depreciation expense. The AG argues the Commission should approve a five-year amortization for unprotected EDIT for the additional reason that a more rapid return of these funds to consumers will help to moderate the higher revenue requirement associated with cost of capital on undepreciated plant additions.

The AG notes the formula rate law allows AIC to include projected 2019 plant additions in this docket, which increases the revenue requirement to cover the cost of capital in the early, less-depreciated years of the additions. Thus, the AG reasons, in addition to being more likely to return EDIT to the customers who previously paid the higher tax rate that funds ADIT and EDIT, amortizing unprotected EDIT over five years will moderate the revenue requirement effect of plant additions on the revenue requirement over the next five years.

The AG observes that last year the Commission accepted a 39.5 year amortization for unprotected EDIT for ComEd because the longer period “aligns the amortization of the EDIT with the useful life of the underlying assets, ensuring that the same customers who are paying over time for the underlying assets and taxes giving rise to the EDIT also see the benefits of the new lower tax rates.” Docket No. 18-0808, Order at 57. The AG argues that this statement should not control the Commission’s decision in this docket, noting that the law is well-settled that Commission orders are not “res judicata,” and the Appellate Court has confirmed “the Commission is authorized to determine each case before it, even when it considers issues identical to those in a previous case.” See Lakehead Pipeline Co., 296 Ill.App.3d at 956, 696 n.e.2D AT 354.” Ameren v. Ill. Commerce Comm’n, 2012 IL App. (4th) 100962, ¶ 77 (“Ameren”).

The AG states that in Ameren, the Court affirmed a Commission order that reversed Commission treatment of the accumulated depreciation reserve (“ADR”) and ADIT in connection with pro forma adjustments to rate base. The Commission had reversed its prior position and adopted an adjustment recommended by IIEC to match increases in gross plant with offsetting increases to ADR and ADIT. The AG notes that the Court rejected arguments that the Commission’s change in position required a rulemaking or was otherwise precluded.

The AG further notes that in Commonwealth Edison Co. v. Ill. Commerce Comm’n, 405 Ill. App. 3d 389, 405 (2d Dist. 2010), unlike in Ameren, the Commission had adopted the position ComEd advanced and rejected the IIEC recommendation to match gross plant with ADR and ADIT. However, the Court reversed the Commission’s decision, and the Court agreed that the Commission departed from standard utility cost accounting when it used gross plant to measure ComEd’s rate base in the new plant additions. The AG asserts that caselaw and Commission practice are clear: the Commission has the authority to review prior decisions and correct errors or change policy, based on the record before it.

The AG characterizes AIC’s explanation of how ADIT is funded and treated as “convoluted and inaccurate.” The AG states that although AIC argues that “customers are not the source of the excess amounts,” on cross examination Mr. Stafford admitted that customers pay both current and deferred taxes and that the deferred taxes are accounted for in the ADIT balance that becomes an adjustment to rate base. The AG
states that standard regulatory accounting as well as common sense demonstrate that ADIT, and EDIT as a subset of ADIT, represent ratepayer funds provided to pay taxes, including taxes that tax law allows to be deferred. Because pre-2018 customers provided the “excess” taxes that now are no longer due, the AG reasons, AIC’s argument that EDIT need not be promptly refunded to consumers should be rejected, and the Commission should adopt the five-year amortization to return the significant amount of EDIT to customers.

The AG cites AIC’s FERC Form 1 which describes the excess deferred income tax balances or EDIT amounts as “refundable to customers.” The AG submits this FERC Form 1 disclosure represents compelling evidence that EDIT belongs to, is owed to, and should be quickly returned to utility customers.

The AG notes AIC’s argument that customers have pre-paid or otherwise funded the ADIT liabilities deducted from rate base is incorrect. The AG notes that while AIC argues that ADIT “represents funds supplied by the government through what is essentially an interest-free loan,” Mr. Stafford was clear that the “government loan” idea is just an analogy. While the government allows the utility to retain cash collected from customers that otherwise would have gone to pay income taxes, the money that the utility gets to hold on to originally came from rates paid by customers.

The AG explains that the revenue requirement includes income taxes at the full statutory rate, then the utility pays out part as currently payable taxes and defers income taxes as allowed by state and federal tax law, and accounts for the taxes that are deferred and not paid out to taxing authorities within the ADIT balance. For AIC, the AG explains, the ADIT balance for the rate year equals $922 million, about 24% of AIC’s total rate base. The AG states that ADIT is used by the utility as non-investor supplied funds for plant investment and is a reduction to rate base.

The AG highlights the Appellate Court’s recognition that “ADIT represents taxes payable in the future that provide a source of funds the utility can use until such time the taxes become due.” Ameren Ill. Co. v. Ill. Commerce Comm’n, 2013 IL App (4th) 121008, ¶34 (Modified upon denial of rehearing). The AG states that as a result of the ADIT reduction, AIC foregoes a return on $922 million of investment dollars, as required under regulatory accounting rules.

The AG explains that ADIT is a reduction to rate base because it would be inequitable to require consumers to pay a return on funds that investors do not supply and that have been collected from customers and not remitted or paid to taxing authorities. Although AIC suggests that EDIT funds do not come from consumers, the AG counters that this substantial sum of money comes from someone. The AG argues that basic regulatory accounting demonstrates that the money that funds ADIT comes from the income tax expense that is included in the revenue requirement at full statutory tax rates and is recovered in customer rates. The AG explains that the revenue requirement includes both deferred and currently payable income tax expenses, and the government allows the utility to retain the deferred tax amounts and use as capital until the tax “reverses.”

The AG asserts this regulatory accounting makes it clear that ADIT and EDIT are in fact funded by the rates paid by AIC’s consumers and that EDIT should be returned to
the consumers who paid the higher, pre-2018 tax rate over a reasonably prompt period. The AG maintains that it is inequitable to deny timely refunds to the consumers whose rates funded EDIT at the higher pre-2018 income tax rate.

The AG states that rather than request that the full $73.7 million be refunded in one year, it proposed a five-year refund period, smoothing out the refund and resulting in a reduction in revenue requirement of about $20 million for each of those five years. The AG reasons that all current customers in each of those years would receive this refund through rates, while AIC continues to retain the much larger amounts of restricted EDIT associated with accelerated depreciation for which ARAM must be utilized. The AG notes AIC’s critique that after the five-year amortization ends, in year six, “customers get nothing,” and responds that is the case with any amortization, whether it is a refund or a charge.

The AG asserts that AIC’s concern about the sixth year cliff must be considered in light of the other factors that drive AIC’s revenue requirements. The AG states that in the years of the formula rate, AIC’s revenue requirements have changed by much more than $19.9 million. In some years AIC’s rates increased and in other years it decreased, ranging largely between a $240 million increase to a $44 million decrease. The AG states the end of a five-year EDIT amortization is merely one of a multitude of factors affecting AIC’s revenue requirements and is easily subsumed by other cost changes as the Commission sets rates based on the aggregate of all jurisdictional costs of a rate year, plus the reconciliation allowed under Section 16-108.5(d).

c) AIC’s Position

AIC explains that prior to 2017, when the Company claimed certain tax deductions (e.g., accelerated depreciation), AIC would defer its income tax liability by an amount determined using the corporate tax rate expected to be in effect when, in the future, the deferred tax liability became due. It was expected that the amount of the deferral would eventually have to be paid to the government in the form of higher cash income taxes when, later in the life of the depreciable assets, book depreciation would exceed the available tax depreciation deductions.

AIC states that when the TCJA became law, the future expected corporate tax rate went down from 35% (or, prior to 1994, 34%) to 21%. Thus, AIC states, when eventually the higher taxable income is produced, it will be taxed at 21%, not the higher rate in effect in the past, and thus some amount of the deferred tax liability was no longer needed to pay taxes in the future. That amount is EDIT. AIC notes that while all parties agree that this excess should be refunded to customers, the question is the amortization period over which the refund should occur for a certain type of EDIT: “unprotected” plant-related EDIT.

AIC explains that it has a current EDIT balance of $451,423,654. Of that, $373,427,284, or 83%, consists of plant-related deferred taxes that must, under federal tax law and rules, be refunded to customers over a period determined by the average rate assumption method, or ARAM. AIC explains that this amount, whose amortization period is mandated by law, is “protected” EDIT. AIC further explains that the ARAM period over which this protected EDIT is refunded to customers, while not a straight-line amortization over a set period, is approximately 35 years. According to AIC, $2,235,485, or less than 1% of the total, is unprotected plant-related EDIT amortized over a straight-line basis of
35 years. In addition, AIC explains no party opposes its proposal to refund non-plant EDIT of $2,016,648, also less than 1% of the total, over seven years. AIC explains that the remainder, $73,744,236, or 16%, is the unprotected plant-related EDIT at issue here.

AIC proposes the same, consistent amortization method for all plant-related deferred taxes, both protected and unprotected, using the ARAM method, which approximates the remaining useful life of the underlying plant assets, for all property-related excess deferred taxes where ARAM is required by law or where it is feasible to do so, and a 35-year amortization as a proxy for the remaining useful life of the assets for those items where AIC’s tax systems cannot perform the necessary calculations for ARAM. AIC observes that Staff supports this proposed consistent treatment of the amortization period for property-related EDIT (both protected and unprotected), noting that the Company’s proposal ensures that current and future customers pay a smoother, normalized cost of the asset over time, and that such an approach is rational and balances amortization throughout the remaining life of the underlying assets. AIC also notes Staff’s position that the Company’s proposal would partially offset the effect of future tax increases and could be used as a guide in future cases to ensure that distribution rates are not increased to collect a deferred tax deficiency too quickly. According to AIC, amortizing EDIT over the life of the asset ensures that current and future customers who pay for an asset over its useful life (through depreciation) continue to receive the offsetting benefit of an EDIT refund as they pay. AIC asserts that application of ARAM would refund $4.3 million in 2018 for unprotected EDIT.

AIC argues that the AG and IIEC/CUB’s proposals to significantly accelerate the refund of unprotected EDIT over an arbitrary five year or seven year period, respectively, would produce a short-term windfall for current customers at the expense of those customers (and future customers) as they pay for assets over the longer period of those assets’ useful life. AIC explains that in the AG’s case, accelerated amortization means a refund of approximately $12.7 million per year in unprotected EDIT for five years, while customers receive nothing from year 6 until the end of the useful life of the relevant asset. Thus, AIC explains, the AG and IIEC/CUB proposals do not provide the return of EDIT to customers in later years who are paying for the plant at issue through depreciation expense. In contrast, AIC asserts that amortizing EDIT over the life of the asset ensures that current and future customers pay a smoother, normalized cost for the asset over time, for at least five reasons.

AIC states that its proposed amortization period matches the benefit of the EDIT refunds to the payments customers are making for assets through depreciation expense – payments that extend over the life of the asset until it is fully depreciated (as well as the period over which the underlying deferred tax liability reverses). AIC argues that this is an appropriate outcome, as it provides for “intergenerational equity” by allocating the EDIT to all of the customers that will pay for and support the depreciable asset smoothly over its useful life. AIC notes that opposition to this approach is based on an unsupported premise – that accelerated refunds would be more likely to go to the same ratepayers who paid the pre-2018 higher statutory tax rate. AIC asserts that such a conclusion is speculative and is not supported by any empirical analysis. AIC notes that customers who were paying the pre-2018 statutory tax rates many years ago, on assets now nearing the end of their useful lives, may have, as AG witness Brosch suggests, died or moved
away and so would not benefit from any refund. Meanwhile, new customers would get an immediate benefit even though they did not pay taxes at the old, higher statutory rates. AIC explains that its proposal, by contrast, smooths benefits to current and future customers over time, and could – as explained by Staff – mitigate the impact of future tax increases on current and future customers.

AIC submits that its proposal would cost customers less, as shown on Ameren Exhibit 9.4, which illustrates the impact of a hypothetical utility plant asset of $2,000,000 placed in service prior to the TCJA tax reform to compare and contrast the Company’s proposed EDIT amortization with the proposals offered by the AG and IIEC/CUB. AIC explains that in this example, the asset is book depreciated on a straight-line basis over 20 years, at $100,000 per year. For tax purposes, the assumption is that the asset is a repair that is fully tax depreciable at the time it was acquired, with the applicable tax deduction at the 35% Federal tax rate. AIC states that this generates an ADIT balance of $823,500. With the TCJA, the Federal tax rate declined to 21%, which results in a split of the ADIT amount, with $570,100 remaining as ADIT and $253,400 as the excess ADIT, or EDIT, amount. AIC states that under all three proposals – AIC, AG, and IIEC/CUB – the ADIT balance reverses uniformly over the 20-year asset life, as the asset is depreciated for book and financial statement purposes. Under AIC’s proposal to amortize EDIT uniformly, the EDIT reversal takes a shape similar to ADIT, and contributes to a moderate and relatively consistent adjustment to rate base as EDIT is amortized and flowed back into customer rates. AIC states that the AG’s proposal, in contrast, results in accelerated EDIT amortization that occurs only within the first 5 years of the asset’s useful life. Similarly, under IIEC/CUB’s proposal, EDIT amortization is accelerated and occurs only within the first seven years of the asset’s useful life. AIC asserts that the overall revenue requirement for the 20-year review period is higher under Interveners’ proposed approaches, when compared to AIC’s. In other words, AIC argues, the Intervenors’ approach will cost customers more over time.

AIC also contends that its approach avoids the rapid jump in revenue requirement that would occur after the AG or IIEC/CUB accelerated amortization period ends. AIC’s proposed EDIT amortization smooths out the impact on rate base, tax expense amortization, and revenue requirement, while under both the AG’s and IIEC/CUB’s proposals, the flow back of EDIT amortization in the early years is much greater, and suddenly stops. AIC explains that this has the effect of abruptly increasing revenue requirement and customer rates in year 6 under the AG’s proposal, with a similar effect in year 8 under IIEC/CUB’s proposal. In short, AIC argues that the Intervenors’ proposals result in winners, which are customers taking service in the early years after the TCJA’s enactment, and losers, which are customers taking service after year 5, under the AG’s proposal, and customers taking service after year 7, under IIEC/CUB’s proposal. In response to the AG’s argument that the revenue requirement cost of new assets is “heavily frontloaded,” AIC notes that the fact that the total cost of an asset is higher in early years of its service has been, and will continue to be, a fact of utility accounting and ratemaking. Thus, AIC argues that the AG’s argument is really about targeting those higher initial costs for new assets in a narrow time window, while ignoring the costs of new assets both before and after, therefore providing a windfall for current customers. AIC points out that the benefit from the AG claims would only be available for new plant added in years 1-5 (under the AG’s proposal); however, AIC will continue to add new
plant after year 5, and for such new plant added in later years, AIC’s proposal would continue to provide a benefit, while the AG’s would provide none. Moreover, AIC argues that customer rates would already be lower as new assets are added going forward, because income tax expense would be calculated at the new, reduced federal income tax rate of 21%.

AIC submits that its approach is consistent with the nature and purpose of ADIT, which effectively operates as a loan from the government that is repaid over time as a book / tax timing differences reverse. AIC explains that the legislative purpose in enacting accelerated depreciation was to extend ADIT loans to business and so encourage investment; thus, deferred income taxes (both ADIT and EDIT) are most accurately characterized as an interest-free loan from the government. AIC notes that deferred taxes represent a cost-free source of capital, but that capital is provided to the utility by tax law provisions that allow the utility to defer payments it would otherwise owe the government. AIC states that ratepayers pay those tax amounts regardless (as they represent the utility’s current or future tax liability) because tax expense is calculated at statutory rates. Therefore, AIC explains, if actual payment of federal taxes is not deferred, the utility would record those federal taxes as current tax expense and would collect revenues in rates to recover those current tax amounts. The deferral of these actual payments of federal taxes occurs only because they are authorized by the government through federal tax law or rules. It is this government-provided opportunity to defer tax payments that produces the cost-free capital.

AIC takes the position that its proposal treats unprotected plant consistently with protected plant. For protected plant, the tax laws require that the amortization period is set using ARAM. If plant that produced protected EDIT uses ARAM, it makes sense that plant that produced unprotected EDIT be refunded using the same amortization methodology. AIC asserts that it is for this reason that AIC’s proposal to amortize all plant-related EDIT based on the remaining useful life of the assets subject to amortization is a more equitable and reasonable approach.

AIC avers that its approach is consistent with the Commission’s determination of this same issue for ComEd in its 2018 delivery services formula rate case, Docket No. 18-0808, as well as with Staff’s position in this case. AIC further notes that its approach is consistent with a recent FERC ruling on AIC’s transmission formula rate tariff treatment of unprotected EDIT. AIC argues that the proposal to accelerate amortization has already been rejected in Docket No. 18-0808, and that neither the AG nor IIEC/CUB have offered a compelling reason to change that result.

AIC states that in Docket No. 18-0808 the Commission approved ComEd’s use of the ARAM methodology for “unprotected” property-related excess deferred taxes. The Commission found “this period aligns the amortization of the [excess deferred taxes] with the useful life of the underlying assets,” or approximately 39 years. AIC observes that ComEd’s position in that docket was that EDIT should be recognized in rates over the same period as underlying assets that gave rise to the EDIT are paid for, i.e., over the life of that plant, which would ensure that current and future customers will pay for the underlying assets and taxes, and receive any tax benefits, on a consistent basis.
AIC asserts that the AG raised essentially the same arguments in that proceeding as it does here, namely that ComEd’s proposal would deny ratepayers the timely return of monies already paid to the Company as deferred income taxes, that ratepayers benefit from lower rates in the near-term, that the ratepayers who funded the EDIT balance are entitled to seeing the benefits of the federal corporate income tax rate decrease, including EDIT amortizations, and many of the ComEd ratepayers who previously paid deferred taxes at a rate now rendered excessive will have moved out of the ComEd service territory, thereby depriving them of the full return of excess ADIT collected from them and implicating legitimate and inter-generational equity concerns.

AIC emphasizes that the Commission rejected the AG’s arguments in Docket No. 18-0808, finding that an amortization period using ARAM aligns the amortization of the EDIT with the useful life of the underlying assets, ensuring that the same customers who are paying over time for the underlying assets and taxes giving rise to the EDIT also see the benefits of the new lower tax rates. The Commission explained that:

ComEd demonstrates that there are possible inequities in shorter amortization periods. Specifically, ComEd explains that if EDIT is reversed more rapidly than the rate at which depreciation expense and the original ADIT gets reflected in rates, customers in early years receive a benefit that is denied to customers in later years even though those customers will be paying for the underlying asset and the related ADIT. The Commission notes ComEd’s concerns and finds that ComEd’s longer amortization period for unprotected plant-related to EDIT is reasonable.

Docket No. 18-0808, Order at 57.

AIC notes that the Commission has made similar findings to approve the amortization of unprotected EDIT over the remaining life of the assets which gave rise to those deferred taxes. Central Ill. Public Service Co., Docket No. 91-0193, 1992 WL121730 (March 18, 1992), aff’d 243 Ill.App.3d 421 (4th Dist. 1993); Ill. Commerce Comm’n On Its Own Motion: Investigation into the appropriate accounting treatment of the deferred tax reserve resulting from changes in statutory income tax rate, Docket No. 83-0309, 0085 WL 1271150. The Commission has likewise rejected accelerated payback of unprotected property-related EDIT. See Cent. Ill. Light Co., Docket No. 80-0157, 1981 WL 140798 (Jan. 7, 1981); Central Ill. Public Service Co., Docket No. 91-0193.

AIC contends that the Ameren Missouri stipulation to utilize a 10-year amortization period for EDIT has no bearing on the appropriate amortization period for AIC, as this was a stipulated agreement, not a litigated decision by the Missouri PSC, that by its own terms has no precedential effect and could potentially be based on any number of compromises. Furthermore, AIC notes that the Commission could also consider AIC’s most recent gas rate case, Docket No. 18-0463, where the parties entered a stipulation agreeing that the test year revenue requirement included amortization of EDIT based on the remaining useful life of the assets subject to the amortization for property-related EDIT balances (both protected and unprotected). In that proceeding, the Commission’s Order found that the amount of amortization of EDIT included in the test year revenue requirement was reasonable. AIC argues that the AG cannot, on the one hand, challenge Staff’s citation to AIC’s gas rate order’s stipulated outcome on amortization of EDIT and
on the other ask the Commission to give an Ameren Missouri stipulation on the same topic probative weight. Furthermore, AIC observes that the 10-year period that Ameren Missouri agreed to is longer than either IIEC/CUB or the AG’s proposals, that no witness testified that a 10-year amortization period was appropriate, and that the AG does not explain why a time frame twice as long as what Mr. Brosch proposes would be appropriate.

AIC states that while the AG and IIEC/CUB reference other cases from other jurisdictions that adopted a shorter amortization period for unprotected EDIT, the Commission is under no obligation to follow these cases. AIC notes that the Virginia, New Jersey, Kansas and Indiana orders cited by the AG and IIEC/CUB all resolved by stipulation or settlement. AIC asserts that as with any such non-litigated outcome, such resolution could have reflected trade-offs elsewhere in the approved revenue requirements – in other words, these results were simply part of a negotiated settlement package. AIC emphasizes that the AG acknowledges this point, stating in their Reply Brief, “the terms of a compromise parties agreed to in another proceeding reflect only what parties were willing to accept for the sake of resolving that case. It does not speak to the merits of the parties’ positions and therefore offers no probative value in this proceeding.” Finally, AIC notes that other jurisdictions in addition to FERC – South Carolina, Maine, and Kentucky, as examples – have approved amortization period for unprotected EDIT using ARAM or otherwise based on the life of the underlying assets. Thus, the cases cited by Interveners from other jurisdictions are in no way dispositive.

AIC next argues that the AG and IIEC/CUB proposals should be rejected as both seek to adjust 2019 filing year amortization expense, an adjustment that is not legally permitted under Section 16-108.5 of the Act, which only allows adjustments for the filing year for filing year projected plant and derivative adjustments. This section states that: “The inputs to the performance-based formula rate for the applicable rate year shall be based on final historical data reflected in the utility’s most recently filed annual FERC Form 1 plus projected plant additions and correspondingly updated depreciation reserve and expense for the calendar year in which the inputs are filed.” 220 ILCS 5/16-108.5(c)(1).

AIC emphasizes that flowing the benefit of EDIT to customers over a period shorter than the life of the asset that produced it effectively truncates the period over which the Company anticipated it would have access to the capital and decreases a utility’s cash flow. AIC argues that this accelerated payback could impact the Company’s credit metrics and increase risk of a downgrade. While AIC cannot predict the ultimate impact on AIC credit ratings of an acceleration of the amortization of EDIT, AIC witness Weber explained that it can be reasonably assumed that such an acceleration would have a detrimental effect on AIC’s Moody’s credit standing. Since the relevant 12-18 month forward looking Moody’s credit metric for AIC (CFO pre-WC/Debt) is already at the lower end of the minimum threshold to maintain AIC’s current rating, and an accelerated payback of excess ADIT would negatively impact this metric, AIC asserts that it can be reasonably assumed that such a move would ultimately put the metric below the threshold. In addition, AIC observes that if Moody’s deemed such a move as a change to a “less credit-supportive regulatory environment,” this could also impact the qualitative measures that are also used by Moody’s to determine the rating. Both the lower CFO
pre-WC/Debt metric and less favorable regulatory environment would, at the very least, create additional pressure on the overall Moody’s credit rating.

As Moody’s already is predicting that AIC’s midpoint for its 12-18 month forward view for the CFO pre-WC/Debt metric is at 19%, it is reasonable to conclude that even a small adjustment would put pressure on the metrics, lowering the mid-point below the 19% stated threshold for maintaining AIC’s current rating.

Finally, AIC observes that the AG and IIIEC/CUB argue that EDIT should be refunded to customers quickly as the deferred taxes are ratepayer funded. However, AIC testifies that the idea that customers have pre-paid or otherwise funded the ADIT liabilities deducted from rate base is wrong. AIC’s income tax expense is reflected in its revenue requirement at statutory tax rates. AIC explains that under the tax law, AIC may take certain deductions that allow it to defer payment of some taxes (only until the applicable book/tax timing difference reverses, at which time the deferred amounts become payable back to the government). Thus, if some of AIC’s taxes are deferred, the amount customers pay is less, because there is an accounting entry offset to account 282, accumulated deferred income taxes, for entries to deferred tax expense accounts 410 and 411. AIC observes that ratemaking follows accounting, and the change in the account 282 deferred income tax liability is reflected in the accumulated deferred tax balance deducted from rate base, which in turn lowers the revenue requirement. Thus, AIC states, if taxes are deferred, ratepayers enjoy the benefit of an offset to rate base for the jurisdictional ADIT amounts. In other words, the deferral of taxes reduces the revenue requirement amount customers would otherwise pay. Even when the deferred tax amounts become excess with the reduction in federal income tax rates, customers have not paid the EDIT amount.

AIC explains that this rate base reduction for ADIT does not occur because deferred taxes are funded by customers. AIC states that ADIT reduces rate base because it represents funds that are not supplied by investors – instead, ADIT represents funds supplied by the government through what is essentially an interest-free loan. The reduction in the federal income tax rate has caused the amount AIC must ultimately remit to the government to go down, and that amount, EDIT, can be refunded to customers. But, AIC asserts, customers are not the source of the excess amounts – they pay the full income tax expense calculated at statutory rates regardless of whether any amounts are deferred. AIC explains the availability of these excess funds for refund to customers is the direct result of federal tax reform, and the corresponding relief of the obligation to pay back these funds to the Federal government. AIC further notes that while the AG cites three cases to stand for the proposition that the funds received by the utility to pay taxes, but that are deferred and retained by the utility during the deferral period, are ratepayer supplied funds, those cases actually stand for the undisputed proposition that deferred taxes are not “investor-supplied funds” (i.e., they are cost-free source of capital), and therefore are appropriately deducted from rate base. AIC emphasizes that in those proceedings, the courts’ concern was that AIC would get the benefit of cost-free capital that ratepayers would nevertheless pay a return on – notably, the court did not say such cost-free capital is “ratepayer supplied.”

AIC states that even if one were to accept the view that customers funded EDIT, that does not resolve the question of how long the amortization period should be. In short,
AIC argues that the source of the funds is not dispositive – the question remains over what time period the refunds should be made to customers. AIC emphasizes that amortizing EDIT over the life of the asset ensures that current and future customers who pay for an asset over its useful life (through depreciation) continue to receive the offsetting benefit of an EDIT refund as they pay. Thus, AIC argues that its proposed treatment is a reasonable resolution that has customers paying a smoother, normalized cost for the asset over time, and should be approved.

d) Staff’s Position

Staff states that Staff witness Ebrey did not address the amortization of EDIT in her direct testimony because she did not take issue with AIC’s proposed amortization period and therefore did not have an adjustment to propose. Staff explains that Ms. Ebrey submitted rebuttal testimony on this matter so that the Commission would have the benefit of Staff’s analysis on the matter when deliberating on the issue. Staff notes that in her rebuttal testimony, Ms. Ebrey supported AIC’s amortization period of 35 years for EDIT based on the remaining useful life for the unprotected property-related EDIT.

Staff notes that in AIC’s last gas rate case, Docket No. 18-0463 (“2018 AIC Gas Rate Case”), the test year revenue requirement included amortization of EDIT based on the remaining useful life of the assets subject to amortization for property-related EDIT balances and a seven year amortization for non-property EDIT. The Commission found that the amount of amortization of EDIT included in the test year revenue requirement was reasonable. Staff asserts that the facts and circumstances around the issue for AIC in the current case have not changed since the Commission’s Order in Docket No. 18-0463. Staff further notes that the amortization period for EDIT was not an issue in AIC’s 2018 electric formula rate case, Docket No. 18-0807.

Staff highlights Ms. Ebrey’s testimony indicating that ADIT represents the amount of income tax liability to be paid to the United States Treasury that was deferred and will be paid later. Staff explains this tax deferral occurred mostly because the tax deduction for depreciation expense was taken on the tax returns more quickly than the depreciation expense was recognized in financial statements and utility rates. Staff states this deferred tax liability was accumulated based on the 35% tax rate in the past and will now be based on the lower 21% tax rate in the future. Staff explains the EDIT is the amount by which the remaining accumulated tax liability has been reduced by virtue of the reduction of the tax rate from 35% to 21%.

Staff avers that there is no dispute between Staff, the Company, IIEC/CUB, and the AG on the amount of EDIT; the sole issue is whether the regulatory liability should be amortized over five or seven years as proposed by the AG and IIEC/CUB, respectively, or 35 years based upon what the Company proposed, which Staff supports.

Staff supports AIC’s position that amortizing EDIT over the life of the asset ensures the current and future customers pay a smoother, normalized cost for the asset over time. Staff explains that the ARAM method is mandatory for protected plant-related EDIT because it protects against intergenerational inequity, that is, ratepayers in one period of time paying the costs of an asset but not receiving the benefit of the related EDIT amortization. Staff argues that while ARAM is not mandatory for non-protected plant, the
underlying methodology is a sound, rational approach that balances the amortization throughout the remaining life of the underlying assets, rather than an arbitrary period.

Staff states that the Commission’s decision on this issue in the instant case could impact the results of future cases. Staff argues that in the event of a future tax rate increase, the longer ARAM amortization period adopted by the Commission in Docket No. 18-0463 would benefit ratepayers in the following two ways. First, Staff argues the longer EDIT amortization period proposed by AIC would partially offset the effect of future tax increases, thus resulting in lower distribution rates than if shorter amortization periods are used. Staff explains this is because any remaining unamortized EDIT at the time of the future tax rate increase would offset the deferred tax deficiency resulting from such a tax rate increase.

Second, Staff argues the application of the longer ARAM amortization period now could be used as a guide in future cases to ensure that distribution rates are not increased to collect a deferred tax deficiency too quickly. Staff explains, for example, if the Commission here adopts a five-year amortization period to address EDIT, a party in a future case may be more likely to prevail in arguing that the use of a shorter amortization period to address the deferred tax deficiency for a future tax increase is also appropriate. Staff notes that in the same way that the shorter amortization period proposed by the AG and IIIEC/CUB for EDIT leads to a larger revenue requirement decrease in the current proceeding, that same shorter amortization period applied in a tax increase/deferred tax deficiency scenario would lead to a larger revenue requirement increase. Staff argues that given that the current 21% maximum corporate tax rate is the lowest since 1939, and recognizing that no one can predict the future, it seems more likely than not that income tax rates in the future will increase rather than decrease; thus, the scenario described above is more likely to happen.

While Staff recognizes that Commission decisions do not have the effect of res judicata, Staff also observes that Commission decisions are entitled to less deference when the Commission drastically departs from past practice. Business & Professional People for the Public Interest v. Ill. Commerce Comm’n, 136 Ill.2d 192, 228 (1989). Staff notes that in addition to the 2018 AIC Gas Rate Case, last year’s ComEd electric formula rate proceeding considered the same arguments regarding EDIT that the AG and IIIEC/CUB raised in this proceeding. In the ComEd decision (Docket No. 18-0808), the Commission ultimately approved a 39.47-year amortization period for unprotected plant-related EDIT which used the ARAM methodology. Docket No. 18-0808, Order 57. Staff argues that in this proceeding, adoption of either the AG or IIIEC/CUB’s position would be a drastic departure from the Commission decision reached on the identical issue less than one year ago.

Staff agrees with AIC that amortizing EDIT over the life of the asset ensures the current and future customers pay a smoother, normalized cost for the asset over time. Staff argues that the AG’s proposal is short-sighted because it focuses only on the short-term benefit to ratepayers and does not consider the long-term effects of the shorter amortization period of EDIT. In response to the AG’s argument that EDIT should be returned “as quickly and efficiently as practicable” over a five-year period, Staff argues that the five-year period is arbitrary and that the AG does not explain where the five-year period was derived from. Staff argues the AG’s focus on a faster return ignores the fact
that ratepayers will be paying the cost of the assets that gave rise to the deferred tax through depreciation over the much longer useful life of the asset – which AIC and Staff agree should be the amortization period over which the EDIT should be returned. In response to the AG’s position that the five-year amortization period will reduce the revenue requirement currently and over the next five years, Staff counters that the revenue requirement in years six and beyond will be significantly increased for those same ratepayers since EDIT will have been amortized over an arbitrarily shorter time period.

Staff notes that IIEC/CUB argue that no weight should be given to Ms. Ebrey’s testimony regarding how amortization periods adopted in the instant proceeding could affect rates in the event of a future income tax increase. Staff counters that IIEC/CUB exhibit short-sightedness through their criticism of Ms. Ebrey’s observation of how the decision on this issue may impact future decisions by the Commission. Staff argues that Commission decisions should not be based on which party benefits from the final decision in the Order, but rather should be based on the methodology that makes the most sense and can be applied consistently in different factual scenarios. Staff argues that common sense dictates that although tax rates decreased in 2018, it is likely that at some point in the future, rates will increase from current rates. Staff argues it is not speculative, but rather reasonable and insightful to consider how the regulatory treatment of a probable tax increase would affect taxpayers. Staff states that while both IIEC/CUB and the AG argue that the current ratepayers should receive the benefit of an expedited return of the EDIT in the current case, neither party provided any rebuttal to Ms. Ebrey’s testimony that the amortization period adopted in this case should also be used as a guide in the future when tax rates will most likely increase. Staff argues that in the same way a shorter amortization period results in a greater decrease to the revenue requirement, that same shorter amortization period applied to a tax increase/deferred tax deficiency scenario would lead to a larger revenue requirement increase.

Staff recommends that the Commission adopt an amortization period based on ARAM which results in an amortization period of 35 years for EDIT and reject the AG’s proposed five-year amortization period and IIEC/CUB’s proposed seven-year amortization period.

e) Commission Analysis and Conclusion

All parties agree that the EDIT balances at issue in this docket should be refunded to customers. The parties disagree, however, about the appropriate amortization period that should be applied to AIC’s “unprotected” plant-related EDIT, where the ARAM methodology is not required, but permitted. AIC proposes, and Staff concurs, that the Commission should apply a consistent amortization period for all plant-related deferred taxes, both protected and unprotected. Specifically, AIC argues that the Commission should approve using ARAM for all property-related excess deferred taxes whenever ARAM is required by law or is feasible. For those items where AIC’s tax systems cannot perform the necessary calculations for ARAM, a 35-year amortization can be used as a proxy for the remaining useful life of the assets. AG and IIEC/CUB argue for a shorter amortization period – five and seven years, respectively.
The Commission notes that it addressed this issue less than one year ago in Docket No. 18-0808, ComEd’s delivery services formula rate case, where this issue was litigated extensively, including oral arguments by both the AG and CUB. The Commission also notes that many of the same arguments raised here by the AG and IIEC/CUB were raised by the AG and CUB in Docket No. 18-0808, and those arguments were considered and rejected by the Commission. There, the Commission noted that if EDIT is reversed more rapidly than the rate at which depreciation expense and the original ADIT gets reflected in rates, customers in early years receive a benefit that is denied to customers in later years even though those customers will be paying for the underlying asset and the related ADIT. Based on this, the Commission found that ComEd’s longer amortization period for unprotected plant-related to EDIT was reasonable. The Commission finds the same concern regarding intergenerational inequity is at issue in this case. Further, the Commission finds that the AG and IIEC/CUB have not demonstrated that a different outcome is warranted here. While the Commission agrees with the AG that EDIT balances should be returned to the customers and returned in a manner that benefits the customers, the Commission is not persuaded that the AG proposed five-year amortization period, or the IIEC/CUB proposed seven-year period, will provide such benefit. Neither the AG nor IIEC/CUB provide a clear methodology to support a specified period, or clear explanation how a shorter period will benefit the customers overall, as compared to the 35-year period derived from the commonly accepted ARAM method. The AG and IIEC/CUB argument that a shorter amortization period will ensure that the same customers that funded the EDIT balances will enjoy the return is not supported by the evidence. Also, the AG and IIEC/CUB proposals overlook the interests of the customers in the long run, those customers that will continue paying for the underlying assets. The Commission is tasked with balancing interest of all customers, in the short-term and long-term, and must ensure that EDIT balances are refunded in a manner that is equitable and benefits all customers. Accordingly, the Commission finds that the record supports AIC’s argument that its use of the ARAM method to arrive at a 35-year amortization period for unprotected plant-related EDIT is reasonable and equitable. Consistent with that finding, the Commission approves AIC’s proposal to use the ARAM methodology for all property-related excess deferred taxes, both protected and unprotected, or a 35-year proxy where ARAM is not feasible.

The Commission rejects the AG’s contention that ADIT (and the EDIT subset) is ratepayer funded, thereby justifying an accelerated amortization period. The Commission notes that it previously rejected this contention in Docket No. 18-0808:

“...as ComEd explains, when a tax deduction is taken, two journal entries are recorded – one to establish a deferred tax liability, and one to establish a current tax payable. . . . Thus . . . customers do not pay for ADIT because they receive an equal credit of current tax expense that negates this ‘payment.’ The Commission rejects the premise relied upon by AG and Cub – namely that ComEd’s customers have already funded the underlying ADIT.”

Docket No. 18-0808, Order at 57.
As AIC explains, AIC’s income tax expense is reflected in its revenue requirement at statutory tax rates. If taxes are deferred, ratepayers enjoy the benefit of an offset to rate base for the jurisdictional ADIT amounts and a reduced effective tax rate. Thus, the deferral of taxes reduces the amount customers would otherwise pay, and customers are not paying the full dollar for dollar impact of deferred tax expense. Even when the deferred tax amounts become excess with the reduction in federal income tax rates, ratepayers have not supplied the full EDIT amount. Consistent with its decision in Docket No. 18-0808, the Commission again rejects the AG’s contention that ratepayers funded the underlying ADIT.

The Commission finds the AG’s argument that accelerated refunds make it more likely that ratepayers who paid the pre-2018 statutory tax rate receive the (unprotected) EDIT refund is speculative and not supported by empirical evidence in the record. There is no guarantee that pre-TCJA customers continue to be AIC customers (or will be five years from now). Similarly, there are undoubtedly new AIC customers who did not pay those pre-2018 tax rates. In the interest of equitable ratemaking, the Commission has previously determined that it is in the best interest of ratepayers to align the amortization of EDIT with the useful life of the underlying assets, allowing customers to pay a smoother, more normalized cost over time. The Commission sees no reason to depart from that practice now.

2. NextGrid Expenses
   a) AG’s Position

   The AG notes that on April 20, 2017, the Commission issued a Resolution “Regarding Illinois’ Consideration of the Utility of the Future: ‘NextGrid’ Grid Modernization Study” (the “Resolution”). The Resolution stated that the Commission resolved to “initiate a collaborative process called ‘NextGrid’ in which the industry and other stakeholders can develop a shared base of information and work to build consensus on critical issues facing the electric utility industry now and as it continues to rapidly transform[].” Ill. Commerce Comm’n On its Motion, Regarding Illinois’ Consideration of the Utility of the Future: “NextGrid” Grid Modernization Study, Resolution at 2 (Mar. 22, 2017).

   While the Resolution and related information were issued without being a part of a docketed proceeding, the AG states that the Resolution did direct the Illinois electric utilities to provide funding to support the work of the facilitator, including any necessary project management, meeting hosting, and expert assistance costs that the facilitator may require. The AG argues that the Commission made no mention regarding the recovery of the costs to support the work of the facilitator in rates, but simply stated that the Illinois electric utilities would provide funding. The AG submits that it is apparent that this Commission directive was for the utilities, and not ratepayers, to fund NextGrid.

   AIC seeks to include $308,031 of its expenditures associated with NextGrid in its jurisdictional retail rates, however the AG contends that this is not supported by the Commission’s Resolution, Illinois law, Commission rules, or any other authority. The AG states that precedent requires that all components of rates be reviewed and approved as prudent, just, and reasonable, by the Commission before being included in rates paid by
ratepayers, therefore AG witness Selvaggio proposes an adjustment to remove this expense.

While AIC contends that the costs associated with a utility’s participation in a proceeding, workshop, or collaborative are the normal costs of operating a regulated utility, the AG argues that NextGrid was not a “normal” part of providing regulated utility service in Illinois. As the Commission Resolution noted, the un-docketed, informal process was intended to be “a new proactive collaboration among stakeholders” and was intended to identify and recommend to the Commission and the General Assembly a range of actions and policies that could maximize benefits to various parties. Instead of being a “normal cost of operating a regulated utility,” the AG believes it is more accurate to describe NextGrid as an informal discussion forum in which electric industry sponsors and other stakeholders could discuss a possible shared base of information to build consensus on issues facing the electric utility industry.

Notwithstanding the Resolution’s reference to “collaboration among stakeholders,” in fact the NextGrid process was not open to all interested stakeholders. The AG notes that the closed-door nature of NextGrid is the subject of a pending lawsuit brought against the Commission under the Open Meetings Act. Ill. PIRG, No. 18-CH-7943 (Cir. Ct. Cook County, filed June 25, 2018). More importantly, the AG submits that it is clear that this process was not designed to lead to the establishment of utility rates, classifications, or service categories.

The AG notes that according to the Resolution, NextGrid was to result in a report that outlined relevant issues, opportunities, and challenges, identified areas of consensus and disagreement, educated policy makers, and provided a range of recommendations aimed at empowering customers and communities, driving economic development, optimizing the electric utility industry, and creating a 21st Century regulatory model that supported innovation. As each of the enumerated goals in the Resolution are independent of the establishment of utility rates or classifications or service, the AG argues that it is not appropriate, prudent, or reasonable to include in rates costs associated with an informal discussion process intended to produce a report, particularly when the report is not available.

The AG contends that the example of “similar expenses that AIC has recovered in delivery rates” involving retention of a facilitator (EnerNex Corporation) that produced costs recoverable in rates is not applicable. The AG asserts that AIC’s reference to the “2009-2010 Smart Grid Collaborative” belies the very point AIC intends to make: for each of the utilities directed to participate in the Smart Grid Collaborative, the Commission issued an Order explicitly allowing cost-recovery associated with a specific set of grid modernization improvements (including a collaborative). The AG cites to Commonwealth Edison Co., Docket No. 07-0566, and Cent. Ill. Light Co., Docket Nos. 07-0585 et al. (cons.), to show that absent a Commission Order in a docketed proceeding directing cost recovery from consumers, AIC should not be permitted to recover costs associated with NextGrid in its formula rate update.

The AG also disputes AIC’s claim that the recovery of the Electric Power Research Institute (“EPRI”) expense is undisputed. The AG asserts that there is no way to know whether or not AIC would have gone forward with the EPRI study and incurred that
expense, even if the Commission had not launched the NextGrid collaborative as AIC claims. The AG avers that the Commission should not give this argument any weight as AIC elected to include the costs of the EPRI study it commissioned in its NextGrid expense project.

As the Commission directed AIC to provide funding for the NextGrid facilitator and did not authorize it to pass these costs on to consumers, the Commission should remove the corresponding $308,031 from AIC’s expenses.

b) AIC’s Position

AIC notes that the AG proposes to disallow the expenses it incurred for NextGrid, which the Commission launched in the spring of 2017. AIC explains more than half of the amount charged ($182,000) was a 2018 payment to EPRI for utility-specific research on the potential, impact, and benefits of electrification adoption. The remaining amount ($126,000) constituted reimbursements for NextGrid facilitators—funding that the Commission explicitly ordered AIC to provide. Despite the fact that it willingly participated in NextGrid working groups, the AG now seeks to exclude the costs of complying with the Commission’s directive. AIC asserts that there is no evidence or allegation in the record that the costs were imprudent, unreasonable in amount, or unrelated to the provision of delivery service, and suggest that the AG has failed to demonstrate why the Commission should exclude a utility’s costs of participating in a regulatory proceeding, workshop, or collaborative, and responding to a regulatory directive.

AIC notes that the Resolution stated that the Commission would manage the NextGrid collaborative, with assistance of an expert, independent third-party facilitator. The Resolution also ordered that the Illinois electric utilities would provide the funding to support the work of the facilitator, including any necessary project management, meeting hosting, and expert assistance costs required by the facilitator. In its updated formula rate revenue requirement, AIC included approximately $308,000 in 2018 expenses charged to Account 588, Project J0FXJ, a project that AIC specifically set up to capture and track expenses related to the NextGrid collaborative.

AIC notes that it clarified that approximately $182,000 of that amount was the 2018 payment to EPRI for the electrification research. The purpose of the EPRI study is to examine the impact of customers’ potential future usage, load profiles, and adoption of electrification technologies on AIC’s distribution operations. The information compiled in this study will contribute to the design of AIC’s distribution system and its distribution rates, so that AIC can ensure and enhance the safety, reliability, and resiliency of the distribution system, and meet and manage projected future peak loads.

AIC states that the 2018 payment was charged to Project J0FXJ, an already existing project, because of the overlap on issues being examined by the NextGrid working groups and the ERPI study. AIC notes that it would have gone forward with the ERPI study and incurred the expense, even if the Commission had not launched the NextGrid collaborative, given the significance of adoption rates and usage of emerging electrification technologies to the planning of the future distribution system and the forecasting of customers’ load.
AIC revised the Company’s response to AG Data Request 1.08 to identify the specific portion of expense charged to Project J0FXJ that constituted reimbursements for NextGrid facilitators (approximately $126,000). The Company also continues to seek recovery of the 2018 EPRI payment in formula rates, because the study will produce assessments and data that will assist AIC in designing distribution systems and rates. AIC suggests that it is prudent to gather information on the impact of electrification on expected customer usage and load shapes, so that the Company can design and construct a future distribution system that is safe, reliable, and resilient.

Concerning the remaining 2018 expenses for NextGrid facilitators, AIC states that two reasons have been given for the proposed disallowance: (1) the Commission resolution initiating NextGrid did not expressly state that the costs of supporting the facilitator should be recovered from jurisdictional ratepayers (i.e., electric distribution customers); and (2) there is a pending lawsuit that alleges that the NextGrid collaborative may have been conducted in violation of the Open Meetings Act. AIC believes that neither rationale is a valid justification to exclude the expense from formula rates.

AIC submits that the expenses that utilities incur, which are prudent and reasonable in amount, and which support or relate to the provision of delivery service, including the costs of complying with regulatory directives, are eligible to be included in the formula rate revenue requirement. AIC opines that the costs associated with a utility’s participation in a proceeding, workshop or collaborative, either before or ordered by the Commission, are normal costs of operating a regulated utility, and notes that the AG does not argue that the costs were imprudent or unreasonable in amount, or that the costs incurred do not support or relate to the provision of delivery service.

AIC states that no case has been cited where the Commission has excluded the costs of complying with regulatory directives simply because the directive did not explicitly state that the costs were recoverable. AIC notes that it and ComEd incurred and shared the expense of an outside facilitator during the 2009-2010 Smart Grid Collaborative, and AIC subsequently recovered these Smart Grid study costs through its formula rate. As with the prior expenses incurred in connection with the 2009-2010 Smart Grid Collaborative, the NextGrid facilitator expenses, which the Commission ordered the utilities to fund, are prudent, reasonable, and recoverable delivery service costs.

AIC states that the fact that the NextGrid collaborative is subject to a pending lawsuit does not change the fact that AIC incurred the facilitator costs at the Commission’s directive, and it does not change the fact that the overarching purpose of the NextGrid collaborative was to identify and assess regulatory policies in furtherance of the Commission’s mandate of ensuring adequate, safe, and reliable delivery service.

Although the AG claims that the phrase “the Illinois electric utilities will provide funding” in the Commission’s “NextGrid” Resolution makes it clear that the utilities were required to bear the costs of the NextGrid third-party facilitators, AIC disagrees. While the Company agrees that the NextGrid Resolution does not expressly authorize AIC to recover its share of the facilitator costs in rates, such express preauthorization is not the benchmark for when a cost is recoverable in utility rates. Here, the Commission’s launch of the NextGrid collaborative and its direction to the electric utilities to provide the facilitator funding caused AIC to incur the costs. In turn, the law authorizes AIC to recover
these costs through its formula rate as part of its actual costs of delivery service, provided they are prudently incurred and reasonable in amount. AIC notes that no evidence has been offered in this proceeding that the facilitator costs were imprudent or unreasonable.

AIC therefore recommends that the Commission reject this proposed disallowance.

c) Commission Analysis and Conclusion

The AG proposes that the Commission remove from rates $308,031 related to AIC’s expenditures associated with NextGrid, arguing that since the Commission did not expressly provide for the recovery of these expenditures in the Resolution, these costs should not be recoverable. The AG contends that all components of rates should be reviewed and approved as prudent, just, and reasonable, by the Commission before being included in rates paid by ratepayers. The Commission notes that the Resolution does not expressly authorize AIC to recover its share of the facilitator costs in rates. The Commission finds however, that such express preauthorization is not the benchmark for when a cost is recoverable in utility rates.

Here, the Commission’s launch of the NextGrid collaborative and its direction to the electric utilities to provide the facilitator funding caused AIC to incur the costs. The Commission finds that AIC is authorized to recover these costs through its formula rate as part of its actual costs of delivery service, provided that the costs are prudently incurred and reasonable in amount. It does not appear to the Commission that there is any dispute between the parties that this is the appropriate standard to apply, nor does it appear that any evidence has been offered to show that the facilitator costs were imprudent or unreasonable.

Given that the Commission, in initiating the NextGrid collaborative, considered it to be a prudent use of time and resources, it appears appropriate that the Commission’s directive that the electric utilities provide the funding for the expert, independent third-party facilitators should be given substantial weight in determining whether these costs should be recovered in rates. The Commission finds that stakeholder discussions concerning the future of the grid are an important part of providing regulated utility service, and related costs, to the extent prudent and reasonable, are recoverable in delivery rates. To accept the AG’s position would mean that routine costs incurred by the utility for participating in Commission-administered, but non-docketed, workshops are not actual costs that can be recovered through the formula rate. The Commission does not agree with the AG’s suggestion that such costs are not recoverable operating expenses and finds that the Company can recover the NextGrid facilitator costs.

The Commission notes that the AG does not appear to have rebutted AIC’s explanation that the majority of the disputed expense ($182,000) was a 2018 payment to the EPRI for research on the effect of electrification on the design of distribution operations and distribution rates—research that AIC says it would have requested independent of the NextGrid collaborative. AIC testified that it is prudent for the utility to gather information on the impact of electrification on expected customer usage and load shapes, so that the Company can design and construct a future distribution system that is safe, reliable, and resilient. The Commission finds the Company’s testimony on these research costs to be credible and unchallenged in the record and concludes that the EPRI
expenses are also recoverable. The Commission will therefore decline to adopt the AG’s proposed adjustment on this issue.

C. Recommended Operating Revenues and Expenses

1. Filing Year

The Commission finds based on the decisions presented earlier on the various issues, that a reasonable amount for AIC’s jurisdictional operating revenues and expenses for the filing year is shown on Appendix A, Schedule 1.

2. Reconciliation Year

The Commission finds, based on the decisions presented earlier on the various issues, that a reasonable amount for AIC’s jurisdictional operating revenues and expenses for the reconciliation year is shown on Appendix B, Schedule 1.

VI. COST OF CAPITAL AND RATE OF RETURN

A. Uncontested or Resolved Issues

1. Credit Facility Fees

Staff proposed a correction to the calculation of the annualized Bank Facility Costs. On rebuttal, AIC accepted Staff’s correction, and has reflected the agreed-upon amount in the proposed net revenue requirement.

The Commission finds that the correction is reasonable and uncontested and therefore approves its use in this proceeding.

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

a. Filing Year

As shown in the table below, Staff and AIC agree that a capital structure comprising 49.080% long-term debt, 0.920% preferred stock, and 50.000% common equity is reasonable for setting rates for the filing year and the reconciliation year. Those parties further agree that a cost of long-term debt of 4.456% and a cost of preferred stock of 4.979% are reasonable for both the 2020 rate setting and the 2018 reconciliation. In addition, Staff agrees that AIC’s bank facility costs add 2.4 basis points to AIC’s weighted average cost of capital. Finally, Staff and AIC and agree that the cost of equity is 8.912% for both the 2020 revenue requirement and the 2018 reconciliation year revenue requirement. The 8.912% return equals the 3.112% average of the twelve monthly 30-year U.S. Treasury bond yield averages in 2018, plus 580 basis points, as required under Section 16-108.5 of the Act. 220 ILCS 5/16-108.5(c)(3). Staff and AIC agree that the Commission should find that a reasonable overall rate of return for the filing year is 6.713%.

The Commission finds that the overall rate of return of 6.713% for the filing year is reasonable and uncontested, and it will be adopted for use in this proceeding.

<table>
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<th>Component</th>
<th>Weight</th>
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<th>Weighted Cost</th>
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<tr>
<td>Short Term Debt</td>
<td>0.000%</td>
<td>2.750%</td>
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</table>
Preferred Stock   .920%  4.979%  0.046%
Common Stock     50.000%  8.912%  4.456%
Bank Facility Costs 0.024%
Total Capital    100.000%  6.713%

b. Reconciliation Year

Staff and AIC also agree that the Commission should find that a reasonable overall rate of return for the reconciliation year is 6.713%.

The Commission finds that the overall rate of return of 6.713% for the reconciliation year is reasonable and uncontested, and it will be adopted for use in this proceeding.

VII. RECOMMENDED REVENUE REQUIREMENT

The Commission finds, based on the determinations presented above on the various uncontested issues, that the agreed-upon net revenue requirement, which includes the revenue requirement for the filing year, the reconciliation adjustment with interest, and the ROE collar adjustment, as shown on Appendix A, should be adopted for use in the proceeding. The new delivery services charges, effective beginning with the January 2020 billing period, will reflect this agreed-upon net revenue requirement, as well as the cost allocation, and rate design methods approved by the Commission in Docket No. 16-0387.

VIII. COST OF SERVICE/REVENUE ALLOCATION RATE DESIGN

AIC submitted direct testimony and exhibits that indicated that updated Rate MAP-P pricing is based on the updated net revenue requirement and consistent with the cost allocation, revenue allocation, and rate design methodologies approved by the Commission in Docket No. 16-0387. No party took issue with AIC's pricing calculations.

IX. OTHER ISSUES

A. Uncontested Issues

1. Rider HMAC

Rider HMAC was authorized by the Commission in Docket No. 04-0294. In accordance with the Order in that case, an HMAC fund was established to pay future claims related to hazardous materials exposure. AIC provided the Fund with an initial deposit of $20,000,000 in 2004. Rider HMAC operates to recover allowable hazardous materials (HMAC) costs from Rate Zone III customers. Under the terms of Rider HMAC, a Base Amount is set in each electric rate case that recovers an amount for HMAC Costs. When the annual actual HMAC Costs are greater than the Base Amount, 90% of the excess is withdrawn from the Fund. When the annual actual HMAC Costs are less than the Base Amount, 90% of the difference between the Base Amount and the actual costs are contributed to the Fund.

AG witness Selvaggio proposed an adjustment in direct testimony to reset the Base Amount to zero, but then withdrew that adjustment in rebuttal testimony. The Company did agree, however, that the HMAC Base Amount should be reset as a result of electric formula Rate updates, in addition to electric rate cases, based on reconciliation
year actual amounts. AIC therefore committed to submitting a tariff revision after the conclusion of this case that would revise the Rider HMAC tariff language for the definition of the Base Amount to include formula Rate update proceedings. No party opposes AIC’s proposal to submit a tariff revision for Rider HMAC. The Commission finds AIC’s proposal is reasonable, and it is approved.

B. Contested Issues

1. Ameren Services Company (“AMS”) Charges

   a) IIEC/CUB’s Position

   Section 16-108.5(d) of the Act specifies that “the utility shall file, on or before May 1 of each year, with the Chief Clerk of the Commission its updated cost inputs to the performance-based formula rate for the applicable rate year and the corresponding new charges.” IIEC/CUB note that AIC has followed this legislative directive since 2011 when the Infrastructure Investment and Modernization Act was passed, and these filings have shown significant increases in the amounts paid to AMS each year. IIEC/CUB state that in 2016 AMS charged the Ameren affiliates $386.2 million for services rendered, increasing to $451.7 million in 2017, and $476.9 million in 2018. While these charges are spread across, and paid by all, Ameren affiliates, AMS charges have increased $90.7 million since 2016, of which $51 million has been allocated to AIC. Furthermore, AIC’s share of said costs have increased by 29% compared to the 23% increase in AMS costs.

   IIEC/CUB have previously expressed concern regarding these increases, and while the Commission has stated that it would closely examine AIC’s A&G expenses in future proceedings, since 2016 IIEC/CUB submit that nothing has been done to delve deeper into the reasonableness of AMS costs. IIEC/CUB recommend that the Commission open an investigation of AMS total service company costs, assess whether or not these costs are reasonable, and determine whether the specific costs to AIC represent just and reasonable costs for services provided.

   AMS operates as a centralized service company that provides support services to AIC and eight other Ameren affiliated companies that would otherwise be performed by the companies or be contracted to outside vendors. AMS charges to AIC are governed by a General Services Agreement (“GSA”) which is required to be filed with the Commission by May 1 each year. The May 1 filing includes a billing report that summarizes AMS charges to AIC and other affiliated companies.

   IIEC/CUB note that of the approximately $477 million in AMS charges in 2018, approximately $227 million (48%) was charged to AIC, and $126 million is part of AIC’s revenue requirement in this case.

   IIEC/CUB state that from 2016 to 2018, AIC’s share of service company costs has increased nearly three times the rate of overall AMS costs. IIEC/CUB submit that had AIC’s costs increased comparatively to total AMS costs, AIC’s contribution to AMS costs would be $9.9 million lower in 2018. IIEC/CUB opine that AIC’s share of AMS charges has continued to increase from 45% to 48% of the total AMS charges. In addition, AIC incurred an increase in its share of total AMS charges despite AMS charges being allocated to an additional affiliated company in 2018, the Ameren Transmission Company.
IIEC/CUB are concerned regarding the risks and operational implications presented by intermingling of a regulated utility (AIC) and an unregulated service company (AMS), both subject to 100% ownership by a parent company, each having a vested interest in maximizing profits.

IIEC/CUB assert that AIC has not provided sufficient detail to review the changes in the cost of services provided by AMS, although AIC contends that the GSA protocols are sufficient to ensure proper charges are being assessed by AMS. Despite what AIC claims and what prior Commissions have indicated, the procedures simply give no assurances that the annual significant increase of AMS charges or costs is reasonable. IIEC/CUB submit that the record contains no information of any instances in which AIC disputed any significant charge from AMS or refused to pay a particular charge, nor has AIC produced any evidence that it conducted any review of, or challenge to, total AMS costs to determine whether AIC’s allocated portion of such costs are reasonable.

IIEC/CUB submit that there is a difference between overseeing the allocation of AMS costs that the GSA governs, and determining whether AMS costs are reasonable and prudent. To illustrate the lack of, and the need for, a thorough review, the most significant increase in costs this year come from AMS Information Technology (“IT”) costs, which have increased by $77 million since 2016. At the same time, AIC’s share of AMS IT costs have increased by $41 million, or 63%. While AIC did provide additional details regarding the increase in IT costs, IIEC/CUB aver that the explanation provided under GSA requirements and discovery does not demonstrate or explain why AIC’s share of AMS IT costs increased at a higher rate than the percentage of overall IT costs during that same period, or what services or extra services AMS is providing to AIC that increased AICs allocation (63%) relative to the overall increase (60%).

In Docket No. 16-0287, IIEC/CUB proposed modifications and adjustments to the GSA so that it clearly states AMS obligations and to provide customers and the Commission with the information necessary to fully prove that AMS costs are prudent and reasonable. In the same docket IIEC/CUB also recommended a periodic third-party audit of AMS costs by an independent auditor designated by the Commission. IIEC/CUB believed a third-party audit would be appropriate because it would provide the Commission with an assessment of the necessity of the services AMS provides to the utilities; whether the allocation factors are appropriate; and whether the services are provided at reasonable rates that are at or below market rates for such services.

AIC witness Perniciaro notes that the Order in Docket No. 16-0287 found that the reporting requirements of the GSA provide a means to determine if the charges are prudent and reasonable. IIEC/CUB contend that the reporting requirements do not provide the type of independent assessment that is needed, and simply noting AMS actual costs in required GSA filings to the Commission does nothing to establish the costs are just and reasonable.

In Docket No. 17-0197, IIEC/CUB argued that the Commission had never had the benefit of an independent audit of total AMS services costs, or costs billed to AIC, arguing such an audit could determine whether AMS reasonably manages its costs, and is able to provide service to AIC at just and reasonable prices. IIEC/CUB note that no audit has yet been ordered or conducted, and AMS charges to AIC continue to increase.
Illinois courts have made clear that the Commission has the authority and obligation to review each case before it, pursuant to the evidence presented. “The concept of public regulation includes of necessity, the philosophy that the Commission shall have the power to deal freely with each situation as it comes before it, regardless of how it may be dealt with a similar or the same situation in a previous proceeding.” *City of Chicago v. Ill. Commerce Comm’n*, 133 Ill.App. 3d 435 (1985), quoting from *Mississippi River Fuel v. Ill. Commerce Comm’n*, 1 Ill. 2d 509, 513 (1953). Additionally, it is well-established that Commission decisions are not res judicata. See, e.g., *A. Finkl & Sons v. Ill. Commerce Comm’n*, 250 Ill. App. 3d 317, 323, (1993). Importantly, Illinois courts have stated that “[a] record containing new evidence or argument that implicates past decisions compels reconsideration on the new record and may require a new result.” *Commonwealth Edison Co. v. Ill. Commerce Comm’n*, 405 Ill. App. 3d 389, 403-404 (2011). The fact that the Commission may have refused to initiate such an audit or investigation in prior cases does not bar the Commission from directing the initiation of an audit or investigation in this case. Based on the evidence in the record in this case, IIEC/CUB believe such an audit or investigation is justified.

IIEC/CUB note that the Commission is empowered to conduct management audits or investigations of any public utility under Section 8-102 of the Act. The Commission also has broad general supervisory authority over public utilities under Section 4-101 of the Act, which provides that the Commission may “… inquire into the management thereof and shall keep itself informed as to the manner and method in which the business is conducted.”

IIEC/CUB submit that the recommendation that the Commission investigate or review AMS costs is fully consistent with the structure of the Act and note that the Commission has previously ordered similar investigations or audits. *See, Ill.-American Water Co., Docket No. 07-0507*; and *Ill.-American Water Co., Docket No. 09-0319*, where the Commission ordered an audit of service company fees for the utility pursuant to Section 8-102 of the Act).

IIEC/CUB therefore recommend that the Commission open an investigation of AMS total service company costs, assess whether or not these costs are reasonable, and whether the allocation of these costs to AIC represents the just and reasonable costs for the AMS services provided.

**b) AIC’s Position**

IIEC/CUB witness Gorman recommends that the Commission open a detailed investigation into total AMS costs across all AIC affiliates. AIC notes that this recommendation, for all intents and purposes, is no different than his independent audit recommendation that the Commission has twice rejected, in Docket No. 16-0287 and Docket No. 17-0197. Alternatively, Mr. Gorman recommends that the Commission “cap” the amount of costs that AIC may recover from AMS in subsequent formula rate proceedings. This recommendation, however, is the same “cap” on recovery of affiliate charges in formula rates that the Commission rejected in Docket No. 12-0001.

AIC argues that the evidence provided has yet to demonstrate that the additional reporting on AMS costs in annual compliance filings, when coupled with the information and discovery available to parties in annual formula rate update proceedings, is
inadequate to investigate and review changes in AMS costs allocated to AIC’s electric
distribution business. AIC suggests that IIEC/CUB have also failed to explain how it would
be permissible to “cap” the amount of affiliate charges recovered in updated formula rate
revenue requirements, absent a demonstration that specific charges are imprudent,
unreasonable in amount, or unrelated to delivery service.

The Company submitted testimony that sponsored the billing and variance reports
for the AMS costs allocated to AIC in 2018, which AIC submits annually to the
Commission. The publicly filed billing report summarizes by AMS functional area the
monthly charges to AIC and other affiliated companies from AMS in the prior year. The
confidential variance report identifies and explains material variances in allocated costs
from the prior year’s billing report. In addition, the Company provided the parties to this
proceeding with a confidential workpaper for the prior year’s monthly AMS charges, which
AIC also submits annually to the Commission. The detail in the workpaper includes: the
affiliate(s) charged, the FERC account where the charge was recorded, the related
service project name and number (the project description), the factor used to allocate the
charge among the affiliates, the AMS functional area where the charge originated,
whether the charge was for labor or non-labor costs, whether the charge was direct or
indirect, and whether the charge was attributable to gas, electric, or common operations.
The native workpaper also contains field lists and pivot tables that allow the user to sort
the data by any category of the information provider (e.g., allocator factor).

AIC notes that the Commission has rejected similar independent audit proposals
in Docket Nos. 16-0287 and 17-0197. AIC states that in Docket No. 17-0197, the
Commission found that the annual formula rate proceedings continued “to provide the
appropriate opportunity for the Commission and the parties to review the prudence and
reasonableness of all AIC’s costs of service, including AMS charges.” Ameren Ill. Co.,
Docket 17-0197, Order (Dec. 6, 2017) at 26. The Commission also found that it would
be “premature” to adopt any independent audit proposal unless the additional reporting
on AMS costs in the annual compliance filings was found to be “wanting.” AIC submitted
the additional billing and variance reports in Docket No. 18-0807 for 2017 AMS charges,
and IIEC/CUB did not propose—and the Commission did not make—any disallowances
of AMS costs in that case.

AIC argues that Mr. Gorman disregards the additional cost variance information
that is provided in annual formula rate updates, in addition to the AMS reports and
supporting workpaper. AIC notes that it provided variance explanations for 21 different
FERC accounts, where actual electric expense in 2018 increased (or decreased) by 10%
or more and at least $500,000, or 5% or more and at least $1 million, compared to the
actual 2017 expense level. These FERC account amounts included expenses allocated
to AIC from AMS. In addition, AIC provided information on 2019 projected plant additions,
including the largest plant additions that AIC discloses on its Schedule F-4, and plant
additions that AIC places in service as investments under EIMA. That information
included General and Intangible capital investment allocated to AIC from AMS, to the
extent that the plant addition qualified as an EIMA or F-4 project. AIC states that the
largest specific project for AIC’s 2019 projected plant additions is an intangible plant
project, the Digital Field Experience Project, for which costs are allocated to AIC from
AMS.
Mr. Gorman also discounts the information available through discovery during formula rate proceedings for any party to review a particular AMS cost allocated to AIC—a point that the Commission previously made to the parties. Ameren Ill. Co., Docket 17-0197, Order (Dec. 6, 2017) at 26. For example, in this proceeding in response to Staff and AG data requests, AIC states that it provided detailed files that identified 2019 specific and blanket projected plant additions, including General and Intangible plant additions allocated to AIC from AMS. AIC notes that Staff and the AG submitted discovery on specific allocated AMS costs and proposed no adjustments.

AIC asserts that Mr. Gorman has not offered any evidence that a specific allocated AMS cost is imprudent or unreasonable in amount, but only comments on a “continued increase” or “continued escalation” of AMS costs between 2016 and 2018. The evidence offered by AIC, however, using information available in AMS compliance filings, demonstrated that (1) only $0.5 million of the increase in total AMS costs between 2016 and 2018 relates to expense; the remainder of the increase relates to capital projects; and (2) costs allocated to AIC’s electric distribution business, as a percentage of total AMS charges, have actually decreased by 0.8 percent since 2016. In addition, AIC’s record identifies the 15 different IT services from 2017 and 2018 that constitute the increase in total AMS costs.

AIC submits that the extensive reporting for AMS costs, the opportunity in annual update cases to scrutinize specific costs and relative trends, and the analysis that AIC conducted from available data all shows that Mr. Gorman does not establish that a separate, costly investigation of total AMS costs is justified. Although Mr. Gorman does not propose an adjustment to 2018 AMS costs, he relies on an increase in total costs allocated to AIC, which AIC has explained, as the sole basis for his recommendation. AIC contends that his alternative proposal—a future cap on allocated AMS costs recovered in formula rates—is inconsistent with EIMA and AIC notes that Section 16-108.5(c) of the Act does not specify a recoverable dollar limit; instead, it expressly allows a utility to recover actual costs.

While IIEC/CUB argue that the Commission should be concerned about annual increases in AMS costs, AIC submits that when this criticism is viewed in the context of the Commission’s prior orders, this complaint is not credible. AIC notes that the Commission oversaw a separate docket on the allocation of AMS costs that led to new reporting and record-keeping requirements that provide the Commission annually with information regarding affiliate costs. AIC states that the Commission put all parties on notice that the new and incremental annual reporting on AMS costs “will provide the means to determine whether service company services are provided at rates that are prudent and reasonable.” Ameren Ill. Co., Docket No. 16-0287, Order at 25 (Apr. 7, 2017). AIC notes that the Commission also has reminded parties that the annual formula rate update proceedings will “continue to provide the appropriate opportunity for the Commission and the parties to review the prudence and reasonableness of all of AIC’s costs of service, including AMS charges.” Docket No. 17-0197, Order at 26.

AIC argues that IIEC/CUB’s recommendations on this issue should be rejected for the reasons stated above.
c) Commission Analysis and Conclusion

The Commission notes that IIEC/CUB continue to urge a review and audit of AIC’s AMS costs, contending that the annual increases charged to AIC are out of line with the overall increase in AMS costs. The Commission notes that it oversaw a separate docket on the allocation of AMS costs that led to new reporting and record-keeping requirements. The Commission notes that as a result of this reporting requirement, AIC provides the Commission annually with information regarding affiliate costs. The Commission has previously found that the new and incremental annual reporting on AMS costs “will provide the means to determine whether service company services are provided at rates that are prudent and reasonable.” Docket No. 16-0287, Order at 25. The Commission finds that this finding is still appropriate, and no evidence has been provided in this docket that would change this position.

The Commission has also previously found that the annual formula rate update proceedings, such as this docket, “provide the appropriate opportunity for the Commission and the parties to review the prudence and reasonableness of all of AIC’s costs of service, including AMS charges.” Docket No. 17-0197, Order at 26. The Commission notes that the record shows that for the last two formula rate update proceedings, AIC sponsored testimony to include the AMS billing and variance reports in the record and provided all parties with a workpaper with significant detail on the monthly AMS costs allocated to AIC.

While IIEC/CUB argue that the record lacks information on AIC’s internal review of AMS costs, AIC contends that IIEC/CUB never sought that information in discovery, nor did IIEC/CUB ask any questions on specific 2018 AMS costs allocated to AIC. The Commission notes that in Docket No. 17-1097, the Commission, in rejecting the independent audit proposal, warned the parties that to dispute a cost of service, the law required that “each objection shall be stated with particularity and evidence provided in support thereof.” 220 ILCS 5/16-108.5(d)(3).

AIC asserts that although it produced copious amounts of data in this case, including the billing and variance AMS reports; the AMS cost workpaper; variance explanations for 21 different FERC accounts; detail on all 2019 projected plant additions, IIEC/CUB did not use any of this information to test the prudence and reasonableness of the costs in the updated revenue requirement. In contrast, AIC notes that Staff submitted discovery on specific allocated AMS costs and proposed no adjustments.

The Commission finds that the evidence in the record shows that there is no unexplained continued escalation of AMS costs. The Commission finds, based on the evidence in this docket, and using information available in the AMS compliance filings, that only $0.5 million of the increase in total AMS costs between 2016 and 2018 relates to expense; the remainder of the increase relates to capital projects; and costs allocated to AIC’s electric distribution business, as a percentage of total AMS charges, have actually decreased by 0.8 percent since 2016. The Commission notes that AIC identified 15 different IT services from 2017 and 2018 that constitute the increase in total AMS costs. In contrast, it appears to the Commission that IIEC/CUB did not account for increases in gas only charges, changes in direct charges to AIC, and changes in goods and services requested by other affiliates. It further appears to the Commission that the
IIEC/CUB analysis also disregarded the fact that allocated 2017 AMS costs were already included in the approved revenue requirement in Docket No. 18-0807.

Based on the record in this proceeding, the Commission declines to adopt IIEC/CUB’s recommendations. IIEC/CUB point to the annual increase in total AMS costs as the reason for concern, however the Commission finds that the relevant law provides that an annual increase in costs, by itself, is not evidence of imprudence. In addition, the Commission finds the record in this proceeding provides an adequate explanation for the increases in AMS costs, and that this docket provided an appropriate opportunity for the parties to examine the AMS costs.

The Commission concludes that the additional external reporting requirements and enhanced internal audit processes, which the Commission adopted in Docket No. 16-0287, continue to provide sufficient detail for parties to review annual changes in the cost of service provided by AMS, and remain the means by which the Commission and the parties to the annual formula rate proceedings can assess the prudence and reasonableness of AMS’s services and costs. The Commission finds that until the record shows that the formula rate process does not provide an adequate opportunity to review allocated AMS costs, it will not order a separate audit, the costs of which AIC’s ratepayers ultimately would pay. The Commission notes that Staff did not indicate any issues in reviewing AMS costs and the additional reporting in AIC’s last two formula rate proceedings. The Commission therefore will decline to adopt IIEC/CUB’s proposal for a separate audit of AIC’s AMS costs.

X. FINDINGS AND ORDERING PARAGRAPHS

The Commission, having considered the entire record herein and being fully advised in the premises, is of the opinion and finds that:

(1) Ameren Illinois Company d/b/a Ameren Illinois is an Illinois corporation engaged in the distribution and sale of electricity and natural gas to the public in Illinois, and is a public utility as defined in Section 3-105 of the Act;

(2) the Commission has jurisdiction over the parties hereto and the subject matter herein;

(3) the recitals of fact and conclusions of law reached in the Commission conclusions of this Order are supported by the evidence of record, and are hereby adopted as findings of fact and conclusions of law; the Appendices attached hereto provide supporting calculations for the approved rates;

(4) AIC’s proposed update to its Rate MAP-P should be approved, subject to the conclusions contained herein;

(5) the rates herein found to be consistent with Public Acts 97-0616, 97-0646, and 98-0015 are based on AIC’s FERC Form 1 for 2018;

(6) for purposes of this proceeding, the net original cost rate base for AIC’s electric delivery service operations is $2,972,594,000 for the 2018 reconciliation year and $3,180,739,000 for the 2019 filing year;
the rate of return that AIC should be allowed to earn on its net original cost rate base is 6.713% for the 2018 reconciliation year; this rate of return incorporates a return on common equity of 8.912%;

(8) the rate of return that AIC should be allowed to earn on its net original cost rate base is 6.713% for the 2019 filing year; this rate of return incorporates a return on common equity of 8.912%;

(9) the rates of return set forth in Findings (7) and (8) result in base rate electric delivery service operating revenues of $1,009,912,000 (reflecting the reconciliation and ROE Collar adjustments) and net annual operating income of $213,517,000, as shown on Appendix A;

(10) AIC’s electric delivery service rates presently in effect are insufficient to generate the operating income necessary to permit AIC the opportunity to earn a fair and reasonable return on net original cost rate base consistent with Public Acts 97-0616, 97-0646, and 98-0015; these rates should be permanently canceled and annulled;

(11) the specific rates proposed by AIC in its initial filing do not reflect various determinations made in this Order regarding revenue requirement;

(12) AIC should be authorized to place into effect amended Rate MAP-P Informational Sheets, consistent with the findings of this Order;

(13) AIC should be authorized to place into effect the Rate MAP-P tariff informational sheets designed to produce annual base rate electric delivery service revenues of $1,009,912,000, which represents a decrease of $60,142,000 (-5.62%); such revenues, in addition to other tariffed revenues, will provide AIC with an opportunity to earn the rates of return set forth in Findings (7) and (8) above; based on the record in this proceeding, this return is consistent with Public Acts 97-0616, 97-0646, 98-0015, and 99-0906;

(14) the new charges authorized by this Order shall take effect beginning on the first billing day of the January billing period following the date of the Order in this proceeding; the tariff sheets with the new charges, however, shall be filed no later than December 16, 2019, with the tariff sheets to be corrected thereafter, if necessary;

(15) the Commission, based on AIC’s proposed original cost of plant in service as of December 31, 2018, before adjustments, of $7,326,840,000 and reflecting the Commission’s determination adjusting that figure, unconditionally approves $7,326,201,000 as the composite original jurisdictional distribution services plant in service as of December 31, 2018;

(16) the Commission has considered the costs expended by AIC during 2018 to compensate attorneys and technical experts to prepare and litigate rate case proceedings and assesses that the amount included as rate case expense in the revenue requirements of $623,564 is just and reasonable pursuant to Section 9-229 of the Act; this amount includes the following costs: (1) $0 associated with Docket No. 17-0197; (2) $623,564 associated
with Docket No. 18-0807; and (3) $0 associated with Docket No. 19-0436; and

(17) all motions, petitions, objections, and other matters in this proceeding which remain unresolved should be disposed of consistent with the conclusions herein.

IT IS THEREFORE ORDERED by the Illinois Commerce Commission that the tariff sheets at issue and presently in effect for electric delivery service rendered by Ameren Illinois Company d/b/a Ameren Illinois are hereby permanently canceled and annulled effective at such time as the new electric delivery service tariff sheets approved herein become effective by virtue of this Order.

IT IS FURTHER ORDERED that Ameren Illinois Company d/b/a Ameren Illinois is authorized to file new tariff sheets with supporting workpapers in accordance with Findings (12) and (13) of this Order, applicable to electric delivery service furnished on and after the effective date of said tariff sheets.

IT IS FURTHER ORDERED that Ameren Illinois Company d/b/a Ameren Illinois shall update its formula rate in accordance with this Order.

IT IS FURTHER ORDERED that all motions, petitions, objections, and other matters in this proceeding which remain unresolved are disposed of consistent with the conclusions herein.

IT IS FURTHER ORDERED that pursuant to Section 10-113(a) of the Public Utilities Act and 83 Ill. Adm. Code 200.880, any application for rehearing shall be filed within 30 days after service of the Order on the party.

IT IS FURTHER 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; it is not subject to the Administrative Review Law.

By Order of the Commission this 16th day of December, 2019.

(SIGNED) CARRIE ZALEWSKI

Chairman