

169 FERC ¶ 61,042
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Neil Chatterjee, Chairman;
Richard Glick and Bernard L. McNamee.

Ameren Illinois Company

Docket No. ER17-1198-002

ORDER ON REHEARING

(Issued October 17, 2019)

1. On July 22, 2019, Southwestern Electric Cooperative, Inc. (Southwestern) requested rehearing of the Commission's order issued on June 20, 2019, granting in part, and denying in part, Southwestern's formal challenge to certain inputs to Ameren Illinois Company's (Ameren Illinois) formula rate (Formal Challenge).¹ In this order, we deny rehearing, provide additional explanation, and direct Ameren Illinois to submit a compliance filing.

I. Background

2. Southwestern filed the Formal Challenge under Rule 206 of the Commission's Rules of Practice and Procedure² and section IV of Attachment O-AIC of Midcontinent Independent System Operator, Inc.'s (MISO) Open Access Transmission, Energy and Operating Reserve Markets Tariff (Tariff), challenging certain inputs to Ameren Illinois' formula rate.

3. Attachment O of the MISO Tariff sets forth the formula rate templates and protocols under which Ameren Illinois and other MISO transmission owners recover their respective annual transmission revenue requirements (ATRR), and through which

¹ *Ameren Illinois Co.*, 167 FERC ¶ 61,247 (2019) (June 2019 Order). On July 23, 2019, Southwestern withdrew its rehearing request only as to the formula rate treatment of Accumulated Deferred Income Taxes (ADIT) associated with Contributions in Aid of Construction. Accordingly, we will not address that issue.

² 18 C.F.R. § 385.206 (2019).

they establish charges for transmission service for facilities they own that are under MISO's functional control. To calculate the ATRR, Ameren Illinois projects the values that will populate the Attachment O-AIC formula rate template for each calendar-year rate year and calculates a true-up of the projected values after the actual data becomes available in the FERC Form No. 1, in April following the end of the rate year. Any difference between the projected ATRR and actual ATRR for that previous rate year will then be reflected in an appropriate true-up adjustment to the ATRR for the calendar-year rate year following the calculation of the true-up. Thus, Ameren Illinois' 2017 Annual Update includes the Attachment O-AIC formula rate true-up for the 2015 calendar-year rate year (2015 True-Up), which details the 2015 annual formula rate true-up, actual net revenue requirement, and true-up adjustment. The 2017 Annual Update also includes the Attachment O-AIC formula rate projected ATRR for the 2017 calendar-year rate year (2017 Projection). Ameren Illinois charged its transmission customers in 2017 based on the rate developed in the 2017 Projection and the 2015 True-Up.

4. Ameren Illinois' protocols detail how its formula rate is to be updated annually and how the rate can be challenged. Section II of the formula rate protocols requires Ameren Illinois to update its transmission rates annually by June 1 to provide its annual formula rate true-up, actual net revenue requirement, and true-up adjustment to MISO, and to cause this information to be posted on the MISO website and open access same-time information system (OASIS). Section II of the protocols also requires Ameren Illinois to submit its projected net revenue requirement for the upcoming calendar-year rate year to MISO by September 1, and cause such information to be posted on the MISO website and OASIS. Section IV of the protocols states that interested parties will have until the following January 31 to review the inputs, supporting explanations, allocations and calculations and to notify Ameren Illinois of any specific informal challenges to the formula rate annual true-up or projected net revenue requirement. Section IV specifies that, after submitting an informal challenge, a party has until April 15 to submit a formal challenge to the Commission.

5. Informal and formal challenges are limited to seven avenues of inquiry listed in section IV.D of the protocols: (1) the extent or effect of an accounting change; (2) whether the annual true-up or projected net revenue requirement fails to include data properly recorded in accordance with these protocols; (3) the proper application of the formula rate and procedures in these protocols; (4) the accuracy of data and consistency with the formula rate of the calculations shown in the annual true-up and projected net revenue requirement; (5) the prudence of actual costs and expenditures; (6) the effect of any change to the underlying Uniform System of Accounts or FERC Form No. 1; or (7) any other information that may reasonably have substantive effect on the calculation of the charge pursuant to the formula. Section IV.J of the protocols states that the annual true-up and projected revenue requirement shall not be subject to challenge for

the purpose of modifying the formula rate, and that modifications to the formula rate will require, as applicable, a filing under section 205 or section 206 of the Federal Power Act.³

6. On June 1, 2016, Ameren Illinois posted its 2015 True-Up. On August 31, 2016, Ameren Illinois posted its forward-looking formula rate template to its OASIS site for public review. On January 31, 2017, Southwestern and Southern Illinois Power Cooperative submitted an informal challenge to Ameren Illinois' 2015 True-Up and 2017 Projection. Some, but not all, of the issues were resolved during the informal challenge process. On March 13, 2017, Ameren Illinois submitted its annual informational formula rate update to the Commission (2017 Annual Update). On April 17, 2017, Southwestern submitted its Formal Challenge. In the June 2019 Order, the Commission granted in part, and denied in part, Southwestern's Formal Challenge. Southwestern requested rehearing of the June 2019 Order. Ameren Illinois submitted an answer to Southwestern's rehearing request.

II. Discussion

A. Procedural Matters

7. Rule 713(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.713(d) (2019), prohibits an answer to a request for rehearing. Accordingly, we reject Ameren Illinois' answer to Southwestern's request for rehearing.

B. ADIT

1. Rehearing Request

8. Southwestern contends that the Commission erred in mischaracterizing its arguments and failing to adhere to, or explain deviations from, prior and contemporaneous issued precedent as to recovery of certain ADIT.⁴ Specifically, Southwestern challenges Ameren Illinois' inclusion of ADIT expenses relating to (1) Construction Work in Progress (CWIP) included in Account 282 and (2) Renewable Energy Compliance Costs included in Account 283.

³ 16 U.S.C. §§ 824d, 824e (2018).

⁴ Rehearing Request at 5.

9. Southwestern claims that the Commission misunderstood Southwestern's fundamental concern that CWIP and Renewable Energy Compliance Costs are not legitimate costs borne by Ameren Illinois.⁵ Specifically, Southwestern argues that Ameren Illinois should not be recovering CWIP-related ADIT. Southwestern recognizes that Ameren Services Company (Ameren Services) received CWIP incentive rate treatment for the Grand River Project but contends that this incentive was specific to Ameren Services and does not extend to its affiliate, Ameren Illinois.⁶ Southwestern argues that Ameren Illinois also should not recover ADIT for Renewable Energy Compliance Costs because Ameren Illinois is a transmission-only entity and does not own any generation facilities or resources.⁷

10. Southwestern also alleges that, in denying its Formal Challenge, the Commission acted in a manner that was inconsistent with a concurrently-issued order in Docket No. ER17-2323-002.⁸ Southwestern interprets the Ameren ADIT Rehearing Order as requiring an individual analysis of specific ADIT entries for inclusion/exclusion in the formula rate through the annual update process. Southwestern advocates for the same result here.⁹

11. Southwestern also challenges as inappropriate the Commission's determination regarding the ADIT amounts in Accounts 282 and 283 in light of prior commitments made by Ameren Illinois in its annual updates.¹⁰ Southwestern notes that Ameren Illinois made a prior commitment in the 2016 Annual Update that it would exclude certain balances in Account 283 related to Regulatory Liability Allowance for Funds Used During Construction (AFUDC) Equity. Southwestern also states that, in the 2017 Annual Update process, Ameren Illinois fulfilled a commitment to eliminate certain Account 190 ADIT that is added to rate base.

⁵ *Id.* at 6-7.

⁶ *Id.* at 7.

⁷ *Id.*

⁸ *Id.* (citing *Midcontinent Indep. Sys. Operator, Inc.*, 167 FERC ¶ 61,238, at P 20 (2019) (Ameren ADIT Rehearing Order)).

⁹ *Id.*

¹⁰ *Id.* at 9.

12. Southwestern argues that the values reported in the FERC Form No. 1 are a ceiling on the amount to be inserted into a rate formula, and that an inquiry into individual amounts to be recovered from transmission customers is not foreclosed through the annual update process.¹¹ Referencing a Commission staff guidance document, Southwestern claims that Commission policy requires that a certain category of inputs must be adjusted from the amounts reported in the FERC Form No. 1 to ensure that inappropriate costs are not recovered from customers.¹² Southwestern states that, on rehearing, the Commission should either disavow this guidance or explain its deviation from the guidance.

2. Commission Determination

13. We deny rehearing on Southwestern's claim that the Commission erred in dismissing Southwestern's challenge concerning the recovery of CWIP-related ADIT. In its 2017 Formal Challenge in this proceeding, Southwestern stated that it was only raising the issue of CWIP-related ADIT to preserve its rights because rehearing of the Commission's order on the 2016 Formal Challenge was pending at the time.¹³ Specifically, Southwestern asserted that it "did not and does not intend to re-litigate issues decided by the Commission." However, Southwestern noted that, given the outstanding rehearing request on those issues, it did not want to "foreclose relief on those issues in the 2017 Annual Update proceeding when the Commission issues a favorable order on rehearing."¹⁴

14. On the rehearing of the order denying Southwestern's 2016 Formal Challenge, the Commission considered – and did not misunderstand – Southwestern's argument that "whether a particular cost (or part thereof) is properly recoverable is a different question than the method for allocating how much of the cost is to be recovered."¹⁵ The

¹¹ *Id.*

¹² *Id.* at 10 (citing Staff Guidance on Formula Rate Updates, <https://www.ferc.gov/industries/electric/indus-act/oatt-reform/staff-guidance.pdf> (issued Jul. 17, 2014)).

¹³ Southwestern April 17, 2017 Formal Challenge at 5 (Formal Challenge); June 2019 Order, 167 FERC ¶ 61,247 at P 20.

¹⁴ Formal Challenge at 5.

¹⁵ *Ameren Illinois Co.*, 156 FERC ¶ 61,209 (2016) (2016 Formal Challenge Order), *order on reh'g*, 162 FERC ¶ 61,025, at P 23 (2018) (2016 Formal Challenge Order on Rehearing).

Commission agreed that these are different questions but noted that “to challenge the amount that the method makes recoverable as not properly recoverable is to challenge the method itself. In other words, it is a collateral attack on an allocation specified in the formula rate.”¹⁶ The Commission also considered – and did not misunderstand – Southwestern’s argument as to the legitimacy of including CWIP expenses in Account 282. In response, the Commission stated:

Account 282 does not provide for the exclusion of CWIP-related ADIT, therefore Ameren Illinois is properly including the CWIP-related ADIT in rate base. What the Commission permits with regard to the inclusion of CWIP in rate base is not relevant here as Southwestern has not challenged Ameren Illinois’ ability to recover CWIP, only its associated ADIT.¹⁷

15. Despite claiming that it would not re-litigate issues, Southwestern is doing precisely that by raising the same arguments on rehearing of the June 2019 Order as it did in the 2016 Formal Challenge proceeding. We reject those arguments for the same reasons the Commission rejected them in the 2016 Formal Challenge Order on Rehearing.

16. We deny rehearing on Southwestern’s claim that the Commission erred in allowing for the inclusion of Renewable Energy Compliance Costs associated with ADIT in Account 283. In its Formal Challenge, Southwestern argued that a reduction to the Account 283 balance for these costs was inappropriate because renewable energy is related to Ameren Illinois’ power supply resources and is not related to transmission.¹⁸ In the June 2019 Order, the Commission rejected that argument as a collateral attack on the formula rate because Southwestern was seeking to functionalize Renewable Energy Compliance Costs on a direct assignment basis when the formula requires that the cost be functionalized on the basis of a net plant allocation ratio.¹⁹ On rehearing, Southwestern states that, while it is concerned that these costs are not related to transmission service, its more fundamental concern is that these “are not legitimate costs borne by [Ameren Illinois] and that [Ameren Illinois] has not demonstrated that they have incurred such costs.”²⁰ From this statement, it is unclear whether Southwestern is challenging the

¹⁶ 2016 Formal Challenge Order on Rehearing, 162 FERC ¶ 61,025 at P 23.

¹⁷ *Id.*

¹⁸ Formal Challenge at 21.

¹⁹ June 2019 Order, 167 FERC ¶ 61,247 at P 31.

²⁰ Rehearing Request at 7.

legitimacy of including Renewable Energy Compliance Costs in the Account 283 input to the formula rate or whether it is alleging that these costs were not incurred during the rate year.

17. To the extent that Southwestern is questioning the legitimacy of including Renewable Energy Compliance Costs in the Account 283 input to the formula rate, we affirm the Commission's determination that this is a collateral attack on the formula rate and outside the scope of the challenge procedures. As the Commission held in the 2016 Formal Challenge Order on Rehearing with respect to CWIP-related ADIT, "challenging the amount that the method makes recoverable as not properly recoverable is a challenge to the method itself. In other words, it is a collateral attack on an allocation specified in the formula rate." Furthermore, just as the provisions for the Account 282 input to the formula rate do not provide for the exclusion of CWIP-related ADIT, Account 283 does not provide for the exclusion of ADIT associated with Renewable Energy Compliance Costs. Therefore, Ameren Illinois is properly recovering ADIT associated with Renewable Energy Compliance Costs.

18. To the extent that Southwestern is arguing that Ameren Illinois did not incur any Renewable Energy Compliance Costs or CWIP-related ADIT in the rate year, this argument differs from the argument Southwestern raised in the Formal Challenge. The Commission looks with disfavor on parties raising issues for the first time on rehearing.²¹ In any event, we note that Southwestern is incorrect in claiming that the Ameren Services' CWIP incentive rate treatment for the Grand River Project does not extend to Ameren Illinois.²² We also note that load serving entities, such as Ameren Illinois, can incur Renewable Energy Compliance Costs associated with their retail load obligations, even if they do not own generation resources.

19. Southwestern argues that the Commission's determination that Renewable Energy Compliance Costs and CWIP-related ADIT costs must be allocated via the allocator – without any examination of the individual ADIT entries – is inconsistent with the Ameren ADIT Rehearing Order and with a Commission staff guidance document on

²¹ See, e.g., *PJM Interconnection, L.L.C.*, 126 FERC ¶ 61,030, at P 15 and n.10 (2009) ("The Commission has held that raising issues for the first time on rehearing is disruptive to the administrative process and denies parties the opportunity to respond"); *Allegheny Energy Supply Co., L.L.C.*, 122 FERC ¶ 61,104, at P 6 (2008) (same); 18 C.F.R. § 385.713(d) (2019) ("The Commission will not permit answers to requests for rehearing.").

²² See *Ameren Services Co.*, 135 FERC ¶ 61,142, at P 104 (2011) (providing that the incentive granted to Ameren Services was assignable to affiliates); see also *Midwest Indep. Transmission Sys. Operator*, 141 FERC ¶ 61,121, at P 35 (2012) (granting CWIP incentive to Ameren Illinois).

formula rate updates. We reject this argument. The portion of the Ameren ADIT Rehearing Order cited by Southwestern reads as follows:

Further, the Commission did not err when it did not address the Tax Cuts and Jobs Act's repeal of certain tax carryover provisions, as Southwestern contends. Rather, Southwestern's argument that these tax carryover provisions were repealed by the Tax Cuts and Jobs Act is not relevant here; Southwestern is attempting to propose additional changes to the formulas that are beyond the scope of the instant filing. We clarify, however, that if any amounts related to the carryover provisions at issue are disallowed by the IRS in the future, Ameren must remove any existing deferred tax account balances related to any disallowed amounts, and factor them into its overall computation of regulatory assets or liabilities for excess or deficient ADIT. As discussed above, such a change would be part of the supporting detail requirement in an annual informational filing.²³

20. This discussion was simply a reminder to Ameren Illinois to follow IRS guidance when performing its accounting during its annual update. As Southwestern states, the Ameren ADIT Rehearing Order contemplates a challenge to individual account entries as part of the annual update process.²⁴ But that is entirely different from a challenge to an allocation method of a defined cost category in the formula rate, which is what Southwestern seeks to do here and which the Commission properly rejected in the June 2019 Order and in the 2016 Formal Challenge Order on Rehearing as a collateral attack on the formula rate.²⁵

21. Southwestern's reliance on the Commission staff guidance document, which is not binding on the Commission in any event, is also misplaced. The staff guidance document addresses certain enumerated generic rules or policies, none of which is relevant to the Renewable Energy and CWIP ADIT issues present here.

22. Finally, we do not find controlling Ameren Illinois' prior commitment in the 2016 Annual Update to exclude certain balances in Account 283 related to Regulatory Liability AFUDC Equity and its commitment in the 2017 Annual Update to exclude

²³ Ameren ADIT Rehearing Order, 167 FERC ¶ 61,238 at P 20.

²⁴ Rehearing Request at 8, 9.

²⁵ June 2019 Order, 167 FERC ¶ 61,247 at P 31; 2016 Formal Challenge Order on Rehearing, 162 FERC ¶ 61,025 at 31.

certain Account 190 ADIT. Ameren Illinois is within its right to make voluntary concessions for the purpose of avoiding further litigation and need not be bound by such concessions.

C. **Regulatory Expenses**

1. **Rehearing Request**

23. Southwestern contends that the Commission erred by ignoring an issue raised by Southwestern concerning the treatment of regulatory expenses – specifically those expenses relating to Regulatory Policy and Planning (REPP), Legal State Regulatory Service (LSTR) and generation interconnections.

24. Southwestern argues that, by booking REPP to Account 923 (Outside Service Employed) as opposed to Account 928 (Regulatory Commission Expenses), Ameren Illinois is violating the accounting instructions set forth in the description of Account 923.²⁶ Southwestern asserts that Account 923 is described as including “the fees and expenses of professional consultants and others for general services *which are not applicable to a particular operating function or to other accounts*” and that costs booked to this account are for services “of persons engaged for a special or temporary administrative general purpose in circumstances where the person so engaged *is not considered as an employee of the utility.*”²⁷ Southwestern argues that Ameren Illinois is violating both of these requirements because (1) the REPP costs are applicable to another account, namely to Account 928, and (2) REPP costs involve services performed by Ameren Illinois Company employees.²⁸

25. Similarly, Southwestern argues that LSTR, which Ameren describes as including “all activities performed by the legal department to provide state regulatory services to Missouri and Illinois to include: representation of the Company before the [Missouri Public Service Commission] and/or [Illinois Commerce Commission] in rate matters, customer complaints, tariff filings and other docketed matters,” should be booked to Account 928.²⁹

²⁶ *Id.* at 12-13.

²⁷ *Id.* at 13 (emphasis in pleading).

²⁸ *Id.*

²⁹ *Id.*

26. According to Southwestern, the significance of booking regulatory expenses to Account 928 is that such expenses become subject to a two-step methodology under the formula rate to ensure that transmission customers are not funding regulatory commission expenses that are unrelated to transmission. Southwestern describes the two-step methodology as involving, first, the subtraction of Account 928 Regulatory Commission Expenses and, second, the addition of those Account 928 Regulatory Commission Expenses that are specific to transmission.³⁰ Southwestern alleges that, in booking REPP and LSTR to Account 923 instead of 928, Ameren Illinois bypassed the customer protections inherent in the mechanics of this two-step process.³¹

27. Southwestern also notes that in its Formal Challenge it had objected to being assigned a portion of regulatory expenses associated with interconnections. Southwestern states that the Commission declined to address this issue in the June 2019 Order. Southwestern argues that there is no reason to include the regulatory expenses associated with interconnections while Ameren Illinois excludes the cost of interconnection itself.³²

2. Commission Determination

28. We disagree that the Commission, in the June 2019 Order, “ignored” the arguments relating to the treatment of certain regulatory commission expenses, as Southwestern asserts. In the 2016 Formal Challenge, Southwestern argued, as it does here, that all regulatory expenses should be recorded in Account 928 and that certain regulatory expenses should be excluded from recovery because they relate to Ameren Illinois’ retail business.³³ The Commission rejected that argument in the 2016 Formal Challenge Order,³⁴ but, since the issue was pending rehearing at the time of the

³⁰ *Id.* at 11-12.

³¹ *Id.*

³² *Id.* at 14.

³³ *See* 2016 Formal Challenge Order, 156 FERC ¶ 61,209 at P 66.

³⁴ *Id.* at PP 71-72.

2017 Formal Challenge, Southwestern re-raised the argument in the 2017 Formal Challenge.³⁵ Prior to the issuance of the June 2019 Order, however, the Commission denied rehearing of the 2016 Formal Challenge Order by affirming its rejection of Southwestern's argument.³⁶ Thus, in the June 2019 Order, the Commission appropriately dismissed the 2017 Formal Challenge with respect to certain administrative and general and transmission operations and maintenance expenses, which include regulatory commission expenses, as having already been addressed and denied in the 2016 Formal Challenge Order on Rehearing.³⁷ Accordingly, we deny Southwestern's request for rehearing on this issue. Since the Commission's orders on the 2016 Formal Challenge did not specifically address REPP, LSTR, and generation interconnections, however, we further explain the appropriate accounting for these expenses, as discussed below.

29. In response to Southwestern's Formal Challenge, Ameren Services, on behalf of Ameren Illinois, stated that REPP activities are performed for Ameren Illinois' transmission business by Ameren Services employees, including "the time spent . . . responding to informal and formal challenges of Ameren Illinois' formula rate projections and true-ups."³⁸ Ameren Services agreed that Attachment O contains a requirement to deduct Account 928 Regulatory Commission expenses and to then add back the transmission-related portion to the ATRR.³⁹ However, Ameren Services noted that Southwestern's argument in this regard is "misplaced" because "Account 928 expenses relate to formal proceedings, not expenses related to internal employees performing normal job duties related to ordinary, daily activities, such as the rate calculations and true-up questioned by [Southwestern]."⁴⁰

³⁵ As noted above with respect to Southwestern's challenge on CWIP-related ADIT, Southwestern represented that it did not intend to re-litigate issues decided by the Commission in the 2016 Formal Challenge Order on Rehearing but was simply raising the issues to preserve its rights with respect to the 2017 Annual Update while the 2016 Formal Challenge was pending rehearing. *See* June 2019 Order, 167 FERC ¶ 61,247 at PP 14, 20.

³⁶ 2016 Formal Challenge Order on Rehearing, 162 FERC ¶ 61,025 at PP 32, 35.

³⁷ June 2019 Order, 167 FERC ¶ 61,247 at P 20.

³⁸ Ameren Illinois' May 22, 2017 Response to Formal Challenge at 78 (Response to Formal Challenge).

³⁹ Response to Formal Challenge at 59.

⁴⁰ *Id.* at 59.

30. Given Ameren Services' description of REPP from its response to the Formal Challenge, we are persuaded that expenses associated with rate calculations and true ups are not necessarily "in connection with formal cases before regulatory commissions" such that they would need to be included in Account 928, particularly if they involve informal challenges. However, expenses associated with responding to and defense against formal challenges and expenses incurred in connection with other formal cases before a regulatory body would fall within the instructions of Account 928,⁴¹ and those expenses should therefore be booked to Account 928, whether performed by external or internal employees. We also note, however, that any REPP activity performed by internal employees also should not be booked to Account 923, because that account is specific to outside services.⁴² Therefore, we direct Ameren Illinois to provide in a compliance filing, due within 30 days of the date of this order, a summary of any changes in accounting to (1) record expenses associated with formal challenges and other formal cases before a regulatory body in Account 928 and (2) exclude internal employee REPP costs from Account 923. Ameren Illinois must also reflect any necessary changes in accounting in the annual true-up in accordance with the formula rate protocols.

31. Similarly, we find that Ameren Illinois should exclude LSTR expenses from Account 928 where such expenses are not "in connection with formal cases before regulatory commissions, or other regulatory bodies, or cases in which such a body is a party," as required by Account 928. Any other LSTR activity that does involve a formal case before a regulatory commission should be booked to Account 928. Outside legal or consulting expenses relating to state regulatory matters that do not involve formal cases are appropriately booked to Account 923, consistent with the instructions in that account. Therefore, we direct Ameren Illinois to provide in the compliance filing referenced above a summary of any changes in accounting to (1) record LSTR expenses relating to formal cases before a regulatory body in Account 928 and (2) exclude internal employee LSTR costs from Account 923. Ameren Illinois must also reflect any necessary changes in accounting in the annual true-up in accordance with the formula rate protocols.

32. Finally, we are unpersuaded by Southwestern's argument that Ameren Illinois should exclude regulatory expenses associated with generator interconnections from the transmission formula rate. As a transmission owner in MISO, Ameren Illinois may incur

⁴¹ See 18 C.F.R. pt. 101, Account 928, Regulatory Expenses (2019) ("This account shall include all expenses . . . in connection with formal cases before regulatory commissions, or other regulatory bodies, or cases in which such a body is a party").

⁴² See 18 C.F.R. pt. 101, Account 923, Outside Services Employed (2019) ("This account shall include the fees and expenses of professional consultants and others for general services which are not applicable to a particular operating function or to other accounts.").

costs associated with disputes it may have with generators involving, for example, payments for network upgrades. These costs relate to transmission and are properly included in the Ameren Illinois' transmission rates.

D. Land Held for Future Use

1. Rehearing Request

33. Finally, Southwestern contends that the Commission departed from current precedent with respect to recovery of costs for the treatment of land held for future use.⁴³ Southwestern states that, in its Formal Challenge, it had argued that Ameren Illinois should not be earning a return on land holdings which have no plan for future use. Southwestern notes that the Commission rejected this argument in the June 2019 Order when it stated that “the Commission does not require utilities to explain the precise need or to provide citations to transmission studies to support the inclusion of purchased property in the land held for future use account.”⁴⁴ Southwestern takes issue with the two authorities cited by the Commission in support of that determination, which comprise (1) a 1981 ruling of a Commission Administrative Law Judge (ALJ) in *Pacific Gas and Electric Company*⁴⁵ and (2) Federal Power Commission (FPC) Order No. 420.⁴⁶

34. First, as to the Order No. 420 citation, Southwestern alleges that the Commission, in the June 2019 Order, cited the wrong Order No. 420, by referring to a 1985 order instead of the FPC's Order No. 420, issued in 1971, which revised the description of Account 105 for land held for future use.⁴⁷ Second, Southwestern notes that, while the FPC, in adopting Order No. 420, revised the language of Account 105 to eliminate the requirement that a public utility have a “definite plan” for land held for future use, it retained the requirement that the land be held “under a plan.”⁴⁸ Third, Southwestern asserts that *Pacific Gas and Electric Company* supports the requirement that utilities must

⁴³ *Id.*

⁴⁴ *Id.* at 15 (citing June 2019 Order, 167 FERC ¶ 61,247 at P 43).

⁴⁵ *Pac. Gas & Elec. Co.*, 16 FERC ¶ 63,004 at 65,021 (1981), *modified by* Opinion No. 147, 20 FERC ¶ 61,340 (1982).

⁴⁶ *Accounting Treatment For Land Held For Future Utility Use and For Profits of Losses Realized Through Sales of Those Lands*, Order No. 420, 45 F.P.C. 106 (1971).

⁴⁷ Rehearing Request at 16.

⁴⁸ *Id.* at 17.

have “a plan” for the land because the ALJ in that case examined three properties and ultimately concluded that they were “properly includible in rate base *since all have planned uses.*”⁴⁹ Southwestern argues that “the very case that the [June 2019 Order] cites as evidence that no plan is required for recovery of [land held for future use] demonstrates precisely the opposite is true” and that the Commission therefore failed to make a reasoned decision in relying on, rather than distinguishing, that case.⁵⁰

2. Commission Determination

35. We affirm the Commission’s determination in the June 2019 Order⁵¹ that the sites Ameren Illinois identified in its 2017 Annual Update are properly recoverable under the formula rate as land held for future use. The June 2019 Order does not purport to dispense with the requirement that utilities have “a plan” for the inclusion of purchased property as land held for future use. In finding that utilities do not need “to explain the precise need or to provide citations to transmission studies to support the inclusion of purchased property in the land held for future use account,”⁵² the Commission was emphasizing that that the planned use of the land need not meet the level of specificity demanded by Southwestern.

36. The precedent cited in the June 2019 Order is not inconsistent with the Commission’s finding. We do not dispute that Order No. 420 retained the requirement that land held for future use must be held “under a plan.” As Southwestern acknowledges, however, Order No. 420 removed the requirement that such a plan for land and land rights be “definite.”⁵³ Similarly, in *Pacific Gas and Electric Company*, which was affirmed and adopted by the Commission in Opinion No. 147 on this issue, the ALJ recognized that there was no requirement that a “definite plan” exist for land held for future use but found that Pacific Gas and Electric Company “provided a quantum

⁴⁹ *Id.* at 19 (emphasis in pleading).

⁵⁰ *Id.*

⁵¹ June 2019 Order, 167 FERC ¶ 61,247 at P 43.

⁵² *Id.*

⁵³ Rehearing Request at 17. The Commission included a mistaken FERC citation in footnote 82 of the June 2019 Order. The Commission intended to cite to Order No. 420 as issued by the FPC in 1971. The correct citation should have read *Accounting Treatment For Land Held For Future Utility Use and For Profits of Losses Realized Through Sales of Those Lands*, Order No. 420, 45 F.P.C. 106 (1971).

of evidence sufficient to justify rate base treatment.”⁵⁴ Here, Ameren Illinois has explained that its land parcels will be used to accommodate future transmission system expansion projects anticipated to be needed due to projected generation additions or retirements.⁵⁵ This qualifies as a quantum of evidence sufficient to justify rate base treatment under Commission precedent. Accordingly, we deny Southwestern’s request for rehearing on this issue.

The Commission orders:

(A) Southwestern’s request for rehearing is hereby denied, as discussed in the body of this order.

(B) Ameren Illinois is hereby directed to submit a compliance filing, within 30 days of the date of this order, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

⁵⁴ *Pac. Gas. & Elec. Co.*, 16 FERC ¶ 63,004, at 65,020, *modified*, Opinion No 147, 20 FERC ¶ 61,340 (1982).

⁵⁵ Response to Formal Challenge at 45-46.