

143 FERC ¶ 61,240  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;  
Philip D. Moeller, John R. Norris,  
Cheryl A. LaFleur, and Tony Clark.

Ameren Corporation

Docket No. AC11-46-000

ORDER REJECTING REFUND REPORT AND PROVIDING GUIDANCE

(Issued June 20, 2013)

1. This order directs Ameren Illinois Company (Ameren Illinois) to refile its refund report to reverse the effects of including goodwill and other acquisition premiums<sup>1</sup> in prior formula rate billings. The order finds that Ameren Illinois' refund computations, filed in compliance with the Commission's July 19, 2012 Order (July 19 Order),<sup>2</sup> are flawed. Therefore, the order rejects Ameren Illinois' refund report, and provides guidance on filing a new report.

**I. Background**

**July 19 Order**

2. In the July 19 Order, the Commission approved Ameren Corporation's (Ameren) final accounting entries regarding an internal reorganization in 2010 which, among other things, resulted in the merger of Central Illinois Light Company (CILCO) and Illinois Power Company (AmerenIP) with and into Central Illinois Public Service Company, to

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<sup>1</sup> In a merger or other business combination, the acquisition premium is the excess of the total purchase price or consideration paid in the transaction over the historical cost of the net assets of the entity acquired. The acquisition premium, comprised of goodwill and fair value adjustments to the historical cost of assets and liabilities, is recorded on the acquired entity's books and records at the time of a business combination (purchase accounting adjustments).

<sup>2</sup> *Ameren Corp.*, 140 FERC ¶ 61,034 (2012) (July 19 Order).

form Ameren Illinois (Reorganization Transaction).<sup>3</sup> However, the Commission also found that Ameren Illinois improperly included acquisition premiums in its transmission formula rate, and directed Ameren Illinois to make refunds with interest pursuant to the Commission's regulations.

3. Specifically, the Commission found that Ameren Illinois included journal entries for the Reorganization Transaction that incorporated adjustments related to two previous merger transactions. The first transaction was Ameren's 2003 acquisition of CILCORP, Inc. (CILCORP), the parent holding company of CILCO, in which \$197 million of goodwill was recorded and maintained on the books of CILCORP. In connection with the Reorganization Transaction in 2010, CILCORP was merged into Ameren and the goodwill relating to the 2003 CILCORP acquisition was then transferred to Ameren Illinois, as successor to CILCO. The second transaction was Ameren's acquisition of AmerenIP in 2004, in which \$214 million of goodwill was initially recorded and maintained on the books of AmerenIP, and later transferred to the books of Ameren Illinois in the Reorganization Transaction. The Commission found that due to these two transactions, goodwill of \$411 million is now maintained on the books of Ameren Illinois (as successor to AmerenIP and CILCO) as a result of the Reorganization Transaction.<sup>4</sup> The Commission also noted that there may have been other acquisition premiums recorded that may have affected formula rate billings.<sup>5</sup>

4. According to Ameren, the goodwill related to the CILCORP acquisition (i.e., \$197 million) was first reflected in the equity component of Ameren Illinois' cost of capital in Attachment O formula rates<sup>6</sup> in June 2011, and the goodwill related to the AmerenIP acquisition (i.e., \$214 million) was first reflected in AmerenIP's cost of capital in June 2005. Ameren acknowledged that the increase in equity related to the goodwill

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<sup>3</sup> On June 17, 2010, in Docket No. EC10-52-000, the Commission approved the Reorganization Transaction. *See Ameren Corp.*, 131 FERC ¶ 61,240 (2010).

<sup>4</sup> July 19 Order at PP 2, 5-7.

<sup>5</sup> *Id.* P 40.

<sup>6</sup> As we described in the July 19 Order, Attachment O of the Midwest Independent Transmission System Operator, Inc. (MISO) open access transmission tariff contains the transmission formula rate template that was filed with and approved by the Commission. *Id.* P 7 & n.14.

also impacted the computation of Ameren Illinois' allowance for funds used during construction (AFUDC) rate.<sup>7</sup>

5. In the July 19 Order, the Commission noted that it had a longstanding policy regarding the recovery of acquisition premiums, including goodwill, through rates. The Commission explained that, under Commission policy, rate recovery of an existing facility is generally limited to the original cost of the facility and recovery of acquisition premiums, including goodwill, in cost-based rates is allowed only if the acquisition is prudent and provides measurable, demonstrable benefits to ratepayers. The Commission emphasized that to receive rate recovery of any amounts related to an acquisition premium, including goodwill, a public utility must request express Commission authorization pursuant to section 205 of the Federal Power Act (FPA), and that, absent such express authorization, the Commission requires removal of the effects of acquisition premiums and goodwill from the utility's cost of service. In this regard, the Commission noted that Ameren never made, or filed to make, a demonstration that its 2003 acquisition of CILCORP, 2004 acquisition of AmerenIP, or 2010 Reorganization Transaction provided measurable, demonstrable benefits to ratepayers that would justify recovery of goodwill.<sup>8</sup> Therefore, the Commission directed Ameren Illinois to adjust its formula rate billings for amounts it, and AmerenIP before it, inappropriately recovered from customers as a result of including acquisition premiums in rates beginning in June 2005.<sup>9</sup>

6. In addition, the Commission stated that, while the order addressed Ameren Illinois' treatment of goodwill related to Ameren's acquisition of CILCORP and AmerenIP and its effect on Attachment O formula rates, the Commission recognized that there may have been other acquisition premiums recorded by Ameren Illinois for those acquisitions as a part of the Reorganization Transaction that may have had an effect on Attachment O rates. Therefore, the Commission also directed Ameren Illinois to adjust its formula rate billings for any other acquisition premiums, besides the identified goodwill, resulting from the above acquisitions that affected Ameren Illinois and AmerenIP's Attachment O rates.<sup>10</sup>

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<sup>7</sup> *Id.* PP 25-29.

<sup>8</sup> *Id.* PP 30-31, 37-38.

<sup>9</sup> *Id.* P 39.

<sup>10</sup> *Id.* P 40.

7. Furthermore, the Commission found that Ameren Illinois may have incorrectly billed transmission ratepayers, through depreciation expense and return on rate base, for excessive amounts of AFUDC accrued as a result of using the inappropriately increased equity amounts in the determination of AFUDC rates. Therefore, the Commission also directed Ameren Illinois to adjust its transmission service formula rate billings, as appropriate, for any amounts inappropriately recovered from its (and, prior to the Reorganization Transaction, from AmerenIP's) customers associated with acquisition premiums and related over-accrual of AFUDC.<sup>11</sup>

## II. Ameren's Refund Report

8. On November 15, 2012, Ameren, on behalf of Ameren Illinois, submitted a refund report.<sup>12</sup> Ameren explains that the required adjustments directed by the Commission result in \$19,693,343, plus interest, that Ameren Illinois has not billed or collected from customers, and thus is owed to Ameren. Ameren requests that the Commission accept the refund report, and either terminate this proceeding with no refunds or surcharges due, or provide the requested Commission guidance on how to collect the amounts owed to Ameren Illinois.<sup>13</sup>

9. Specifically, in Exhibit I to the November 15 filing, Ameren explains the steps Ameren took to implement the July 19 Order. Ameren states that it identified acquisition premium transactions as directed by the Commission, and then reversed these acquisition premium transactions for each year going back to 2004. Ameren states that it put Ameren Illinois back to the historical cost of all of its assets and liabilities. Ameren also states that Ameren Illinois' Attachment O calculations over each of the relevant periods were then reviewed to determine which data from its FERC Form 1s were used in its Attachment O calculation that included acquisition premiums or amortizations of

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<sup>11</sup> *Id.* PP 41-42.

<sup>12</sup> On August 16, 2012, the Commission's Secretary, pursuant to delegated authority, issued a notice granting Ameren an extension of time until November 16, 2012, to file a refund report. *Ameren Corp.*, Docket No. AC11-46-000 (August 16, 2012). Illinois Municipal Power Agency, Southern Illinois Power Cooperative, and Wabash Valley Power Association, Inc. (jointly, Customers) filed a request for rehearing, asking that the Commission reconsider granting Ameren the extension. On September 19, 2012, the Commission dismissed Customers' request for rehearing, and also explained that Ameren Illinois' refund obligations continue to accrue until fully paid. *Ameren Corp.*, 140 FERC ¶ 61,213 (2012).

<sup>13</sup> Ameren's Filing at 7-9.

acquisition premiums. Ameren adds that some of the acquisition premium adjustments removed assets and liabilities that would have been amortized had AmerenIP not been acquired by Ameren. Ameren states that Exhibit I assumes the continuation of amortization of assets and liabilities by AmerenIP that were removed by acquisition premium adjustments.<sup>14</sup>

10. Ameren further explains that AmerenIP's balance sheet, as of September 30, 2004, included multiple series of long-term debt notes with stated interest rates that were above then-current market rates at the acquisition date. Ameren adds that AmerenIP repurchased three series of notes within the first three months of Ameren acquiring AmerenIP, the largest of which related to the \$550,000,000, 11.5 percent notes, which were scheduled to mature in 2010. Ameren states that to repurchase this higher cost debt, AmerenIP had to pay a redemption premium of approximately \$100 million, and, because of the long-term debt adjustment established in purchase accounting, the redemption premium paid to debt holders was never included in AmerenIP's income statement. Thus, Ameren argues that the cost of this repurchase was not previously included in the calculation of Ameren Illinois and its predecessors' annual transmission revenue requirements (ATRR). Ameren asserts that the July 19 Order's directive to remove acquisition premiums related to this loss on repurchased debt should result in that cost now being included in the ATRR calculation under Attachment O. Ameren also states that, consistent with the July 19 Order, Ameren Illinois recalculated its AFUDC rate for the relevant periods.<sup>15</sup>

11. Ameren concludes that removing all of the acquisition premiums results in increases in Ameren Illinois and its predecessors' ATRR for almost every rate year or portion of a rate year from June 2005 through June 2012. Ameren states that these increased amounts were not previously reflected in the formula rate billings of Ameren Illinois and its predecessors and, thus, were not previously recovered from customers. Ameren states that Ameren Illinois applied the percentage increases for each period shown in Exhibit I to its historical billings for each period to derive an amount not previously recovered and, thus, owed to Ameren Illinois of \$19,693,343. Ameren asserts that, with interest of \$3,054,030, the total amount that was not recovered from customers is \$22,747,373. Ameren asks that the Commission terminate the proceeding with no refunds or surcharges, or provide guidance on how to collect the amounts due from customers as a result of the adjustments the Commission directed.<sup>16</sup>

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<sup>14</sup> *Id.* at 5-6.

<sup>15</sup> *Id.* at 7-8.

<sup>16</sup> *Id.* at 6, 9.

### III. Protests and Answers

12. Illinois Municipal Electric Agency, Prairie Power Inc., Southern Illinois Power Cooperative, and Wabash Valley Power Association (jointly, Customers) filed a joint protest. Customers argue that the July 19 Order required Ameren Illinois to remove goodwill and other acquisition premiums from the calculation of cost of equity and AFUDC in its Attachment O rates beginning in 2005 and to make appropriate refunds. Instead, Customers state that Ameren Illinois “reversed all transaction-related accounting entries and then substituted those faux accounting entries into the Attachment O formula rate to derive a phantom rate higher than the rate which gave rise [to] the required refunds.”<sup>17</sup> Customers assert that Commission policies and precedent hold that the acquisition premiums paid for assets over and above historical cost may not be included for ratemaking purposes absent Commission approval. They add that the only adjustment Ameren Illinois should have made was to remove from the Attachment O calculation the goodwill recorded in Account 186, since Ameren Illinois did not have any acquisition premium adjustments recorded in Account 114 during that period.<sup>18</sup> Customers also contend that Ameren Illinois’ refund report inappropriately includes extraneous matters and lacks adequate support.<sup>19</sup>

13. Ameren, on behalf of Ameren Illinois, filed a motion for leave to answer and an answer to Customer’s protest. Ameren claims that the July 19 Order plainly directed Ameren Illinois to remove not only goodwill but also to remove any other acquisition premiums from its formula rates. Therefore, Ameren asks that the Commission reject Customers’ protest and find that no refunds are due.

14. Customers filed in opposition to Ameren’s answer. Customers argue that Ameren’s answer confirms that Ameren Illinois’ accounting did not comply with the July 19 Order, and repeats the arguments it made earlier. Customers add that the

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<sup>17</sup> Customers’ Protest at 7 & n.24.

<sup>18</sup> For the purchase method of accounting, the Commission has previously clarified that the cost of the acquired company allocated to plant assets, up to their fair value, in excess of depreciated original cost at the date of acquisition, is recorded as an acquisition adjustment in Account 114, Electric Plant Acquisition Adjustments. Additionally, the excess of the cost of the acquired company over the sum of the amounts assigned to all identifiable assets acquired and liabilities assumed is recorded as goodwill in Account 186, Miscellaneous Deferred Debits. *Great Plains Energy Inc., et al.*, 121 FERC ¶ 61,069, at P 64 (2007).

<sup>19</sup> Customers’ Protest at 8-10.

Commission did not order Ameren Illinois to unwind all purchase accounting entries associated with the 2004 merger and create a *pro forma* impact on its revenue requirement as if the merger never occurred. Therefore, they ask that the Commission reject Ameren's answer.

#### IV. Discussion

##### A. Procedural Issues

15. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2012), prohibits an answer to a protest or answer unless otherwise ordered by the decisional authority. We are not persuaded to accept Ameren's answer and will, therefore, reject it. And Customers' opposition to Ameren's answer is thus moot.

##### B. Refund Report Analysis

16. We agree with Customers that Ameren Illinois' refund report inappropriately includes extraneous matters, and lacks adequate support. Therefore, as discussed below, the Commission rejects the refund report because: (1) the accounting adjustments outlined in the refund report improperly go beyond the scope of the Commission's July 19 Order; and (2) the refund report does not contain sufficient detail for the Commission to follow the actions listed in the refund report. In addition, the Commission provides additional guidance on the scope of the items to be included in the new refund report that Ameren Illinois is directed to file.

17. First, we find that the adjustments proposed by Ameren Illinois in its refund report improperly go beyond the scope of the July 19 Order. For example, Ameren Illinois indicates in its refund report that, within three months of Ameren's acquisition of AmerenIP, AmerenIP repurchased three series of high coupon notes. To repurchase this higher-cost debt, Ameren further indicates that AmerenIP paid a redemption premium of approximately \$100 million. Ameren states that, due to the long-term debt adjustment established in purchase accounting, the redemption premium paid to debt holders was never included in AmerenIP's income statement or AmerenIP's formula rate billings. Ameren asserts that the Commission-ordered removal of the acquisition premium, which was created in purchase accounting for the fair value of debt, would now warrant the amortization of the loss on required debt to interest expense over the life of the old maturity. Accordingly, Ameren Illinois proposes in the refund calculation to now create a new asset and then amortize that new asset, the redemption premium, for rate purposes over the original remaining life of the security issue redeemed. According to Ameren Illinois, this adjustment would allow Ameren Illinois to increase interest expense included in its formula rate by approximately \$100 million and result in increased billings to customers.

18. However, in the July 19 Order, we only directed Ameren Illinois to remove the acquisition premiums associated with the 2003 and 2004 transactions from its transmission formula rates.<sup>20</sup> The Commission emphasizes that in the July 19 Order it did not direct Ameren Illinois to create theoretical accounting entries that establish new assets and then amortize these assets for rate purposes (in order to recover costs that it believes should have been recovered through its formula rate had it not used purchase accounting), in addition to removing the effects of including acquisition premiums in previous formula rate billings. Accordingly, we find that Ameren Illinois' inclusion of the debt redemption premium in the refund report improperly goes beyond the scope of the July 19 Order.

19. In the July 19 Order, the Commission directed Ameren Illinois to remove the acquisition premiums because Ameren Illinois failed to make a section 205 filing showing of demonstrable ratepayer benefits in order to be able to include the acquisition premiums in rates, and therefore was not entitled to include the acquisition premium in its rates.<sup>21</sup> Moreover, Ameren Illinois may pursue the recovery of merger-related costs or other costs not previously included in rates only through a section 205 filing, and not here through a refund filing.<sup>22</sup>

20. Second, with the exception of the discussion on the debt redemption premium, Ameren Illinois' refund report includes only a summary spreadsheet with some explanatory notes to support Ameren Illinois' refund calculation. Given the information before it, the Commission cannot ensure the refund report's accuracy because Ameren Illinois does not provide sufficient details on what acquisition premiums were originally recorded, the manner each acquisition premium was included in prior formula rate calculations, the effect on formula rate billings of including each acquisition premium in prior formula rate calculations, or the manner by which the effects were removed from billings. Furthermore, for those acquisition premiums that were reversed, it is impossible to tell from the filing what adjustments, if any, Ameren Illinois made to establish new theoretical assets for ratemaking purposes, and how those assets were amortized, since Ameren Illinois' filing does not provide sufficient detail on such adjustments (other than generally with respect to the debt redemption premium, as previously discussed).

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<sup>20</sup> See *supra* note 9.

<sup>21</sup> July 19 Order at PP 30-31, 38-39.

<sup>22</sup> The July 19 Order noted that Ameren Illinois could still make a section 205 filing seeking rate recovery of the acquisition premiums relating to the CILCORP and AmerenIP acquisitions. *Id.* P 35 & n.43.

21. Therefore, the Commission rejects Ameren Illinois' refund report and directs Ameren Illinois to resubmit a new refund report, with the corrections noted above and with additional detail. Specifically, as required by the July 19 Order, Ameren Illinois must exclude from the formula rates for the period in question all acquisition premiums from the calculations, without adjustment for new assets or the amortization of such assets by Ameren Illinois. In addition, as indicated in the above paragraph, Ameren Illinois should separately identify each acquisition premium adjustment being removed from its transmission formula rates, by account, along with related dollar amounts. Finally, as indicated in the above paragraph, Ameren Illinois must separately disclose the effect on the transmission formula rate of each acquisition premium being removed for each period the item was included in rates.

The Commission orders:

(A) Ameren Illinois' refund report is hereby rejected, as discussed in the body of this order.

(B) Ameren Illinois is hereby directed to, within 30 days of the date of this order, adjust formula rate billings and make refunds, as appropriate, for acquisition premiums inappropriately recovered from its (and, prior to the Reorganization Transaction, from AmerenIP's) customers with interest on the adjustments calculated in accordance with 18 C.F.R. § 35.19a (2012).

(C) Ameren Illinois is hereby ordered to file a refund report with the Commission within 30 days of its making refunds.

By the Commission.

( S E A L )

Kimberly D. Bose,  
Secretary.