

140 FERC ¶ 61,034
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Ameren Corporation

Docket No. AC11-46-000

ORDER APPROVING ACCOUNTING FOR INTERNAL CORPORATE
REORGANIZATION AND DENYING RATE TREATMENT RELATED TO
ACQUISITION PREMIUMS

(Issued July 19, 2012)

1. This order approves Ameren Corporation's (Ameren) final accounting entries regarding: (1) the merger of Central Illinois Light Company (AmerenCILCO) and Illinois Power Company (AmerenIP) with and into Central Illinois Public Service Company (AmerenCIPS) to form Ameren Illinois Company (Ameren Illinois); and (2) the distribution by Ameren Illinois of the common stock of AmerenEnergy Resources Generating Company (AmerenEnergy Resources Generating) to Ameren, and the subsequent contribution by Ameren of the common stock of AmerenEnergy Resources Generating to Ameren Energy Resources Company, LLC (Ameren Energy Resources) (Reorganization Transaction). The order finds Ameren's proposed journal entries are in compliance with the Commission's Uniform System of Accounts and are approved for accounting purposes only. However, the Commission finds that Ameren Illinois improperly included acquisition premiums¹ in its transmission formula rate and directs

¹ "Acquisition premiums" are the difference between the total acquisition cost of assets and the historical basis of the net assets acquired, and can include goodwill. "Goodwill" is an accounting concept and represents the excess cost of the acquired company over the sum of the amounts assigned to all identifiable assets acquired and liabilities assumed. When a utility records goodwill on its balance sheet, it records an asset in Account 186 with an offsetting increase in equity which is recorded in Account 211.

Ameren Illinois to make refunds with interest pursuant to Section 35.19a of the Commission's regulations,² as discussed below.

I. Background

A. Reorganization Transaction

2. On March 15, 2010, Ameren, together with and on behalf of its directly or indirectly owned subsidiaries, AmerenIP, AmerenCILCO, AmerenCIPS, Ameren Energy Resources, and AmerenEnergy Resources Generating (collectively, Applicants), filed an application under section 203(a) of the Federal Power Act (FPA)³ requesting Commission authorization for the Reorganization Transaction, consisting of two steps: (1) the merger of AmerenCILCO and AmerenIP with and into AmerenCIPS to form Ameren Illinois; and (2) the distribution by Ameren Illinois of the common stock of AmerenEnergy Resources Generating to Ameren and the subsequent contribution by Ameren of the common stock of AmerenEnergy Resources Generating to Ameren Energy Resources. Although not discussed in the filing, Applicants included journal entries for the Reorganization Transaction that incorporated purchase accounting adjustments related to two previous transactions:⁴ (1) Ameren's acquisition of CILCORP, Inc. (CILCORP) in 2003, including goodwill of \$197 million, previously maintained on the books of CILCORP, a non-jurisdiction company, that would now be maintained on the books of Ameren Illinois, a jurisdictional company (CILCORP acquisition);⁵ and (2) Ameren's acquisition of AmerenIP in 2004, including goodwill of \$214 million (AmerenIP acquisition) that would also now be maintained on the books of Ameren Illinois.⁶ In addition, Applicants filed a petition for declaratory order seeking

² 18 C.F.R. § 35.19a (2011).

³ 16 U.S.C. § 824b (2006).

⁴ Ameren Corporation, Application, Docket No. EC10-52-000, at Appendix 4 (filed Mar. 15, 2010).

⁵ *Ameren Services Company*, 101 FERC ¶ 61,202 (2002) (Ameren's acquisition of CILCORP was approved by the Commission on November 21, 2002 but was not consummated until January 2003).

⁶ *Ameren Corporation, et al.*, 108 FERC ¶ 61,094 (2004) (*Ameren Corp.*).

confirmation that the distribution by Ameren Illinois of AmerenEnergy Resources Generating's stock to Ameren was not barred by section 305(a) of the FPA.⁷

3. On June 17, 2010, the Commission authorized the Reorganization Transaction under section 203(a)(1), and also granted Applicants' petition for declaratory order under section 305(a).⁸ In authorizing the Reorganization Transaction, the Commission ordered Applicants to submit final accounting entries and amounts related to the transaction along with "narrative explanations describing the entries, including a full explanation of purchase accounting journal entries" within six months of the date that the transaction was consummated.⁹

B. Additional Filings

4. On October 12, 2010, in accordance with the June 17 Order,¹⁰ Ameren notified the Commission that the Applicants consummated both steps of the Reorganization Transaction on October 1, 2010.

5. On March 30, 2011, as ordered by the Commission in the June 17 Order¹¹ Ameren submitted final accounting entries for the Reorganization Transaction. The journal entries recorded the transfer of all of AmerenCILCO and AmerenIP's assets, liabilities and equity balances with and into AmerenCIPS to form Ameren Illinois. However, the submission lacked sufficient information to be processed because it did not include narrative explanations describing the entries or full explanations of purchase accounting journal entries. As a result of Ameren's failure to provide the required information, Commission staff issued two additional requests for information. In reply, Ameren submitted two additional supplemental information responses. As a part of Ameren's submissions, Ameren included the journal entries it recorded in 2010 to transfer purchase accounting adjustments¹² to Ameren Illinois that were previously maintained on the

⁷ 16 U.S.C. § 825d(a) (2006).

⁸ *Ameren Corporation*, 131 FERC ¶ 61,240 (2010) (*June 17 Order*).

⁹ *Id.* at ordering para. (F).

¹⁰ *Id.* at ordering para. (I) (stating that Applicants shall notify the Commission within 10 days of the date that the reorganization transaction has been consummated).

¹¹ *Id.* P 37; *see also id.* ordering para. (F).

¹² In the context of mergers, purchase accounting adjustments represent the difference between the purchase price and the book value of the company acquired.

books of CILCORP. Ameren states that the transfer of these purchase accounting adjustments to Ameren Illinois became necessary when CILCORP was merged into Ameren in preparation for the Reorganization Transaction that created Ameren Illinois. The purchase accounting adjustments transferred to and on the books of Ameren Illinois included \$197 million of goodwill. Ameren Illinois accounted for the \$197 million of goodwill transferred as part of the purchase accounting adjustments by debiting Account 186, Miscellaneous Deferred Debits, and crediting Account 211, Miscellaneous Paid in Capital.

6. In addition, \$214 million of goodwill previously recorded on AmerenIP's books related to Ameren's acquisition of AmerenIP in 2004 was transferred to Ameren Illinois.¹³ The goodwill is included on Ameren Illinois' books embedded as an asset in Account 186 with an offsetting amount recorded as an increase to equity in Account 211.

7. As a result, goodwill of \$411 million, which is comprised of \$197 million from the CILCORP acquisition in 2003, and \$214 million from the AmerenIP acquisition in 2004, was transferred to Ameren Illinois in the Reorganization Transaction. Ameren states that the \$411 million of goodwill was included as part of Ameren Illinois' capital structure in its Attachment O transmission formula rate.¹⁴ According to Ameren, the first order approving the inclusion of goodwill in the capital structure is *Midwest Independent Transmission System Operator, Inc.*, Opinion No. 453, which approved the use of the Attachment O rate formula.¹⁵ In addition, Ameren asserts that *Ameren Corp.*¹⁶ authorized the inclusion of goodwill relating to the 2004 AmerenIP acquisition in rates. Ameren also acknowledges that the increase in equity related to the goodwill impacted the computation of Ameren Illinois' allowance for funds used during construction (AFUDC).

II. Notice of Filing and Responsive Pleadings

8. Notice of Ameren's March 30, 2011, June 3, 2011, and April 16, 2012, filings were published in the *Federal Register*, 77 Fed. Reg. 24,482 (2012), with comments,

¹³ See *supra* note 6.

¹⁴ 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 FERC.

¹⁵ 97 FERC ¶ 61,033 (2001) (*Opinion No. 453*).

¹⁶ See *supra* note 6.

protests, or interventions due on or before May 18, 2012. Prairie Power, Inc. (Prairie Power) filed a timely motion to intervene, and Southwestern Electric Cooperative, Inc. (Southwestern) filed a timely motion to intervene and comments. On May 31, 2012, Southwestern filed a notice of withdrawal of its motion to intervene and comments.

9. On May 18, 2012, Illinois Municipal Electric Agency (Illinois Municipal) filed a timely motion to intervene and protest. Illinois Municipal asks that the Commission reject Ameren's accounting treatment of goodwill. Illinois Municipal claims that, as demonstrated in Ameren's response to the Commission's requests for additional information, Ameren used its accounting entries to side-step long-standing Commission requirements and provide itself with an unauthorized rate increase.¹⁷ Illinois Municipal claims that as a result of these entries Ameren was able to increase its transmission service rates by inflating its equity component of its capital structure by \$411 million.¹⁸

10. Illinois Municipal argues that Ameren's accounting is in direct conflict with the Commission's policy on recovery of acquisition premiums, including goodwill, through rates. Illinois Municipal contends that, under Commission precedent, to receive rate recovery of any amounts related to an acquisition premium, a public utility must request Commission authorization pursuant to section 205 of the FPA.¹⁹ Moreover, Illinois Municipal counters Ameren's claim that including goodwill, including the increase in the equity component portion of Ameren Illinois' capital structure, was authorized by the two Commission orders cited in Ameren's April 16, 2012 response. Illinois Municipal argues that these orders are irrelevant since they have nothing to do with approving the impact on rates resulting from including the goodwill premiums relating to Ameren's 2003 acquisition of CILCORP and 2004 acquisition of AmerenIP.²⁰

11. Illinois Municipal asserts that it is a basic truism that accounting regulations cannot dictate ratemaking results. Illinois Municipal contends that under Commission precedent, Ameren Illinois is required to make a filing under section 205 of the FPA if it seeks to recover the acquisition premium from ratepayers. It adds that under Commission policy, rate recovery of purchase accounting adjustments or goodwill in cost-based rates is allowed only if the acquisition is prudent and provides measurable, demonstrable benefits to ratepayers. Thus, Illinois Municipal asks that the Commission reject

¹⁷ Illinois Municipal's protest at 1-2.

¹⁸ *Id.* at 3-4.

¹⁹ *Id.* at 5 (citing *ITC Holdings Corp.*, 139 FERC ¶ 61,112, at P 50 (2012)).

²⁰ *Id.* at 4-5.

Ameren's accounting entries and require that proper accounting entries be made. Illinois Municipal also asks that the Commission commence an investigation should it develop that Ameren Illinois has, through its accounting entries, inflated transmission rates under the Attachment O formula rate without the required showing under section 205 of the FPA.²¹

12. On May 21, 2012, Hoosier Energy Rural Electric Cooperative, Inc. (Hoosier) and Southern Illinois Power Cooperative (Southern Illinois) filed an out-of-time motion to intervene and protest. They adopt the arguments and recommendations of Illinois Municipal as their own, and ask that the Commission reject the accounting entries submitted by Ameren, or alternatively, investigate whether those accounting entries must be revised.

13. On May 24, 2012, the Illinois Commerce Commission (Illinois Commission) filed an out-of-time motion to intervene without making any substantive comments.

14. On June 7, 2012, Wabash Valley Power Association, Inc. (Wabash) filed a motion to intervene out-of-time and protest. Wabash also adopts the arguments and recommendations in Illinois Municipal's protest as its own, and asks that the Commission reject the accounting entries offered by Ameren, or, alternatively, investigate whether those accounting entries must be revised.

III. Discussion

A. Procedural Matters

15. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.²²

16. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, the Commission will grant the late-filed motions to intervene of Hoosier, Southern Illinois, the Illinois Commission, and Wabash given their interest in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.²³

²¹ *Id.* at 5-6.

²² 18 C.F.R. § 385.214 (2011).

²³ 18 C.F.R. § 385.214(d) (2011).

17. Pursuant to Rule 216(b) of the Commission's Rules of Practice and Procedure, the withdrawal of any pleading is effective at the end of 15 days from the date of filing a notice of withdrawal, if no motion in opposition is filed within that period and the decisional authority does not issue an order disallowing the withdrawal within that period.²⁴ Since no motion in opposition has been filed and we have not disallowed the withdrawal, Southwestern's notice of withdrawal of its motion to intervene and comments is effective.

B. Proposed Accounting for the Reorganization Transaction

18. As noted above, the Reorganization Transaction consisted of two steps. In the first step, AmerenCILCO and AmerenIP were merged with and into AmerenCIPS to form Ameren Illinois. Ameren transferred purchase accounting adjustments, including \$197 million of goodwill, that were previously maintained on the books of CILCORP, which, prior to the Reorganization Transaction, was the parent company of AmerenCILCO.²⁵ These purchase accounting adjustments related to Ameren's acquisition of CILCORP in January 2003. This goodwill was recorded on Ameren Illinois' books as an asset in Account 186 with an offsetting amount recorded as an increase in equity in Account 211.

19. In addition, in connection with this first step, the assets, liabilities and equity balances in the Reorganization Transaction were transferred between entities at their historical cost basis through Account 102, Electric Plant Purchased or Sold, to account for this step of the transaction. Included in this transfer was the \$214 million of goodwill related to Ameren's 2004 acquisition of AmerenIP which, as described above, was transferred from AmerenIP's books to Ameren Illinois as a part of its formation. The goodwill was also recorded as an asset in Account 186 with an offsetting amount recorded as an increase in equity in Account 211.

20. In the second step of the Reorganization Transaction, Ameren sought to consolidate its market-regulated Illinois generation in Ameren Energy Resources, which owns all of Ameren's other market-regulated generating assets in Illinois, by causing Ameren Illinois to distribute the common stock of AmerenEnergy Resources Generating to Ameren, followed by Ameren's contribution of that stock to Ameren Energy Resources, such that AmerenEnergy Resources Generating is now a direct subsidiary of Ameren Energy Resources.

²⁴ 18 C.F.R. § 385.216(b) (2011).

²⁵ As previously noted, CILCORP was merged into Ameren in preparation for the Reorganization Transaction.

Commission Determination

21. In the first step of the Reorganization Transaction, AmerenCILCO and AmerenIP were merged with and into AmerenCIPS to form Ameren Illinois and the assets, liabilities and equity balances were transferred between entities at their historical cost basis through Account 102. We find that Ameren Illinois' final accounting entries for this part of the transaction are consistent with the requirements of Electric Plant Instruction No. 5.²⁶

22. Additionally, Ameren Illinois recorded \$411 million of goodwill on its books and records, comprised of \$197 million of goodwill being transferred from Ameren related to Ameren's acquisition of CILCORP in January 2003, and \$214 million of goodwill being transferred from AmerenIP related to Ameren's acquisition of AmerenIP in 2004.²⁷ Ameren Illinois recorded the \$411 million of goodwill on its books and records by debiting Account 186, with an offsetting credit to increase equity recorded in Account 211. We find that Ameren Illinois' recording of goodwill in Account 186 and Account 211 is consistent with prior Chief Accountant guidance addressing the accounting for business combinations using the purchase method of accounting.²⁸

23. In the second step of the Reorganization Transaction, Ameren Illinois distributed the common stock of AmerenEnergy Resources Generating to Ameren, which subsequently contributed the AmerenEnergy Resources Generating stock to American Energy Resources. We find that Ameren Illinois transferred AmerenEnergy Resources Generating to Ameren based on its carrying value²⁹ in AmerenEnergy Resources Generating, which is consistent with the Commission's Uniform System of Accounts.

24. Therefore, we find that Ameren Illinois' accounting for the Reorganization Transaction is in compliance with the Commission's Uniform System of Accounts, and is approved for accounting purposes only.

²⁶ 18 C.F.R. pt. 101 (2011).

²⁷ See *supra* notes 5-6.

²⁸ See *Transwestern Pipeline Company*, Docket No. AC03-50-000, issued July 25, 2003 (unpublished Chief Accountant letter order); *Michigan Electric Transmission Company, LLC*, Docket No. AC03-9-000, issued February 5, 2004 (unpublished Chief Accountant letter order).

²⁹ "Carrying Value" is the value of a company's assets less its liabilities as reported on its balance sheet.

C. Recovery of Acquisition Premiums and AFUDC

25. Ameren states that Ameren Illinois did not include the \$411 million of goodwill in rate base or cost of service in its Attachment O formula rate. Rather, Ameren explains that the \$411 million of goodwill was included as part of Ameren Illinois' capital structure in its Attachment O formula rate. 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 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.

26. Ameren asserts that the Commission authorized the inclusion of goodwill in Ameren Illinois' rates in two separate orders. Ameren notes that Account 186 is not included in Attachment O of the MISO tariff; however, the goodwill recorded in Account 186 is recorded as a credit in Account 211 which then is included in Attachment O as a result of the Attachment O formula rate. Specifically, Ameren states that the original Attachment O FERC Form No. 1 (Form 1)³⁰ template approved in Opinion No. 453,³¹ as well as the Attachment O template currently on file, identifies the specific lines from page 112 of the Form 1 to be included in the development of the common stock balance for the capital structure contained in the Attachment O formula rate. Ameren states that the net result is that Account 211, which includes the goodwill amounts at issue, is included as a part of Ameren Illinois' common equity for rate purposes. Ameren notes that there is no line item or footnote in the Attachment O template which suggests that any adjustments to these numbers should be made (e.g., removal of goodwill). Thus, Ameren asserts that Ameren Illinois has followed proper accounting and recordation of goodwill in the Form 1 as well as the requirements of the Commission-approved rate on file (Attachment O).

27. According to Ameren, the second order granting approval of the recovery of goodwill in Ameren Illinois' rates is the order approving the acquisition of AmerenIP by Ameren in 2004.³² Ameren indicates that it included the following hold harmless commitment in that case, and it was approved by the Commission:

³⁰ FERC Form No. 1 is an annual report required of major electric utilities (and certain others) engaged in generation, transmission, distribution, or sale of electric energy. These reports are designed to collect financial and operational information from electric utilities, licensees and others subject to the jurisdiction of the Commission.

³¹ See *supra* note 15.

³² See *supra* note 6.

Ameren commits to hold transmission customers harmless from any increase in FERC jurisdictional transmission rates that result from costs related to the [acquisition of AmerenIP] (e.g., acquisition premium, transaction costs) for a period of five years to the extent that such costs exceed savings related to the [acquisition of AmerenIP].³³

28. Thus, Ameren argues that, by approving the hold harmless provision, the Commission specifically approved Ameren's proposal to hold customers harmless from goodwill, but only to the extent the cost of goodwill exceeds the benefits. Ameren states that it is noteworthy that the Commission did not require a showing that the benefits of goodwill exceed the costs before such costs could be included in rates. Moreover, Ameren argues that the hold harmless commitment made in that proceeding specifically mentioned that the acquisition premium will only be subject to the benefits test for five years from the date of the acquisition. Therefore, Ameren argues that, if the Commission wanted to preclude or condition recovery after the five-year period, Ameren would have expected it to say so in its order approving the acquisition, but the Commission did not. Ameren asserts that these facts, coupled with the use of Attachment O, which specifically requires the input of costs from the Form 1 that include goodwill, supports Ameren Illinois' inclusion of goodwill in the equity component of the Attachment O formula rates.

29. In addition, Ameren states that Ameren Illinois used the increase in equity included in Account 211 from the impact of goodwill in determining its AFDUC rate.

Commission Determination

i. Acquisition Premiums

30. The Commission has a long-standing policy related to the recovery of acquisition premiums, including goodwill, through rates.³⁴ 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

³³ Ameren Corporation, Supplemental Submission, Docket No. AC11-46-000, at 4 (filed Apr. 16, 2012).

³⁴ E.g., *Arkla Energy Res. Inc.*, 61 FERC ¶ 61,004, at 61,038 (1992); *Locust Ridge Gas Company*, 29 FERC ¶ 61,052, at 61,114 (1984); *United Gas Pipe Line Co.*, 25 FPC 26, 64 (1961), *rev'd on other grounds sub nom. Willmut Gas & Oil Co. v. FPC*, 299 F.2d 111 (D.C. Cir. 1962).

acquisition is prudent and provides measurable, demonstrable benefits to ratepayers.³⁵ Although goodwill and acquisition premiums have been allowed by the Commission for accounting purposes, this does not guarantee rate recovery.³⁶ Absent express authorization to recover acquisition premiums and goodwill, the Commission requires removal of the effects of acquisition premiums and goodwill from a utility's cost-of-service; ratepayers should not be affected by any amounts related to acquisition premiums, including the increase of equity amounts used to determine formula rate billing, through the inclusion of goodwill without a proper showing to the Commission.³⁷

31. In addition, the Commission has explained in its Merger Policy Statement that it historically has not permitted rate recovery of acquisition premiums.³⁸ To receive rate recovery of any amounts related to an acquisition premium, including goodwill, a public utility must request Commission authorization pursuant to section 205 of the FPA.³⁹

32. We note that Ameren Illinois did not include the goodwill included in Account 186 as part of rate base in determining its transmission service rates under Attachment O. However, it inappropriately included the goodwill increase in equity included in Account 211 in determining its common equity. As a result, we find that by increasing the equity used to determine its formula rate billing with amounts related to acquisition premiums without Commission authorization, Ameren Illinois inappropriately recovered a higher return on rate base.

³⁵ *E.g., Minnesota Power & Light Co.*, 43 FERC ¶ 61,104, at 61,342, *reh'g denied*, 43 FERC ¶ 61,502 (1988); *Duke Energy Moss Landing, LLC*, 83 FERC ¶ 61,318, at 62,304 (1998); *PSEG Power Connecticut*, 110 FERC ¶ 61,020, at P 32 (2005).

³⁶ *Commonwealth Edison Co.*, 91 FERC ¶ 61,036, at 61,138 (2000); *Entergy Services Inc.*, 65 FERC ¶ 61,332, at 62,537 (1993).

³⁷ *See ITC Holdings Corp*, 139 FERC ¶ 61,112, at PP 50-53 (2012) (*ITC Holdings*).

³⁸ *Inquiry Concerning the Commission's Merger Policy Under the Federal Power Act: Policy Statement*, Order No. 592, FERC Stats. & Regs. ¶ 31,044, at 30,126 (1996), *reconsideration denied*, Order No. 592-A, 79 FERC ¶ 61,321 (1997); *see also FPA Section 203 Supplemental Policy Statement*, FERC Stats. & Regs. ¶ 31,253 (2007).

³⁹ *Duke Energy Moss Landing*, 86 FERC ¶ 61,227, at 61,816 (1999) (citing *Mid-Louisiana Gas Company*, 7 FERC ¶ 61,316, at 61,682 (rate recovery of an existing facility is generally limited to the original cost of the facility), *reh'g denied*, 8 FERC ¶ 61,227 (1979), *aff'd sub nom. Transcontinental Gas Pipe line Corp. v. FERC*, 652 F.2d 179 (D.C. Cir 1981)).

33. Commission policy does not allow for goodwill in rates absent a showing of ratepayer benefits, yet Ameren Illinois automatically included the related increase in equity in Account 211 due to its recording goodwill for accounting purposes in its transmission formula rate without any adjustment to exclude the effects of goodwill. While the Commission's accounting rules properly provide for the recording of goodwill on a utility's books for financial statement purposes, the presence of goodwill on a utility's balance sheet does not require that it must or should be included for ratemaking purposes. Accounting does not dictate ratemaking.⁴⁰ Thus, we find that Ameren Illinois erred in its inclusion of goodwill as common equity in the formula rate.

34. Ameren nevertheless maintains that there are two Commission orders authorizing the inclusion of goodwill in Ameren Illinois' capital structure used in its formula rates. First, Ameren argues that both the original Attachment O formula rate, accepted in Opinion No. 453, and the current Attachment O formula rate identify specific lines on page 112 of Form 1 which are to be used in developing the common equity portion of the capital structure under the Attachment O formula rate. These specific lines capture goodwill automatically in the equity portion of the capital structure based on the Commission's accounting regulations and Form 1 reporting requirements. Ameren claims that, since the Commission approved the Attachment O formula rate, it also approved the passthrough of the goodwill amounts contained in Account 211. Finally, Ameren asserts that the Attachment O template does not indicate that an adjustment for goodwill should be made.

35. We disagree. Neither the Attachment O formula rate, as approved by the Commission in Opinion No. 453, nor the recent Ameren Illinois Attachment O that is on file with Commission expressly provides for recovery of goodwill costs; the Commission likewise never expressly authorized the automatic passthrough of goodwill in either case.⁴¹ This is consistent with our general policy of excluding goodwill cost from rates absent a section 205 filing and a showing of customer benefits. The fact that the Commission's accounting rules provide for the recording of goodwill as a part of common equity does not mean it is automatically included in rates. We reiterate that accounting does not dictate ratemaking.⁴² The Commission's accounting procedures aid

⁴⁰ *E.g., Entergy Services, Inc.*, 130 FERC ¶ 61,026, at P 89 (2010); *Southern Co. Services, Inc.*, 116 FERC ¶ 61,247, at P 23 (2006); *North Penn Gas Co.*, 13 FERC ¶ 61,084, at 61,174 (1980).

⁴¹ *E.g., United States v. Shabini*, 513 U.S. 10, 16 (1994); *Webster v. Fall*, 266 U.S. 507, 511 (1925); *Harper v. Va. Dep't of Taxation*, 509 U.S. 86, 118 (1993) (O'Connor, J., dissenting (*quoting Brecht v. Abrahamson*, 507 U.S. 619, 631 (1993))).

⁴² *See supra* note 40.

in the development of a cost-of-service to be used in ratemaking but do not inherently dictate the development of rates. Also, we emphasize, as noted above, that Commission policy excludes goodwill from rates absent Commission approval pursuant to section 205 of the FPA. Thus, Ameren Illinois should have removed goodwill from the formula rate.⁴³

36. Second, Ameren claims that the Commission approved goodwill recovery in its 2004 order approving the acquisition of AmerenIP by Ameren.⁴⁴ In that order, the Commission accepted the hold harmless commitment in which Ameren offered to protect transmission customers by holding them harmless from rate increases for five years by not passing any of its acquisition costs (e.g., acquisition premium, transaction costs) to them to the extent such costs exceed savings related to the acquisition of AmerenIP. Ameren argues that, by accepting the hold harmless commitment, the Commission approved Ameren's proposal to hold customers harmless from goodwill to the extent cost of goodwill exceeds the benefits. Ameren notes that the Commission did not specifically require a showing that the benefits of goodwill exceed the cost before being included in rates. Ameren points out that the hold harmless commitment specifies that the acquisition premium will be subject to benefits test only for five years, and after the five-year period, the Commission should have precluded or conditioned goodwill recovery in its order if that was the intent.

37. Again, we disagree. We note that, even if we accepted Ameren's argument that its hold harmless commitment in the 2004 AmerenIP acquisition allowed for the recovery of goodwill, that 2004 hold harmless commitment would not apply to Ameren's earlier, separate 2003 acquisition of CILCORP and the related \$197 million of goodwill. In the application for the 2003 CILCORP acquisition, Ameren stated simply that the proposed merger would not harm any ratepayers.⁴⁵ Further, the \$214 million related to Ameren's 2004 acquisition of AmerenIP was first reflected in AmerenIP's cost of capital in June 2005, significantly prior to the expiration of Ameren's five-year hold harmless commitment. Therefore, Ameren would still be in breach of that commitment.

⁴³ This order does not preclude Ameren Illinois from making a section 205 filing seeking, prospectively, rate recovery of the acquisition premiums relating to the CILCORP and AmerenIP acquisitions.

⁴⁴ *See supra* note 6.

⁴⁵ Ameren Services Company, Application, Docket No. EC02-96-000, Exhibit J, at 4 (filed Jul. 25, 2002).

38. However, regardless of whether we examine the 2003 CILCORP acquisition, 2004 AmerenIP acquisition, or 2010 Reorganization Transaction, the discussion of the transaction's effect on rates was part of our section 203 analysis in which Ameren had to demonstrate that the acquisition or reorganization would not have an adverse impact on rates, as required under the Commission's standard for evaluating these transactions under section 203 of the FPA. Our analysis of rate effects under section 203 differs from the analysis of whether rates are just and reasonable under 205 of the FPA. The hold harmless commitment by Ameren does not nullify the Commission's separate requirement that recovery of goodwill in rates requires specific authorization under section 205 of the FPA after demonstrating benefits to the ratepayers. The Commission's accounting and financial reporting regulations are neither the appropriate vehicle nor the proper forum to achieve a desired rate outcome or to recover acquisition premiums from transmission ratepayers.⁴⁶ For a five-year period, Ameren committed not to seek to include acquisition costs in its rates, except as to the extent the costs can be offset by savings. Ameren, not the Commission, bears the responsibility in any later rate increases to show that any acquisition premiums included in the cost of service are offset by acquisition-related savings. Ameren has never made a demonstration that its 2003 acquisition of CILCORP, 2004 acquisition of AmerenIP, or 2010 reorganization provides measurable, demonstrable benefits to ratepayers that would justify recovery of goodwill. Accordingly, contrary to Ameren's claim, the Commission would never and has never approved goodwill recovery merely by accepting Ameren's hold harmless commitment under our section 203 analysis.

39. Regarding the recovery of goodwill, we separately note that Illinois Municipal, Hoosier and Southern Illinois and Wabash mischaracterize Ameren Illinois' use of goodwill in rates as an accounting issue, and ask that we reject its accounting entries. As we discuss above, Ameren Illinois' accounting for goodwill complies with the Commission's accounting rules and is accepted, but for accounting purposes only. The accounting approval is not intended to influence the outcome of any rate treatment that may be established for this transaction. The issue raised here, by including goodwill in rates, is whether Ameren Illinois complied with the Commission's policy on the treatment of acquisition premiums and goodwill for ratemaking purposes. As the protesters correctly argue, however, Ameren Illinois did not seek Commission approval under section 205 of the FPA to include goodwill in rates. Accordingly, as discussed above, the Commission directs 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 its rates beginning in June 2005.

⁴⁶ See ITC Holdings at P 55.

40. Finally, while we address Ameren Illinois' treatment of goodwill related to Ameren's acquisition of CILCORP and AmerenIP and its effect on Attachment O rates, we recognize 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 directs 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.

ii. AFUDC

41. Regarding AFUDC, Ameren, as discussed above, did not request or receive Commission authorization for rate recovery of any amounts related to goodwill. Therefore, we find that Ameren Illinois should not have included the increase in equity related to goodwill in the determination of its AFUDC rate. Including increased equity balances in the determination of an AFUDC rate leads to a higher AFUDC rate than would otherwise result.⁴⁷ A higher AFUDC rate used to capitalize amounts of AFUDC would result in Ameren Illinois accruing too much AFUDC as a component of construction cost. Any excessive AFUDC would then be subsequently transferred to Ameren Illinois' utility plant accounts upon completion of the related projects resulting in an overstatement of Ameren Illinois' utility plant accounts. Consistent with the discussion above, Ameren Illinois may also 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.

42. Therefore, we direct Ameren Illinois to recompute its AFUDC rate for all periods the AFUDC rate calculation was inappropriately impacted by the inclusion of acquisition premiums in the capital structure and make appropriate adjustments to its utility plant accounts. In addition, Ameren Illinois is directed 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.

⁴⁷ AFUDC represents the financing cost of constructing assets to be used for utility service. AFUDC is composed of the cost of borrowed funds and an allowance on equity funds used in construction. Utilities are allowed to capitalize AFUDC as a part of the cost of constructing plant and equipment. After construction is completed, the resulting capitalized cost is included in the basis for depreciation and unrecovered investment for ratemaking purposes.

The Commission orders:

(A) Ameren's proposed accounting for the Reorganization Transaction is hereby approved for accounting purposes only, 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 (2011).

(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)

Nathaniel J. Davis, Sr.,
Deputy Secretary.