

147 FERC ¶ 61,225
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Ameren Corporation

Docket Nos. AC11-46-002
AC11-46-003

ORDER DENYING REQUESTS FOR REHEARING

(Issued June 19, 2014)

1. This order denies Ameren Corporation's (Ameren) requests for rehearing of our orders in these proceedings issued on July 19, 2012¹ and June 20, 2013.²

I. Corporate Transactions

A. CILCORP and Illinois Power Acquisitions

2. On November 21, 2002, in Docket No. EC02-96-000, the Commission authorized a transaction under section 203 of the Federal Power Act (FPA)³ in which Ameren acquired the outstanding common stock of CILCORP Inc. (CILCORP), the parent company of Central Illinois Light Company (subsequently known as AmerenCILCO) and another public utility. Among other things, the Commission found that the proposed transaction would have no adverse effect on rates, and thus would not harm ratepayers.⁴

¹ *Ameren Corp.*, 140 FERC ¶ 61,034 (2012) (July 2012 Order).

² *Ameren Corp.*, 143 FERC ¶ 61,240 (2013) (June 2013 Order).

³ 16 U.S.C. § 824b (2012).

⁴ *Ameren Services Co.*, 101 FERC ¶ 61,202 (2002). The transaction was consummated in January 2003.

3. On July 29, 2004, in Docket No. EC04-81-000, the Commission authorized Ameren to acquire from Illinova Corporation (Illinova) all of the outstanding common stock and approximately 73 percent of the preferred stock of Illinois Power Company (subsequently known as AmerenIP), as well as a 20 percent interest in Electric Energy, Inc. Relying on Applicants' hold harmless commitment, the Commission found that the acquisition would not adversely affect wholesale rates of any customer. The Commission also noted that Ameren committed to hold transmission customers harmless from any increase in the Commission-jurisdictional transmission rates that resulted from the acquisition of AmerenIP for a period of five years to the extent that such costs exceed savings related to the AmerenIP acquisition.⁵

B. Reorganization Transaction Order

4. On March 15, 2010, in Docket No. EC10-52-000, Ameren, together with and on behalf of its directly or indirectly owned subsidiaries, AmerenCILCO, AmerenIP, Central Illinois Public Service Company (AmerenCIPS), AmerenEnergy Resources Generating Company (AmerenEnergy Resources Generating), and Ameren Energy Resources Company, LLC (Ameren Energy Resources) filed an application under section 203 requesting Commission authorization for an internal corporate reorganization in which: (1) AmerenCILCO and AmerenIP would be merged with and into AmerenCIPS, which then changed its name to Ameren Illinois Company (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 (Reorganization Transaction). Ameren also noted that, in preparation for the Reorganization Transaction, AmerenCILCO's parent, CILCORP, had been merged into Ameren, thereby making AmerenCILCO a direct wholly-owned subsidiary of Ameren.

5. On June 17, 2010, the Commission authorized the Reorganization Transaction under section 203(a)(1) of the FPA,⁶ and ordered Ameren to submit final accounting entries and amounts related to the Reorganization Transaction along with "narrative explanations describing the entries, including a full explanation of purchase accounting journal entries."⁷

⁵ *Ameren Corp.*, 108 FERC ¶ 61,094, at PP 62, 68 (2004) (*AmerenIP Order*).

⁶ *Ameren Corp.*, 131 FERC ¶ 61,240 (2010) (Reorganization Transaction). The Reorganization Transaction was consummated on October 1, 2010.

⁷ *Id.* ordering para. (F).

6. Ameren filed the final accounting entries for the Reorganization on March 30, 2011, and, on June 2, 2011 and April 16, 2012, provided further explanations of the purchase accounting adjustments made in the Reorganization Transaction in response to inquiries from Commission Staff.⁸ Ameren's submissions showed that goodwill of \$411 million, 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 Illinois initially indicated that the entire amount of goodwill was recorded as an increase to Account 186, Miscellaneous Deferred Debits, and Account 211, Miscellaneous Paid in Capital.⁹ Ameren initially indicated that the \$411 million of goodwill was included as part of the equity component of Ameren Illinois' capital structure in its Attachment O of the Midwest Independent System Operator, Inc. (MISO)¹⁰ transmission formula rate.¹¹ In its April 16, 2012 submission, Ameren supported its inclusion of goodwill by arguing that *Midwest Independent Transmission System Operator, Inc.*, Opinion No. 453, approved the use of the Attachment O rate formula,¹² and that the *AmerenIP Order*¹³ authorized the inclusion of goodwill related to the 2004 AmerenIP acquisition in rates. Ameren also acknowledged that the increase in equity related to the goodwill impacted the computation of Ameren Illinois' Allowance for Funds Used During Construction (AFUDC).

⁸ Purchase accounting is also commonly referred to as acquisition accounting under generally accepted accounting principles in the United States. Purchase accounting is a formal accounting method for merger transactions which measures the assets and liabilities of the acquired entity at fair value and establishes goodwill for amounts paid in excess of fair value. *See* Accounting Standard Codification section 805.

⁹ Ameren Illinois later asserted in Exhibit No. DRL-1 (page 10 of 11) of its July 22, 2013 Refund Report (Second Refund Report), that the balance in goodwill did not result in a corresponding dollar-for-dollar change in equity as originally presented in Ameren Illinois' April 16, 2012 data request response.

¹⁰ Effective April 26, 2013, MISO changed its name from "Midwest Independent Transmission System Operator, Inc." to "Midcontinent Independent System Operator, Inc."

¹¹ Attachment O of the MISO open access transmission tariff contains the transmission formula rate template that was filed with and approved by the Commission.

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

¹³ *See supra* note 5.

C. July 2012 Order

7. On July 19, 2012, the Commission approved Ameren's final accounting entries regarding the Reorganization Transaction, described above. Specifically, the July 2012 Order found that Ameren's proposed journal entries were in compliance with the Commission's Uniform System of Accounts and were approved for accounting purposes only.

8. The Commission also responded to Ameren's arguments that Opinion No. 453 and the *AmerenIP Order* authorized the inclusion of goodwill in Ameren Illinois' capital structure used in its formula rates. Specifically, the Commission found that 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 provided for recovery of goodwill. Thus, the Commission stated that it never expressly authorized the automatic passthrough of goodwill in either case. The Commission added that this finding was consistent with its general policy of excluding goodwill from rates absent a section 205 filing and a showing of customer benefits. The Commission also clarified that the Commission's accounting rules, which provide for the recording of goodwill as a part of equity, did not mean it was automatically included in rates, and emphasized that accounting did not dictate ratemaking. The Commission explained that the Commission's accounting procedures aid in the development of a cost-of-service to be used in ratemaking, but do not inherently dictate the development of rates. Thus, the Commission stated that Ameren Illinois should have removed goodwill from the formula rate. The Commission noted, however, that Ameren Illinois was not precluded from making a section 205 filing seeking, prospectively, rate recovery of the acquisition premiums related to the CILCORP and AmerenIP acquisitions.¹⁴

9. The Commission noted that, by increasing the equity component of its capital structure used to determine the formula rate billings with amounts related to acquisition premiums without Commission authorization, Ameren Illinois inappropriately recovered a higher return on rate base. The Commission also found that Ameren Illinois may have incorrectly billed transmission ratepayers for excessive amounts of AFUDC accrued as a result of using the inappropriately increased equity amounts in determining AFUDC rates.¹⁵ Therefore, the Commission directed Ameren Illinois to, within 30 days: (1) adjust its formula rate billings and make refunds for acquisition premiums, and related over-accrual of AFUDC, inappropriately recovered from its customers, with interest on

¹⁴ July 2012 Order, 140 FERC ¶ 61,034 at PP 35-36 & n.43.

¹⁵ *Id.* P 41.

the adjustments calculated in accordance with 18 C.F.R. § 35.19a; and (2) file a refund report.¹⁶

D. Request for Rehearing of the July 2012 Order

10. On August 20, 2012, Ameren, on behalf of Ameren Illinois filed a timely request for rehearing of the July 2012 Order.¹⁷ Ameren argues that Ameren Illinois' actions were consistent with the requirements of section 205 of the FPA and the filed rate doctrine. Ameren asserts that, in implementing the filed rate doctrine, the courts and the Commission have made clear that public utilities are required to charge only those rates on file with the Commission and that public utilities are not allowed to deviate from those rates. Ameren claims that, under the filed rate doctrine, Ameren Illinois acted properly in reflecting goodwill associated with the CILCORP and AmerenIP acquisitions in the equity component of its capital structure and under the terms of the tariff. Ameren explains that Attachment O rate formula is the filed rate under the tariff, and the applicable Attachment O provisions required Ameren Illinois to reflect the amounts in Account 211 in determining its equity component. Ameren adds that Attachment O directs Ameren Illinois to use the information provided on page 112 of FERC Form 1 in developing common stock, which is the equity component of the rate of return, and that page 112 of FERC Form 1 requires the inclusion of the amounts in Account 211 in the determination of Total Proprietary Capital.¹⁸

11. Ameren argues that nothing in the tariff limits, modifies, or restricts Ameren Illinois' obligations to reflect goodwill amounts as it did, and there is nothing in Attachment O that bars the inclusion of goodwill in a public utility's equity component. Thus, Ameren claims it had no choice but to follow the tariff, and the Commission should grant rehearing of its finding directing Ameren Illinois to remove goodwill from the equity component of its capital structure and provide refunds dating back to 2005.¹⁹

¹⁶ *Id.* PP 40, 42, & ordering paras. (B)-(C).

¹⁷ On August 2, 2012, Ameren filed a motion for an extension of time to provide refunds and to file a refund report, which the Commission granted on August 16, 2012. *Ameren Corp.*, 140 FERC ¶ 61,213 (2012).

¹⁸ August 20, 2012 Request for Rehearing at 10-13.

¹⁹ *Id.* at 13.

12. In addition, Ameren states that Attachment O requires transmission owners, such as Ameren Illinois, that use FERC Form 1 data to reflect the amounts recorded in Account 211 in the equity component of their annual transmission revenue requirements (ATRR) calculation. Therefore, Ameren argues that if the Commission decides that page 4 of 5, lines 23-26 of Attachment O or Attachment O-AIC, are no longer just and reasonable or unduly discriminatory or preferential under the FPA, under the filed rate doctrine and the rule against retroactive ratemaking, the Commission can only order prospective changes to these tariff provisions. Moreover, the Commission can do so only after it implements an investigation into whether the relevant provisions of Attachment O are no longer just and reasonable or are unduly discriminatory or preferential.²⁰

13. Ameren also claims that Ameren Illinois followed the requirement set forth in Electric Plant Instruction 3(17)(b) in determining AFUDC in rates. Thus, Ameren also contends that Ameren Illinois determined its AFUDC rate in accordance with the Commission's accounting requirements and regulations.²¹

14. In addition, Ameren maintains that it has demonstrated that including Account 211 in its equity component was consistent with the tariff, as well as with Opinion No. 453, and also consistent with its hold harmless commitment in the Commission order approving the 2004 AmerenIP acquisition. However, according to Ameren, the Commission failed to provide a meaningful response to its arguments in the July 2012 Order. Ameren asserts that this failure to respond meaningfully to Ameren's arguments is contrary to reasoned decision making.²²

15. Ameren also contends that, in other Commission orders under section 203, the Commission has specifically required a merger applicant to submit a filing before seeking to reflect goodwill or acquisition premium costs in rates to show that they were satisfying their hold harmless commitment, but did not do so in its orders approving the AmerenIP acquisition or the Reorganization Transaction. Ameren further asserts that the Commission did not begin to impose the requirement to submit a compliance filing before recovering merger-related costs in its section 203 orders until 2010, six years after the AmerenIP acquisition was approved and several months after the Reorganization Transaction was approved.²³

²⁰ *Id.* at 16-17.

²¹ *Id.* at 13, 18.

²² *Id.* at 14-16.

²³ *Id.* at 15-16.

16. Ameren further claims that the Commission did not provide Ameren with an opportunity to show that the AmerenIP and CILCORP acquisitions provided sufficient benefits to justify reflecting goodwill in the equity component of the transmission formula rate. Ameren maintains that due process requires that an individual be given notice and an opportunity for a hearing before being deprived of a significant property interest, and thus the Commission's failure to allow Ameren to make these showings is inconsistent with due process and constitutes error.²⁴

17. Ameren asks that if the Commission denies rehearing, the Commission should exercise its equitable discretion and determine that refunds are only due prospectively, as of July 19, 2012. In this regard, Ameren claims that Ameren Illinois did not act in bad faith and only did what Attachment O obligated it to do.²⁵

1. Answers

18. On September 4, 2012, Illinois Municipal Electric Agency, Prairie Power Inc., Southern Illinois Power Cooperative, and Wabash Valley Power Association (jointly, Customers) filed a response opposing Ameren's request for equitable relief that was included in Ameren's August 20, 2012 request for rehearing. Customers assert that, while an answer to a request for rehearing is not permitted, Ameren's request to be relieved of its responsibility to provide refunds is, in effect, a motion for relief. Thus, Customers claim their answer is permitted under Rule 213(a)(3) of the Commission's Rules of Practice and Procedure.²⁶ Alternatively, Customers ask that, to the extent that the Commission believes that Ameren's pleading should be treated as a request for rehearing, the Commission waive its rules that prohibit the filing of an answer to a request for rehearing.

19. On September 19, 2012, Ameren filed an answer to Customers' response. Ameren argues that, while claiming to respond to Ameren's request for equitable relief, Customers' response is an attack on Ameren's request for rehearing. Ameren also asserts that Customers have not justified waiver of the general prohibition against answers to rehearing requests under Rule 213(a)(2),²⁷ and that, rather than providing information that clarifies the record or is useful to the Commission, Customers confuse the record

²⁴ *Id.* at 19-21.

²⁵ *Id.* at 22-23.

²⁶ 18 C.F.R. § 385.213(a)(3) (2013).

²⁷ 18 C.F.R. § 385.213(a)(2) (2013).

with misstatements. Thus, Ameren asks that the Commission reject Customers' response as improper.

20. On September 28, 2012, Customers filed an answer to Ameren's motion for leave to file an answer. Customers ask the Commission to reject Ameren's answer since it is prohibited under Rule 213(a)(2). Alternatively, Customers ask that if the Commission accepts Ameren's answer, it should also accept Customers' answer in order to provide a complete record.

E. Discussion

1. Procedural Issues

21. Rule 713(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.713(d) (2013) prohibits an answer to a request for rehearing. We do not agree with Customers that Ameren's request for rehearing is in the nature of a motion. Accordingly, we will reject Customers' answers as impermissible answers to requests for rehearing, and we correspondingly reject Ameren's answer.

2. Ameren's Request for Rehearing of the July 2012 Order

22. Contrary to Ameren's arguments, as discussed below, we deny Ameren's request for rehearing of the July 2012 Order.

i. Whether Ameren Illinois' Actions Were Consistent with the Filed Rate Doctrine

23. Ameren argues that Ameren Illinois' actions were consistent with the requirements of section 205 of the FPA and the filed rate doctrine. Ameren claims that, since the Attachment O rate formula is the filed rate, Ameren Illinois acted properly in reflecting goodwill associated with the CILCORP and AmerenIP acquisitions in the equity component of its capital structure.

Commission Determination

24. We disagree. Ameren incorrectly states that it merely charged a rate filed with the Commission, consistent with the filed rate doctrine. While the filed rate doctrine requires that a public utility charge the rate on file with the Commission,²⁸ a transmission owner

²⁸ *E.g., Corporation Comm. of the State of Oklahoma v. American Electric Power Co.*, 130 FERC ¶ 61,120, at P 29 n.43 (2010) (quoting *City of Girard, Kansas v. FERC*, 790 F.2d 919 (D.C. Cir. 1986)).

with a formula rate on file must correctly implement that filed formula rate.²⁹ Thus, the issue here is whether Ameren Illinois' cost recovery is authorized under its filed formula rate. In this case, Ameren Illinois provided incorrect inputs to its formula rate by improperly including goodwill and improperly deriving an incorrect charge for transmission service that was not authorized.

25. Moreover, as we explained in the July 2012 Order, the Commission has a long-standing policy related to the recovery of acquisition premiums, including goodwill, through rates.³⁰ 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.³¹ 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. We stated that 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.³² Here, by increasing the equity used to determine its formula rate billing

²⁹ *E.g.*, *Midwest Independent Transmission System Operator, Inc.*, 143 FERC ¶ 61,149, at PP 18, 84 (2013), *reh'g denied*, 146 FERC ¶ 61,209 (2014) (utility must correctly implement its filed formula rate and its formula rate inputs); *accord PJM Interconnection, L.L.C.*, 110 FERC ¶ 61,053, at P 120 & n.105 (2005) (explaining that although the Commission's acceptance of a formula rate authorizes a utility to use the formula rate on an ongoing basis, the costs used in applying the formula rate are not part of the rate and are subject to challenge and review).

³⁰ July 2012 Order, 140 FERC ¶ 61,034 at P 30 (citing *Arkla Energy Res. Inc.*, 61 FERC ¶ 61,004, at 61,038 (1992); *Locust Ridge Gas Co.*, 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)).

³¹ *Id.*, citing *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); *Id.* P 31 & nn. 38-39.

³² *Id.*, citing *ITC Holdings Corp*, 139 FERC ¶ 61,112, at PP 50-53 (2012) (*ITC Holdings*).

with amounts related to acquisition premiums without Commission authorization, Ameren Illinois inappropriately implemented the formula rate and inappropriately recovered a higher return on rate base.³³ Thus, we continue to find that Ameren Illinois erred in its inclusion of goodwill as equity in the formula rate.³⁴

ii. Whether the Commission can Order Only Prospective Changes

26. Ameren argues that the Commission can only order prospective changes to the Attachment O tariff provisions, and only after an investigation into whether the relevant provisions of Attachment O are no longer just and reasonable or are unduly discriminatory or preferential. Ameren maintains that the rule against retroactive ratemaking prohibits the Commission from imposing or approving tariff changes that become effective retroactively or requiring retroactive refunds.

Commission Determination

27. We disagree that the Commission's directive in the July 2012 Order amounts to retroactive ratemaking. The Commission has repeatedly held that it may order refunds for past periods where a utility has either misapplied a formula rate or otherwise charged rates contrary to the filed rate.³⁵ The Commission has explained that, "in approving any formula rate, the Commission approves the formula itself, the algebraic equation used to calculate the rates. It does not approve the inputs into the formula or the charges resulting from the application of the inputs to the algebraic equation."³⁶ Moreover, "[t]he Commission's long-standing precedent is that, under formula rates, parties have the right to challenge the inputs to or the implementation of the formula at whatever time they discover errors in the inputs to or implementation of the formula."³⁷ The reason for

³³ *Id.* P 32.

³⁴ *Id.* P 33.

³⁵ *See American Electric Power Service Corp.*, 124 FERC ¶ 61,306, at P 35 & n.50 (2008); *see also DTE Energy Trading, Inc. v. Midwest Indep. Transmission Sys. Operator, Inc.*, 111 FERC ¶ 61,062, at P 28 (2005); *Appalachian Power Co.*, 23 FERC ¶ 61,032, at 61,088 (1983).

³⁶ *American Electric Power Service Corp.*, 124 FERC ¶ 61,306 at P 34.

³⁷ *Id.* P 35.

permitting such challenges and related refunds is because “customers may not uncover errors in data or imprudent or otherwise inappropriate costs until well after the challenge period.”³⁸

28. Moreover, the Commission’s general policy is to order full refunds to remedy overcharges.³⁹ In the July 2012 Order, we provided a full explanation for our decision to order refunds since Ameren Illinois’ inclusion of goodwill in its formula rate resulted in overcharges to its customers in violation of the Commission’s regulations, policies and precedent. And, we note, “the breadth of agency discretion is, if anything, at zenith when the action assailed relates primarily . . . to the fashioning of policies, remedies, and sanctions”⁴⁰ In the July 2012 Order, we found that by using accounting practices to dictate ratemaking, Ameren charged a rate for transmission service that was not authorized. Accordingly, we appropriately ordered refunds. Ameren’s assertions to the contrary that the Commission can only provide prospective relief after hearing are, as just noted, baseless.

iii. Whether the Commission Responded Meaningfully to Ameren’s Arguments

29. Ameren also argues that under established precedent the Commission must provide a meaningful response to its arguments. Ameren claims it demonstrated that including Account 211 in its equity component was consistent with the tariff and Opinion No. 453. Ameren also maintains that this inclusion was consistent with its hold harmless

³⁸ *Id.* P 35 & n.51 (citing *Yankee Atomic Electric Co.*, 60 FERC ¶ 61,316, at 62,096-62,097 (1992) (allowing review of potentially imprudent costs charged to customers in the prior-year formula rates)).

³⁹ *E.g.*, *Consolidated Edison Co. of New York v. FERC*, 347 F.3d 964, 972 (D.C. Cir. 2003); *Towns of Concord, Norwood, & Wellesley, Mass. v. FERC*, 955 F.3d 67, 76 (D.C. Cir. 1992) (*Towns of Concord*); accord *Louisiana Public Service Commission v. FERC*, 174 F.3d 218, 223, 224 (D.C. Cir. 1999) (“Commission’s self-described general policy is to provide full refunds to remedy overcharges”); *Corporation Comm. of the State of Oklahoma v. American Electric Power Co.*, 125 FERC ¶ 61,237, at P 33 (2008) (“Commission’s general policy is to order refunds for overcharges”), *reh’g denied*, *Corporation Comm. of the State of Oklahoma v. American Electric Power Co.*, 130 FERC ¶ 61,237 at P 32; *Entergy Services, Inc.*, 82 FERC ¶ 61,098, at 61,369 (1998) (“the Commission’s general policy is to order refunds to remedy overcharges”), *aff’d*, 174 F.3d 218 (D.C. Cir. 1999).

⁴⁰ *Niagara Mohawk Power Corp. v. FPC*, 379 F.2d 153, 159 (D.C. Cir. 1967).

commitment in Docket No. EC04-81-000, which the Commission accepted in the *AmerenIP Order*. Ameren concludes, therefore, that the Commission failed to respond meaningfully to its arguments or examine the relevant factors, contrary to reasoned decision making.

Commission Determination

30. Ameren is incorrect. The Commission fully responded to Ameren's arguments in the July 2012 Order. In the July 2012 Order, the Commission found that, consistent with its general policy of excluding goodwill cost from rates absent a section 205 filing and a showing of customer benefits, 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 provided for recovery of goodwill costs. Moreover, the Commission stated that it has never expressly authorized the automatic passthrough of goodwill in either case. We emphasized that, although the Commission's accounting rules provide for the recording of goodwill as a part of equity, such accounting does not mean goodwill is automatically included in rates since accounting does not dictate ratemaking. The Commission explained that, while its accounting rules assist the development of a cost-of-service to be used in ratemaking, they do not dictate the development of rates. Thus, the Commission found that Ameren Illinois should have removed goodwill from the formula rate.⁴¹

31. In addition, Ameren claims that the Commission approved goodwill recovery in the *AmerenIP Order*. Ameren argues that, by accepting the hold harmless commitment, the Commission approved Ameren's proposal to hold customers harmless from goodwill to the extent the 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.

32. Ameren is again incorrect. The Commission emphasized in the July 2012 Order that it did not approve goodwill recovery merely by accepting Ameren's hold harmless commitment under its section 203 analysis. The Commission explained why Ameren's arguments were not reasonable, and Ameren has failed to persuade us that we erred. Specifically, the Commission stated that, in the *AmerenIP Order*, it accepted Ameren's commitment to hold AmerenIP's transmission customers 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. However, the Commission noted that the \$214 million related to Ameren's acquisition of AmerenIP was first reflected in its cost of capital in June

⁴¹ July 2012 Order, 140 FERC ¶ 61,034 at P 35 & n.43.

2005, significantly prior to the expiration of Ameren's five-year hold harmless commitment. In addition, the Commission noted that, even if it accepted Ameren's argument that the hold harmless commitment in the 2004 AmerenIP acquisition allowed for the recovery of goodwill, that hold harmless commitment would not apply to Ameren's earlier acquisition of CILCORP and the related \$197 million of goodwill.⁴²

33. Moreover, in the July 2012 Order, the Commission stated that, regardless of whether it examined the CILCORP acquisition, AmerenIP acquisition, or Reorganization Transaction, the discussion of the transaction's effect on rates was part of a section 203 analysis in which Ameren had to demonstrate that the acquisition or reorganization would not have an adverse impact on rates. In that regard, the Commission emphasized that its analysis of rate effects of the transaction for purposes of section 203 differed from the analysis of whether rates are just and reasonable under 205 of the FPA.⁴³ The Commission stated, correctly, that the hold harmless commitment by Ameren did 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 stated that its accounting and financial reporting regulations were neither the appropriate vehicle nor the proper forum to achieve a desired rate outcome or to recover acquisition premiums from transmission ratepayers.⁴⁴ Thus, the Commission properly concluded that Ameren never made a demonstration that its 2003 acquisition of CILCORP, 2004 acquisition of AmerenIP, or the Reorganization Transaction provided measurable, demonstrable benefits to ratepayers that would justify recovery of goodwill. The Commission emphasized, again correctly, that the Commission would never and has never approved goodwill recovery merely by accepting a utility's-- here Ameren's -- hold harmless commitment under its section 203 analysis.⁴⁵

⁴² *Id.* PP 36, 37 & n.45.

⁴³ A section 203 filing and analysis is not the same as the filing and analysis under section 205. Specifically, section 203(a) of the FPA provides that the Commission must approve a proposed merger if it finds that the merger "will be consistent with the public interest." The Commission generally takes account of three factors in analyzing proposed mergers: (a) the effect on competition; (b) the effect on rates; and (c) the effect on regulation. Section 205 requires that the Commission look to whether rates are just and reasonable.

⁴⁴ July 2012 Order, 140 FERC ¶ 61,034 at P 38 & n.46.

⁴⁵ *Id.* P 38.

34. Ameren also argues that nothing in the prior orders approving the AmerenIP acquisition or the Reorganization Transaction in this case required a showing that the benefits of the merger exceed its costs before Ameren Illinois would be allowed to include goodwill in rates. Ameren further asserts that the Commission did not begin to impose the requirement to submit a compliance filing before recovering merger-related costs in orders until 2010.

35. Ameren is incorrect. Ameren should have been well aware of Commission policy well before the CILCORP acquisition in 2003. And that policy provides, as the Commission explained in the July 2012 Order, per its Merger Policy Statement issued in 1996, as well as per precedent, no rate recovery of acquisition premiums; a separate authorization -- which Ameren has not been granted so far -- is required.⁴⁶ Neither Opinion No. 453 nor Attachment O likewise provides for the automatic recovery of goodwill costs or the automatic passthrough of goodwill, consistent with the Commission's policy that goodwill costs should be excluded from rates absent a section 205 filing.⁴⁷

iv. Whether the Commission Violated Due Process

36. Ameren also claims that the Commission did not provide Ameren with an opportunity to show that the CILCORP and AmerenIP acquisitions provided sufficient benefits to justify reflecting goodwill in the equity component of the transmission formula rate. Ameren maintains that due process requires that an individual be given notice and an opportunity for a hearing before being deprived of a significant property interest, and thus the Commission's failure to allow Ameren to make these showings is inconsistent with due process.

⁴⁶ *Id.* P 31 (citing, e.g., *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)).

⁴⁷ *Id.* P 35; *accord id.* P 31 (citing *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)).

Commission Determination

37. Ameren is incorrect. As the Commission stated in the July 2012 Order, to receive rate recovery of any amounts related to the acquisition premium, including goodwill, a public utility must request Commission authorization under section 205 of the FPA.⁴⁸ Ameren Illinois has made no such filing. The Commission added that Commission policy does not allow for goodwill in rates absent a showing of ratepayer benefits, nevertheless Ameren Illinois automatically included the related increase in equity in Account 211 when it recorded goodwill for accounting purposes in its transmission formula rate without any adjustment to exclude the effects of goodwill. The Commission noted that, while its 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 be included for ratemaking purposes. The Commission stressed, as it long has, that accounting does not dictate ratemaking.⁴⁹ Ameren Illinois is not precluded from making a section 205 filing seeking rate recovery, prospectively, of acquisition premiums relating to the CILCORP and AmerenIP acquisitions.⁵⁰ In any such section 205 filing, Ameren would have the opportunity to show that there were, in fact, demonstrable ratepayer benefits associated with those two transactions that offset any rate impacts of including goodwill in the equity component of rates; no such filing has been made so far, however.

v. Whether Ameren Illinois Properly Calculated AFUDC

38. Ameren claims that Ameren Illinois followed the requirement set forth in Electric Plant instruction 3(17)(b) in determining AFUDC in rates. Thus, it argues that Ameren Illinois determined its AFUDC rate in accordance with the Commission's accounting requirements and regulations.

Commission Determination

39. Ameren is incorrect. As stated in the July 2012 Order, Ameren did not request or receive Commission authorization for rate recovery of any amounts related to goodwill. Thus, Ameren Illinois' actions in determining AFUDC in rates were inconsistent with the

⁴⁸ *Id.*

⁴⁹ *Id.* P 33 (citing *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)).

⁵⁰ *Id.* P 35 & n.43.

Commission's regulations, policies, and precedent, as we discuss above. In the July 2012 Order, the Commission correctly found that Ameren Illinois should not have included the increase in equity related to goodwill in the determination of its AFUDC rate. The Commission added that including increased equity balances in the determination of an AFUDC rate leads to a higher AFUDC rate than would otherwise result. 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. Consequently, 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. Recomputation of AFUDC with adjustments to its accounts and billings, as appropriate, are thus warranted.⁵¹

vi. Whether the Commission Should Grant Equitable Relief

40. Finally, Ameren asks that, if the Commission denies rehearing, the Commission should exercise its equitable discretion and determine that refunds are only due prospectively, as of July 19, 2012. In this regard, Ameren claims that Ameren Illinois did not act in bad faith and only did what Attachment O obliged it to do.

Commission Determination

41. Addressing Ameren's claim that it did not act in bad faith, we find that, even if true, this does not provide proper grounds for invoking equitable relief. The fact that Ameren Illinois' actions were not undertaken in bad faith does not militate against applying the Commission's general refund policy here. Indeed, the Commission presumes, absent contrary evidence, that all regulated entities are acting in good faith.⁵² Thus, the Commission properly orders refunds where, as here, a public utility has charged rates in excess of the filed rate even in the absence of finding bad faith. The only issue is whether Ameren has demonstrated any reason for the Commission to deviate from its

⁵¹ *Id.* PP 41-42.

⁵² *Louisiana Public Service Commission, et al. v. Entergy Corp.*, 132 FERC ¶ 61,133, at P 32 (2010), *rev'd on other grounds*; *New England Power Co.*, 31 FERC ¶ 61,047, at 61,082 ("good faith is presumed on the part of the utility absent a showing of inefficiency or improvidence," citing *West Ohio Gas Co. v. Public Utilities Commission of Ohio*, 294 U.S. 63, 72 (1935)), *reh'g denied*, 32 FERC ¶ 61,113 (1985), *aff'd*, 800 F.2d 280 (1st Cir. 1986).

policy of granting full refunds.⁵³ We find that Ameren has not provided any reason why we should depart from our policy.

II. Ameren's First Refund Report

42. On November 15, 2012, Ameren, on behalf of Ameren Illinois, submitted a refund report (First Refund Report).⁵⁴ Ameren explained that the required adjustments directed by the Commission resulted, in fact, in \$19,693,343, plus interest, owed to Ameren. Ameren requested that the Commission accept the refund report, and either terminate this proceeding with no refunds due, or provide the requested Commission guidance on how to collect the amounts owed to Ameren. Ameren adds that the required adjustments result in an amount of \$19,693,343, plus interest, over the relevant period that Ameren Illinois has not billed or collected from customers, which Ameren Illinois asserts it is entitled to and will seek to collect if the Commission does not terminate these proceedings without any obligation to make refunds. Ameren also repeats the arguments it made in its request for rehearing of the July 2012 Order.⁵⁵

43. Specifically, Ameren stated that it identified purchase accounting transactions for AmerenIP since September 2004 and for AmerenCILCO since October 2010, and then reversed these acquisition premium transactions for each year going back to 2004, putting Ameren Illinois back to the historical cost of all of its assets and liabilities. Ameren added that some of the acquisition premium adjustments removed assets and liabilities that would have been amortized had AmerenIP Power not been acquired by Ameren.⁵⁶

44. Ameren explained 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 added that, in accordance with a recapitalization plan that was approved by the Illinois Commerce Commission, AmerenIP repurchased three series of notes within the first three months of being acquired by Ameren, the largest of which, a \$550,000,000 series of 11.5 percent notes,

⁵³ See *supra* note 39.

⁵⁴ On July 22, 2013, Ameren filed a Second Refund Report as directed by the Commission in the June 2013 Order. In an order issued contemporaneously with the instant order, we are setting the Second Refund Report filing for hearing and settlement judge procedures. *Ameren Corporation*, 147 FERC ¶ 61,224 (2014).

⁵⁵ Ameren's First Refund Report at 1-4.

⁵⁶ *Id.* at 5-6.

were scheduled to mature in 2010. Ameren explained 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 argued that the cost of this repurchase was not previously included in the calculation of Ameren Illinois' and its predecessors' ATRR. Ameren asserted that the July 2012 Order's direction to remove acquisition premiums related to this loss on repurchased debt results in that cost being included in the ATRR calculation under Attachment O. Ameren also stated that, consistent with the July 2012 Order, Ameren Illinois recalculated its AFUDC rate for the relevant periods.⁵⁷

45. Ameren concluded that removing all of the acquisition premiums resulted 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 stated 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 stated that Ameren Illinois applied the percentage increases for each period shown in Exhibit I (included in its November 15, 2012 filing) to its historical billings for each period to derive an amount not previously recovered and, thus, owed to Ameren Illinois of \$19,693,343, plus interest of \$3,054,030. Ameren asked 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.⁵⁸

46. Ameren also argues that Section 7.1 of the MISO tariff contains the billing provisions for transmission customers, but does not impose a time limit on billing or refunding customers to correct billing errors. Ameren asserts that Commission precedent holds that, when the relevant tariff does not contain a limit on the time to correct billing errors, retroactively billing customers to correct a billing error is permissible and consistent with the filed rate doctrine. Ameren states that, if the Commission continues to believe that Ameren Illinois and its predecessors erred in drawing inputs to Attachment O calculations from FERC Form 1 without adjustments to remove goodwill and other

⁵⁷ *Id.* at 5-7.

⁵⁸ *Id.* at 6-7.

acquisition premiums, it is appropriate for Ameren Illinois to make all of the required adjustments and surcharge customers for the resulting increase in ATRR, a total amount of \$19,693,343, plus interest, to correct the error.⁵⁹

47. Finally, Ameren Illinois asks that the Commission review the totality of the evidence in the record of this proceeding, including not only the instant filing, which shows a surcharge to customers, but also Ameren's rehearing request that demonstrates that the benefits associated with the CILCORP and AmerenIP acquisitions are such that Ameren Illinois should be allowed to include goodwill in rates, and terminate this proceeding expeditiously without refunds or surcharges. Ameren Illinois asks that, in the event that the Commission chooses not to terminate this proceeding, the Commission should provide guidance on how to collect the amounts due from customers as a result of the adjustments the Commission directed.⁶⁰

A. Protest and Answers

48. Customers filed a joint protest. Customers argue that the July 2012 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."⁶¹ 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

⁵⁹ *Id.* at 7-8.

⁶⁰ *Id.* at 8-9.

⁶¹ Customers' December 21, 2012 Protest at 7 & n.24.

did not have any acquisition premium adjustments recorded in Account 114 during that period.⁶² Customers also contend that Ameren Illinois' refund report inappropriately includes extraneous matters and lacks adequate support.⁶³

49. Ameren, on behalf of Ameren Illinois, filed a motion for leave to answer and an answer to Customers' protest. Customers filed in opposition to Ameren's answer.

B. June 2013 Order

50. On procedural matters, citing Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2012), the Commission rejected Ameren's answer to Customers' protest and found that Customers' opposition to Ameren's answer was thus moot. On substantive matters, in the June 2013 Order, the Commission agreed with Customers that the First Refund Report inappropriately included extraneous matters, and lacked adequate support. Therefore, the Commission rejected the First Refund Report, finding that: (1) the accounting adjustments outlined in the refund report improperly went beyond the scope of the Commission's July 2012 Order; and (2) the refund report did not contain sufficient detail for the Commission to follow the actions listed in the refund report. In addition, the Commission provided additional guidance on the scope of the items to be included in the new refund report that Ameren Illinois was directed to file.⁶⁴

51. First, the Commission found that the adjustments proposed by Ameren Illinois in the First Refund Report improperly exceeded the scope of the July 2012 Order. The Commission explained that, as an example, Ameren Illinois indicated in its refund report that it repurchased three series of high coupon notes, and to repurchase this higher-cost debt AmerenIP paid a redemption premium of approximately \$100 million. The Commission noted that Ameren stated that, due to the long-term debt adjustment

⁶² The Commission has previously clarified that, for the purchase method of accounting under the Uniform System of Accounts, 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.*, 121 FERC ¶ 61,069, at P 64 (2007).

⁶³ Customers' Protest at 8-10.

⁶⁴ June 2013 Order, 143 FERC ¶ 61,240 at P 16.

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. Furthermore, Ameren asserted that the Commission-ordered removal of the acquisition premium, which was created in purchase accounting for the fair value of debt, now warranted the amortization of the loss on required debt to interest expense over the life of the old maturity. Accordingly, Ameren Illinois proposed in the refund calculation to create a new asset and then amortize that new asset, i.e., 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 resulted in increased billings to customers.⁶⁵

52. In response to Ameren, the Commission stated that, in the July 2012 Order, it only directed Ameren Illinois to remove the acquisition premiums associated with the 2003 CILCORP and 2004 AmerenIP transactions from its transmission formula rates. The Commission emphasized that it did not direct Ameren Illinois to create theoretical accounting entries that established new assets and then to amortize these assets for rate purposes. Accordingly, the Commission found that Ameren Illinois' inclusion of the debt redemption premium in the refund report improperly went beyond the scope of the July 2012 Order.⁶⁶ In the June 2013 Order, the Commission also reiterated that Ameren Illinois could pursue the recovery of merger-related costs or other costs not previously included in rates only through a section 205 filing, and not through a refund filing.⁶⁷

53. Second, the Commission stated that, with the exception of the discussion on the debt redemption premium, the First Refund Report included only a summary spreadsheet with some explanatory notes to support Ameren Illinois' refund calculation. In the June 2013 Order, the Commission stated that, given the information before it, the Commission could not ensure the refund report's accuracy because Ameren Illinois did 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, the Commission stated that, for those acquisition premiums that were

⁶⁵ *Id.* P 17.

⁶⁶ *Id.* P 18.

⁶⁷ *Id.*

reversed, it was 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 did not provide sufficient detail on those adjustments.⁶⁸

54. Therefore, the Commission rejected the First Refund Report and directed Ameren Illinois to submit a new refund report, with the corrections the Commission described and with additional detail. Specifically, as required by the July 2012 Order, the Commission stated that 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, the Commission stated that Ameren Illinois should separately identify each acquisition premium adjustment being removed from its transmission formula rates, by account, along with related dollar amounts. Finally, the Commission stated that 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.⁶⁹

C. Ameren's Request for Rehearing of the June 2013 Order

55. On July 22, 2013, Ameren filed a request for rehearing of the Commission's June 2013 Order in the above-captioned proceeding. Ameren asks that the Commission reconsider its rejection of the First Refund Report. On rehearing, Ameren argues that its First Refund Report complies with the Commission's July 2012 Order, is fully supported, and should have been approved. Ameren believes the Commission erred in: (1) rejecting the adjustments contained in the First Refund Report as beyond the scope of the July 2012 Order; (2) rejecting the adjustments related to the debt redemption premium; (3) finding that certain adjustment were not supported; (4) stating that Ameren is improperly seeking recovery through its First Refund Report rather than a section 205 filing; and (5) failed to respond to Ameren's request for guidance.

⁶⁸ *Id.* P 19.

⁶⁹ *Id.* P 21.

III. Discussion

A. Request for Rehearing of June 2013 Order

56. Contrary to Ameren's arguments, as discussed below, the Commission properly rejected the First Refund Report, and so we will deny rehearing of the June 2013 Order.

1. Did the Commission Err in Rejecting the Adjustments Contained in the First Refund Report as Beyond the Scope of the July 2012 Order

57. Ameren contends that the Commission's rejection of the First Refund Report, along with the failure to provide an adequate or meaningful basis for its determinations, shows the Commission's findings are arbitrary, capricious, and fail the test of reasoned decision making. Ameren argues that it precisely followed the Commission's July 2012 Order and therefore did not go beyond its scope. It claims that its First Refund Report complied with the Commission direction to adjust its formula rate billings for any other acquisition premiums, besides the identified goodwill, that affected Ameren Illinois and Illinois Power's Attachment O rates. Also it argues that the Commission's rejection of its refund report failed to adequately explain why the refund report was beyond the scope. It claims that the Commission's rejection of its adjustments as "theoretical" or "new assets" is an overly narrow reading of the July 2012 Order. It contends that the overarching goal of the July 2012 Order was to revise Ameren's formula rate billings to remove the effects of purchase accounting related to the two referenced acquisitions.

Commission Determination

58. As explained in the June 2013 Order, the Commission only directed Ameren Illinois to remove acquisition premiums associated with the 2003 and 2004 CILCORP and Illinois Power acquisitions from Ameren's transmission rates. The Commission did not, for example, direct Ameren Illinois to unwind all of its purchase accounting adjustments as if the mergers had never taken place. The Commission did not direct Ameren Illinois to increase its equity and as a result increase its charges to customers through a refund filing for the fact that it paid Dynegy (the parent of Illinova) an amount less than Illinois Power's equity.⁷⁰ Finally, the Commission did not direct Ameren Illinois to re-account for assets that it eliminated through purchase accounting

⁷⁰ In a merger using purchase accounting, the equity balances of an acquired entity is reset to its purchase price. If the purchase price is less than the net book value of assets in the acquired entity, equity balances will be reduced.

adjustments because they had no continuing value and include them in its rates as if those assets had value.

59. In its First Refund Report, Ameren Illinois asserts that removing the acquisition premiums, as required in the July 2012 Order, allows them to increase equity and therefore increase charges to customers related to amounts paid to Dynegy in acquiring AmerenIP in its refund calculation. Ameren states that its payment to Dynegy for AmerenIP was less than AmerenIP's equity, resulting in a reduction to AmerenIP equity in purchase accounting. In other words, Ameren's payments to Dynegy were less than the amount of equity on AmerenIP's books at the time of the acquisition so equity amounts needed to be reduced in purchase accounting as they no longer had value. Perversely, Ameren Illinois asserts that, in removing acquisition premiums from its rates, it now needs to treat these non-existent equity amounts as if they exist for rate making purposes.

60. What the Commission directed Ameren Illinois to do in the July 2012 Order was to remove the effects of acquisition premium (i.e., goodwill) amounts impermissibly reflected in its rates. The Commission did not direct Ameren Illinois to include equity amounts in its rates which do not currently exist and, by extension, pass higher amounts along to customers as a result of their inclusion in the computation of its rates.

61. In addition, the Commission did not authorize Ameren Illinois to re-account, for rate purposes for assets that it eliminated through purchase accounting adjustments at the time of the mergers because they had no value, and instead now allow their inclusion in rates. These adjustments are not acquisition premiums and in no way did the July 2012 Order sanction their inclusion in rates. As the Commission explained in the June 2013 Order, Ameren Illinois is not allowed to create theoretical accounting entries for rate purposes that establish new assets and then amortize these assets for rate purposes in order to recover costs that it believes should and would have been recovered through its formula rate had it not used purchase accounting.⁷¹

62. The First Refund Report goes beyond what the Commission directed in its July 2012 Order and the Commission in clear terms pointed this out to Ameren Illinois in its June 2013 Order. What the Commission directed Ameren Illinois to do in the July 2012 Order was simply to remove the effects of acquisition premium (i.e., goodwill) amounts impermissibly reflected in its rates. As the Commission has previously stated, Ameren Illinois is free to seek prospective rate recovery of merger-related costs or other costs not previously included in rates only through a new section 205 filing, and not through a refund filing. Accordingly, Ameren's rehearing request on this issue is denied.

⁷¹ June 2013 Order, 143 FERC ¶ 61,240 at P 18.

2. Did the Commission Err in Rejecting the Adjustments Related to the Debt Redemption Premium

63. Ameren contends that the Commission rejected the adjustments related to the debt redemption premium based on a determination that the debt redemption premium is not associated with the AmerenIP acquisition. It goes on to argue that, because the Commission did not provide any basis for this determination, the Commission's decision is arbitrary, capricious, and contrary to reasoned decision making.

Commission Determination

64. Ameren Illinois asserts that the Commission rejected its proposed adjustment related to the debt redemption premium based on a determination that the redemption was not associated with the AmerenIP acquisition. However, the June 2013 Order nowhere makes a finding that the debt redemption premium was not related to the AmerenIP acquisition. Indeed, the June 2013 Order summarizes Ameren's description of the transaction in detail and its relationship to the AmerenIP acquisition.⁷² The Commission further noted that Ameren Illinois proposed in the refund calculation to 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.

65. The reason that the Commission rejected the adjustment related to the debt redemption premium is that it went well beyond the scope of the July 2012 Order. The July 2012 Order directed Ameren Illinois to remove acquisition premiums from its rates and did not authorize Ameren Illinois to do more. The July 2012 Order did not direct Ameren Illinois to create theoretical accounting entries for rate purposes that established new assets, like the redemption premium asset, and then amortize these assets for rate purposes in order to recover costs that Ameren believes should and would have been recovered through its formula rate had it not used purchase accounting. Recovery of merger-related costs or other costs not previously included in rates would require a separate section 205 filing.

66. Accordingly, Ameren's rehearing request on this issue is denied.

⁷² *Id.* P 17.

3. Did the Commission Err in Finding that Other Adjustments Contained in the Refund Filing Were Not Supported

67. Ameren argues that the spreadsheet and notes it submitted supported its proposed adjustments and the Commission's failure to adequately consider or respond to this evidence is arbitrary, capricious, and contrary to reasoned decision making.

Commission Determination

68. Ameren asserts that the Commission did not adequately explain why the adjustments Ameren Illinois proposed in its refund filing were not supported. The fact that Ameren Illinois' filing physically included a spreadsheet and notes, in and of itself, does not mean its filing is properly supported. The Commission succinctly described in the June 2013 Order the deficiencies in the First Refund Report. The Commission cannot approve what is not understandable.

69. The First Refund Report was rejected, in part, because it did not contain sufficient detail for the Commission to assess the reasonableness of what was proposed. Refund reports need to contain sufficient documentation so the Commission can assess what is proposed. Ameren Illinois' filing, among other things, did not show the rate impact of each proposed adjustment, failed to provide such elementary details as the proposed amount of each adjustment, and did not show how its notes and spreadsheet flow together for each proposed adjustment.

70. The Commission described in the June 2013 Order what Ameren needed to provide in its revised refund report in order for the Commission to assess what was proposed.⁷³ Specifically, Ameren Illinois was directed to separately identify each acquisition premium adjustment being removed from its transmission formula rates, by account, along with related dollar amounts. In addition, Ameren Illinois was directed to separately disclose the effect on the transmission formula rate of each acquisition premium being removed for each period the item was included in rates.

71. Thus the Commission, in the June 2013 Order, described why Ameren Illinois' filing was deficient and provided guidance to Ameren Illinois on what it needed to do to properly support its refund request.

72. Accordingly, Ameren's rehearing request on this issue is denied.

⁷³ *Id.* P 21.

4. Did the Commission Err by Finding that Ameren Acted Improperly by Seeking to Recover the Acquisition Premiums through a Refund Report Rather than through a Section 205 Filing

73. Ameren contends that the Commission's direction to make adjustments to remove the effects of any acquisition premium resulting from the CILCORP and AmerenIP acquisitions and its determination that Ameren acted improperly by seeking recovery of the acquisition premiums by filing the First Refund Report instead of a section 205 filing are inconsistent and thus contrary to reasoned decision making. Ameren also argues that the Commission failed to explain why the fact its adjustments resulted in a surcharge rather than a refund mandates a section 205 filing, or provide a logical explanation for why Ameren's actions were improper, further demonstrating the Commission's decision is contrary to reasoned decision making.

Commission Determination

74. We disagree with Ameren's assertion that the Commission's directives in the July 2012 Order were inconsistent with and contrary to reasoned decision making. In the July 2012 Order, consistent with longstanding precedent, the Commission stated that, 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 and demonstrate benefits to the ratepayers. Additionally, the Commission explained that 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. Subsequently, in the June 2013 Order, the Commission again noted that Ameren may pursue the recovery of merger-related costs or other costs not previously included in rates only through a section 205 filing, and not through a refund filing. This is not a section 205 proceeding and is not structured to evaluate whether or not ratepayers received a benefit. The Commission has repeatedly explained that there can be a forum to examine this question, but this proceeding is not that forum. Accordingly, Ameren's rehearing request on this issue is denied.

5. Did the Commission Err in Failing to Respond to Ameren's Guidance Request

75. Ameren argues that the Commission's failure to address its request for guidance on how to collect the amounts due from customers, as a result of the adjustments it suggests were required by the July 2012 Order, is inconsistent with reasoned decision making.

Commission Determination

76. Contrary to Ameren's claim that the Commission did not address its request for guidance on how to collect amounts Ameren believes it may be due, the Commission has repeatedly and consistently provided such guidance through the orders in this proceeding. Again, Ameren is free to seek rate recovery of merger-related costs or other costs not previously included in rates through a section 205 filing, but not through a refund filing. Moreover, although Ameren believes that it is owed amounts from ratepayers, as we stated above, the First Refund Report was rejected, in part, because it did not contain sufficient detail for the Commission to assess what was proposed. Therefore, notwithstanding this is not the proper forum, the absence of sufficient information in the refund report would make it inappropriate for the Commission to provide guidance beyond what has already been provided. Accordingly, Ameren's rehearing request on this issue is denied.

The Commission orders:

Ameren's requests for rehearing of the July 2012 and June 2013 Orders in this proceeding are hereby denied, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.