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UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Cheryl A. LaFleur, Chairman;
Philip D. Moeller, Tony Clark,
and Norman C. Bay.

Midwest Independent Transmission System
Operator, Inc. and Ameren Illinois Company

Docket Nos. ER11-2777-001
ER11-2779-001
ER11-2782-001
ER11-2786-001
ER11-2788-001
ER11-2789-001
(Consolidated)

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ER11-2790-002
(Consolidated)

OPINION NO. 534

ORDER ON INITIAL DECISION AND DENYING
REQUEST FOR REHEARING

(Issued September 18, 2014)

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1. This case is before the Commission on exceptions to an Initial Decision¹ issued on November 20, 2012. In this opinion, the Commission affirms in part, and reverses in part, the determinations of the Presiding Administrative Law Judge (Presiding Judge). This opinion also denies the request for rehearing in this proceeding.

I. Background and Procedural History

A. Ameren's Filing and Hearing Order

2. On January 28, 2011, Midwest Independent Transmission System Operator, Inc. (MISO)² and Ameren Services Company, on behalf of Ameren Illinois Company (Ameren), filed with the Commission eight unexecuted wholesale distribution service agreements (WDS Agreements) under MISO's Open Access Transmission, Energy, and Operating Reserve Markets Tariff (MISO Tariff)³ between Ameren and eight different WDS Customers.⁴ Ameren filed these agreements to establish the rates, terms, and conditions for Ameren's provision of wholesale distribution service (WDS) to customers on Ameren's distribution network.⁵ The revised WDS Agreements would supersede

¹ *Midwest Indep. Transmission Sys. Operator, Inc. and Ameren Illinois Co.*, 141 FERC ¶ 63,014 (2012) (Initial Decision).

² Effective April 26, 2013, MISO changed its name from "Midwest Independent Transmission System Operator, Inc." to "Midcontinent Independent System Operator, Inc."

³ FERC Electric Tariff, Fifth Revised Volume No. 1.

⁴ The WDS Agreements are between Ameren and the following customers: Hoosier Energy Rural Electric Cooperative, Inc. (Hoosier), Illinois Municipal Electric Agency (IMEA), Mt. Carmel Public Utility Company (Mt. Carmel), Norris Electric Cooperative (Norris), Prairie Power Incorporated (Prairie), Southern Illinois Power Cooperative (Southern Illinois), Southwestern Electric Cooperative (Southwestern), and Wabash Valley Power Association (Wabash) (WDS Customers or, collectively, WDS Customer Group). Initial Decision, 141 FERC ¶ 63,014 at P 2. "Some customers settled with Ameren at various stages of the proceeding. Mt. Carmel did not participate at the hearing. Southwestern initially participated but settled before the original hearing date. Hoosier settled just before the continued hearing date." *Id.* P 3 n.2.

⁵ Module A of the MISO Tariff defines WDS as: "[t]he transmission of electric energy in interstate commerce over Distribution Facilities owned, controlled or operated by the Transmission Provider, or a Transmission Owner on behalf of a wholesale purchaser pursuant to a Commission accepted Open Access Transmission Tariff. To the

(continued...)

existing wholesale distribution service agreements (Existing WDS Agreements) between Ameren and the WDS Customers.

3. The Existing WDS Agreements currently in place were entered into between the WDS Customers and the three recently merged Ameren “legacy” companies: Central Illinois Light Company (Central Illinois Light), Central Illinois Public Service Company (Central Illinois Public Service), and Illinois Power Company (Illinois Power) (collectively, Legacy Companies).⁶ The Existing WDS Agreements feature WDS rates that were most recently updated by the Legacy Companies using test-year cost data from 1997, 1998, and 2002, respectively. Ameren stated that it made the instant filing to consolidate its WDS rates and agreements and to update its costs for WDS.

4. Ameren claimed it developed its proposed WDS rates utilizing a direct assignment approach, specifically based on a typical circuit mile design methodology. Since Ameren does not maintain accounting information on distribution facilities on a segment-by-segment basis, it performed a detailed cost of service study on portions of its distribution system known as Area Distribution Systems (ADS),⁷ including substations and overhead lines needed to serve the WDS Customers’ loads and based on costs for a “typical mile” of facilities. Ameren then directly assigned costs of those facilities dedicated to a WDS Customer entirely to that WDS Customer.⁸ The remaining facilities are shared by more

extent such service is required it shall be specified in the Service Agreement for the associated service being provided under the Tariff. Retail customers are not eligible for Wholesale Distribution Services.” *Id.* P 44.

WDS is an electrical service over lines in between transmission (usually 138 kV and above) and lower-voltage distribution (voltages of 4 kV and 12 kV or 120V and 240V, respectively). In this case, WDS is service over higher-voltage distribution facilities which Ameren has termed “high-voltage distribution facilities” (generally 34.5 kV and 69 kV). *Id.* P 45.

⁶ Effective October 1, 2010, Illinois Power and Central Illinois Light were merged with and into Central Illinois Public Service, as the surviving corporation, which then changed its name to Ameren Illinois Company. *Ameren Corp.*, 131 FERC ¶ 61,240 (2010).

⁷ An ADS is a discrete system of higher-voltage distribution facilities serving one or more WDS delivery points. Ex. AMS-1 at 6.

⁸ “Dead-end radial lines were not included in the ADS and were not allocated to WDS Customers unless a WDS Customer delivery point is served directly from such a line.” Ex. AMS-13 at 5.

than one WDS Customer or by Ameren's retail load and one or more WDS Customers. Ameren stated that it allocated the costs for shared facilities to WDS Customers based on their respective load ratio shares.⁹ Ameren then multiplied the distribution plant costs assigned to each WDS Customer by a carrying charge percentage developed using the weighted cost of capital, plus income taxes, other taxes, operation and maintenance (O&M) expense, administrative and general (A&G) expense, and depreciation and amortization expense. Ameren stated that the carrying charge percentage was calculated using similar cost components as included in the transmission rate formula in Attachment O of the MISO Tariff. Ameren also stated that it developed the percentage associated with each expense category by dividing the actual expense by the gross distribution plant. Ameren's WDS rates were based on 2009 test year data, adjusted to account for increased State of Illinois corporate income taxes.

5. Ameren then calculated the rates in each of the WDS Agreements by dividing the revenue requirement by the weather-normalized 2009 billing determinants to derive a dollar per kilowatt monthly rate. Ameren stated that the billing demand for each customer reflects the sum of the highest demands of each billing month. The proposed WDS Agreements also includes a fixed monthly meter charge to recover the cost of meters and their expenses. To develop this charge, Ameren multiplied the costs of each WDS Customer's meters and associated equipment by the carrying charge.¹⁰

6. In their protests, Hoosier, IMEA, Prairie, Southwestern, and Wabash claimed, among other arguments made, that since the proposed WDS Agreements were new agreements that superseded and terminated the Existing WDS Agreements, Ameren was required to provide, under the terms of the Existing WDS Agreements, 12 months advanced written notice of termination.¹¹ They contended that because Ameren did not provide 12 months advance written notice, the Commission should reject the proposed WDS Agreements.¹² Several of the WDS Customers also argued that Ameren's methodology used to calculate new rates was unsupported by Commission precedent,¹³

⁹ See Initial Decision, 141 FERC ¶ 63,014 at PP 5-6.

¹⁰ *Id.* PP 7-9.

¹¹ Hoosier Protest at 14-15; IMEA Protest at 9-10; Prairie Protest at 9; Southwestern Protest at 9-10; and Wabash Protest at 41-42.

¹² *Id.*

¹³ IMEA Protest at 10-12; Mt. Carmel Protest at 7-8; Prairie Protest at 19-22; Southern Illinois Protest at 11; and Wabash Protest at 13-15.

and that the methodology and calculations lack factual support. WDS Customers also objected to Ameren's use of a 2009 test year because of the depressed load in 2009 due to the recession.¹⁴ In addition, WDS Customers disagreed with Ameren's use of a "typical mile" methodology for estimating the gross cost of facilities.¹⁵

7. Several WDS Customers criticized elements of Ameren's carrying charge methodology,¹⁶ as well as the way Ameren calculated both its distribution O&M expenses and its distribution A&G expenses.¹⁷ Southwestern also disagreed with the "typical mile" methodology Ameren used to develop the metering charge,¹⁸ and claimed that Ameren based its depreciation rates on an outdated study, which resulted in rates that were devoid of a factual basis and reflected unreasonably short average service lives.¹⁹

8. In the March 29 Order, the Commission found that Ameren's proposed WDS Agreements raised issues of material fact that could not be resolved based on the record, and that were more appropriately addressed in hearing and settlement judge procedures.²⁰ Therefore, the Commission accepted for filing the eight unexecuted WDS Agreements, suspended them for a nominal period, to become effective March 30, 2011, subject to refund, and established hearing and settlement judge procedures. The Commission also consolidated the proceedings for purposes of hearing, settlement, and decision.

¹⁴ Hoosier Protest at 7; IMEA Protest at 17-18; Mt. Carmel Protest at 15; Norris Protest at 17; Prairie Protest at 28; Southern Illinois Protest at 19; and Wabash Protest at 38-39.

¹⁵ Hoosier Protest at 5-7; IMEA Protest at 14-17; Mt. Carmel Protest at 16-17; Norris Protest at 7-10; Prairie Protest at 32-35; Southern Illinois Protest at 9-11; Southwestern Protest at 36-37; and Wabash Protest at 21-23.

¹⁶ Hoosier Protest at 12; IMEA at 21-24; Norris Protest at 14-15; Southwestern Protest at 41-43; and Wabash Protest at 36-38.

¹⁷ Hoosier Protest at 10-11; IMEA Protest at 21-22; Prairie Protest at 42-43; and Wabash Protest at 28-31.

¹⁸ Southwestern Protest at 37-39.

¹⁹ *Id.* at 39-40.

²⁰ *Midwest Indep. Transmission Sys. Operator, Inc. and Ameren Illinois Co.*, 134 FERC ¶ 61,242 (2011) (March 29 Order).

B. WDS Customer Rehearing Group's Request for Rehearing and Ameren Service Company's Answer

9. On April 25, 2011, seven of the WDS Customers, namely, Hoosier, IMEA, Prairie, Norris, Southern Illinois, Southwestern, and Wabash²¹ filed a joint request for rehearing of the March 29 Order.

10. On May 10, 2011, Ameren Services Company, on behalf of Ameren, filed a motion for leave to answer and answer to WDS Customer Rehearing Group's request for rehearing. The request for rehearing will be addressed later in this opinion.

C. Procedural History

11. The Chief Administrative Law Judge (Chief Judge) designated Michael J. Cianci, Jr. as the Presiding Judge on August 4, 2011, after settlement judge procedures were not successful. The Presiding Judge held a pre-hearing conference with the parties on August 11, 2011, and thereafter adopted a procedural schedule to govern litigation in this matter.

12. The hearing was initially scheduled for May 22, 2012, but a continuance was granted by the Chief Judge to August 6, 2012. The hearing was completed on August 13, 2012.

D. Initial, Answering, Cross-Answering, Rebuttal, Supplemental, and Sur-Rebuttal Testimony

13. On October 14, 2011, Ameren filed its initial testimony, which included the prepared testimony of six Ameren witnesses generally supporting its proposed WDS charge. Robert J. Mill (Mill) provided testimony on the cost development and allocation for WDS in these proceedings, and also introduced Ameren's other witnesses.²² Karen R. Althoff (Althoff) described and supported the methodology Ameren used to develop the WDS rates and the WDS Agreements filed in these proceedings.²³ Martin J. Hipple

²¹ Hoosier, IMEA, Prairie, Norris, Southern Illinois, Southwestern, and Wabash (collectively, WDS Customer Rehearing Group). Southwestern and Hoosier subsequently reached respective settlements with Ameren in these proceedings as more fully discussed below.

²² Ex. AMS-1 at 2.

²³ Ex. AMS-2 at 3.

(Hipple) provided testimony on system planning and how Ameren's integrated system provides benefits to both retail customers and WDS Customers.²⁴ David E. Starwalt (Starwalt) described the operation of Ameren's higher-voltage distribution system, which is used to serve its WDS Customers.²⁵ Ryan K. Schonhoff (Schonhoff) described and supported the methodology Ameren used to allocate the costs of its higher-voltage distribution system to WDS delivery points, which were used to derive a cost of service and single WDS rate for each WDS Customer.²⁶ Laura M. Moore (Moore) described the plant accounting practices and records of Ameren and its Legacy Companies, specifically with respect to the higher-voltage distribution system assets that are used to provide WDS to WDS Customers.²⁷

14. Four Trial Staff witnesses provided answering testimony. Edward W. Mills (Mills) addressed previously raised cost of service issues and also introduced the other Trial Staff witnesses.²⁸ An Jou Jo Hsiung (Hsiung) provided testimony to address previously raised issues. Ms. Hsiung also made recommendations related to the ADS methodology, the proposed conductor slack, and the proposed loss factor.²⁹ Robert J. Keyton (Keyton) explained that Ameren determined the appropriate capital structure, the cost of long-term debt, the cost of preferred equity, the investor-required return on common equity, and the overall rate of return.³⁰ Elton W. Beasley (Beasley) discussed a variety of issues related to the rates developed for WDS Customers and the terms and conditions of the proposed WDS Agreement.³¹

15. Three witnesses representing the WDS Customer Group also provided answering testimony. In his testimony, Paul Reising (Reising) examined the proposed WDS rates and provided recommendations as to modifications that he believed were necessary to

²⁴ Ex. AMS-12 at 3.

²⁵ Ex. AMS-13 at 2.

²⁶ Ex. AMS-14 at 2.

²⁷ Ex. AMS-24 at 2-3.

²⁸ Ex. S-1 at 2-3.

²⁹ Ex. S-3 at 3.

³⁰ Ex. S-5 at 3.

³¹ Ex. S-8 at 7.

ensure just and reasonable cost-based rates and charges. Mr. Reising divided his testimony into two parts. In the first part, Mr. Reising discussed revenue requirements along with rates and charges for Ameren's provision of WDS. In the second part, Mr. Reising examined the terms and conditions proposed in the WDS Agreements.³² Michael P. Gorman (Gorman) also testified on behalf of the WDS Customer Group. In his answering testimony, Mr. Gorman recommended: (1) adjustments to the carrying charge methodology; (2) replacing Ms. Althoff's proposed development of a return charge with an updated and more accurate cost of capital; (3) an adjustment to the common equity balance used to develop the ratemaking capital structure; (4) that an average year capital structure be used to set rates; (5) an updated return on equity; and (6) that an overall rate of return be set at 8.62 percent. Mr. Gorman also discussed other issues such as the electric utility industry's market outlook and Ameren's investment risk.³³ Finally, Kathleen F. Best (Best) provided testimony that reviewed and analyzed the typical mile methodology used by Ameren.³⁴ Ms. Best argues in her testimony that Ameren's typical mile methodology is deficient and invalid for this proceeding. In reaching this conclusion, Ms. Best prepared a survey of the facilities used to provide WDS to Ameren delivery points in order to develop a more accurate representation of Ameren's cost per mile.

16. Ms. Best also testified that the survey began by randomly selecting a sample of delivery points listed in Ameren's Ex. AMS-21.³⁵ A survey form was then sent out to the WDS Customer Group's personnel who then conducted a visual inspection of the line segments between the delivery point selected and the associated Ameren source substation. Each WDS Customer who participated in the survey recorded information such as pole height and type, pole brands and conductor wire size and type for their respective sample area. The random sample covered 64 of the 280 delivery points of interest and the WDS Customer Group's survey covered approximately 340 miles of distribution lines, including 6,600 poles. Ms. Best testified that of the 57 survey requests distributed, 48 were returned to be analyzed and 39 were processed into the database to be used in the analysis. Once returned, the survey data was then used to approximate the characteristics and cost of the conductors and the poles associated with the line segments.

³² Ex. CG-1 at 3-4.

³³ Ex. CG-10 at 3-4.

³⁴ Ex. CG-30 at 4.

³⁵ Ex. No. CG-37.

In conclusion, the WDS Customer Group's survey provided an estimate of the average original costs per mile for the poles and the conductors, including the shield wire.

17. Additional witnesses representing six individual WDS Customers provided answering testimony. Dr. Martin Blake (Blake), on behalf of Southern Illinois and Norris, analyzed the proposed WDS rates, identified issues, and calculated a revised WDS rate that he asserted more accurately reflects the cost of providing WDS to Southern Illinois and Norris.³⁶ William Hutchison (Hutchison), also on behalf of Southern Illinois and Norris, testified that Ameren's proposed WDS rate is much higher than justified by the cost and accumulated depreciation on the facilities that provide WDS to Southern Illinois and Norris.³⁷ Prairie's witness Daniel Breden (Breden) argued that Ameren's rate proposal does not represent a typical circuit mile of the facilities providing WDS to Prairie and uses methodologies that are not sufficiently supported.³⁸ IMEA's witness Kevin Wagner (Wagner) described the proposed rate impact on IMEA, discussed the surveys performed on select portions of Ameren's system that serve IMEA, and supported certain recommendations made by Reising in his testimony.³⁹ Hoosier's witness Daniel D. Becher (Becher) depicted the surveys performed on the electrical circuits used to provide WDS to Hoosier in order to test the accuracy of Ameren's typical mile method.⁴⁰ Finally, Wabash's witness Brent A. Reyher (Reyher) described the surveys of electric line segments that are owned by Ameren and used in the provision of WDS to Wabash.⁴¹

18. Cross-answering testimony was provided by Mr. Reising, on behalf of the WDS Customer Group, and Dr. Blake, on behalf of Southern Illinois and Norris. Mr. Reising responded to the testimony of Trial Staff's witness Beasley.⁴² Dr. Blake addressed what he characterized as a misconception that the methodology that Southern Illinois and

³⁶ Ex. SN-10 at 1-2.

³⁷ Ex. SN-1 at 5.

³⁸ Ex. PPI-1 at 3.

³⁹ Ex. IM-1.

⁴⁰ Ex. HE-1 at 2.

⁴¹ Ex. WV-1 at 2.

⁴² Ex. CG-44 at 1.

Norris used to calculate their proposed WDS rates only utilized a subset of the higher-voltage distribution lines in the four ADSs that serve Southern Illinois and Norris.⁴³

19. Ameren introduced rebuttal testimony by eight witnesses. Mr. Mill's rebuttal testimony provided an overview of Ameren's rebuttal to the WDS Customer Group's answering testimony. Specifically, Mr. Mill highlighted the flaws in the WDS Customer Group's alternative methodology.⁴⁴ Joseph M. Power (Power) filed rebuttal testimony intended to demonstrate that: (1) the WDS is pursuant to the MISO Tariff; (2) Commission policy provides for a 12.38 percent rate of return on equity; (3) goodwill is reasonably included in the equity portion of Ameren Illinois' capital structure; (4) Ameren reasonably modeled its WDS rate calculations on recent Commission-accepted cases; (5) the allocation and amortization of regulatory expenses is reasonable; and (6) the non-rate terms and conditions proposed by Mr. Reising on behalf of the WDS Customer Group are beyond the scope of this proceeding.⁴⁵ Dr. Mary K. Batcher (Batcher) rebutted the findings on the sample based survey described by Ms. Best.⁴⁶ Ameren's witness Althoff responded to criticisms of, and proposed adjustments to, the WDS rates filed by Ameren.⁴⁷ Ameren's witness Starwalt addressed issues, from an operations standpoint, raised by Mr. Reising, Southwestern's witness Richard McGill,⁴⁸ and Trial Staff's witness Beasley. Mr. Starwalt also discussed flaws related to the design and implementation of the WDS Customers' surveys.⁴⁹ The rebuttal testimony of Mr. Hipple was filed to demonstrate that: (1) the 1.61 percent loss factor is reasonable; (2) Ameren properly identified the WDS facilities; (3) Ameren properly developed the load ratio shares used to allocate such facilities to the WDS Customers; and (4) Ameren made significant upgrades to its higher-voltage distribution system.⁵⁰ Ameren's witness Schonhoff rebutted WDS Customer Group's witness Reising's cost allocation proposal

⁴³ Ex. SN-16 at 1.

⁴⁴ Ex. AMS-25 at 1-2.

⁴⁵ Ex. AMS-26 at 1-2.

⁴⁶ Ex. AMS-27 at 1.

⁴⁷ Ex. AMS-28 (Corrected) at 1.

⁴⁸ Ex. SWC-1.

⁴⁹ Ex. AMS-29 (Corrected) at 1-2.

⁵⁰ Ex. AMS-30 at 1.

for multi-function substations.⁵¹ Ms. Moore provided rebuttal testimony to discuss Ameren's record keeping, non-unitized balances, depreciation studies, and the cost allocation of multi-function substations.⁵²

20. Mr. Reising and Ms. Best provided supplementary testimony on behalf of the WDS Customer Group. Mr. Reising responded to the rebuttal testimony of Ameren's witness Schonhoff.⁵³ Ms. Best addressed and responded to criticisms of her work raised by Ameren's witness Batcher.⁵⁴

21. Three Ameren witnesses provided sur-rebuttal testimony. The sur-rebuttal testimony of Dr. Batcher and Mr. Starwalt rebutted the supplemental testimony prepared by Ms. Best, on behalf of the WDS Customer Group.⁵⁵ Ameren's witness Schonhoff refuted Mr. Reising's supplemental testimony.⁵⁶

22. Testimony during cross-examination at the hearing was provided by thirteen witnesses on behalf of Ameren, the WDS Customer Group, specific WDS Customers, and Trial Staff. Mr. Power, Dr. Batcher, Ms. Althoff, Mr. Starwalt, and Mr. Hipple testified on behalf of Ameren. Mr. Reising and Ms. Best testified on behalf of the WDS Customer Group. Dr. Blake and Mr. Hutchison testified on behalf of two WDS Customers: Southern Illinois and Norris. Mr. Wagner provided testimony on behalf of WDS Customer IMEA. Richard Chapman (Chapman) testified on behalf of WDS Customer Prairie. Finally, Mr. Mills and Mr. Beasley testified on behalf of Trial Staff.

E. Stipulated Issues

23. During the hearing process, the parties and Trial Staff entered into three separate joint stipulations concerning a number of the issues set for trial. On March 23, 2012, the

⁵¹ Ex. AMS-31 at 1.

⁵² Ex. AMS-32 at 1.

⁵³ Ex. CG-45 at 1.

⁵⁴ Ex. CG-47 at 2.

⁵⁵ Ex. AMS-47 at 1.

⁵⁶ Ex. AMS-49 at 1.

parties and Trial Staff entered into a Preliminary Joint Stipulation of Issues.⁵⁷ On April 30, 2012, the parties and Trial Staff entered into a Final Joint Stipulation of Issues concerning conductor sag, an O&M expense adjustment for intercompany transactions, and Edison Electric Institute dues.⁵⁸ On July 31, 2012, the parties and Trial Staff entered into a Joint Stipulation for Hearing concerning Ameren's weighted cost of long-term debt and weighted cost of capital.⁵⁹ Finally, on August 13, 2012, the parties and Trial Staff entered into a Joint Stipulation for Hearing concerning a proposed underbuild credit, the allocation of costs for multi-function substations, use of coincident peak billing determinants for certain WDS Customers, the loss factor to be used in developing ADS cost allocations, and the load assumed for allocation of costs for Prairie's Skyrocket delivery point.⁶⁰ Accordingly, the Commission affirms the Presiding Judge's ruling that the stipulations resolve these issues.

F. Initial Decision

24. In the Initial Decision, the Presiding Judge, in general, accepts Ameren's proposed typical mile methodology, but finds that in order for Ameren's rates and charges as set forth in the proposed WDS Agreements to be just, reasonable, and not unduly discriminatory or preferential, Ameren must make specific corrections in accordance with the survey proffered by the WDS Customer Group. The Presiding Judge rejects Ameren's arguments that the WDS Customer Group's survey evidence is flawed and should be accorded no weight in this proceeding. The Presiding Judge finds that the WDS Customer Group's survey evidence was wholly relevant and probative and therefore accorded it great weight in the deliberative process.⁶¹

⁵⁷ Preliminary Joint Stipulation of Issues, Docket Nos. ER11-2777-002, *et al.* (Mar. 23, 2012).

⁵⁸ Final Joint Stipulation of Issues, Docket Nos. ER11-2777-002, *et al.* (Apr. 30, 2012).

⁵⁹ Joint Stipulation for Hearing, Docket Nos. ER11-2777-002, *et al.* (July 31, 2012).

⁶⁰ Joint Stipulation for Hearing, Docket Nos. ER11-2777-002, *et al.* (Aug. 13, 2012).

⁶¹ Initial Decision, 141 FERC ¶ 63,014 at P 1508 & n.153.

25. The Presiding Judge also concludes, in favor of Ameren, that the non-rate terms and conditions set forth in the WDS Agreements are just, reasonable and not unduly discriminatory or preferential.

G. Briefs on Exceptions and Briefs Opposing Exceptions

26. Briefs on exceptions were filed by Ameren, Trial Staff, and the WDS Customer Group on December 20, 2012. Briefs opposing exceptions were filed by Ameren, Trial Staff, and the WDS Customer Group on January 9, 2013.⁶²

H. Settlements

27. The parties have also reached settlement agreements in several of the dockets consolidated in this proceeding.

28. Ameren Services Company, on behalf of Ameren, and Southwestern submitted an offer of settlement on March 14, 2013, resolving all issues for the settling parties in Docket Nos. ER11-2788-000 and ER11-2788-001, and the consolidated proceedings in Docket No. ER11-2777-000, *et al.*, which concerns the rates, terms, and conditions of an unexecuted WDS agreement between Ameren and Southwestern. Trial Staff submitted initial comments in support of the offer of settlement on April 3, 2013. A Commission letter order approving the settlement was issued on August 16, 2013.⁶³

29. Ameren Services Company, on behalf of Ameren, and Mt. Carmel submitted an offer of settlement on March 14, 2013, resolving all issues for the settling parties in Docket Nos. ER11-2778-000, ER11-2778-001, and ER11-2778-002, and the consolidated proceedings in Docket No. ER11-2777-000, *et al.*, which concerns the rates, terms, and conditions of an unexecuted WDS agreement between Ameren and Mt. Carmel. Trial Staff submitted initial comments in support of the offer of settlement on April 3, 2013. A Commission letter order approving the settlement was issued on October 29, 2013.⁶⁴

30. Ameren Services Company, on behalf of Ameren, and Hoosier submitted an offer of settlement on May 8, 2013, resolving all issues for the settling parties in Docket

⁶² The WDS Customer Group filed Briefs on Exceptions and Briefs Opposing Exceptions on behalf of IMEA, Southern Illinois, Norris, Prairie and Wabash. *Supra*, note 3.

⁶³ *Midwest Indep. Trans. Sys. Operator, Inc.*, 144 FERC ¶ 61,136 (2013).

⁶⁴ *Midwest Indep. Trans. Sys. Operator, Inc.*, 145 FERC ¶ 61,078 (2013).

Nos. ER11-2790-000, ER11-2790-001, and ER11-2790-002, and the consolidated proceedings in Docket No. ER11-2777-000, *et al.*, which concerns the rates, terms, and conditions of an unexecuted WDS agreement between Ameren and Hoosier. Trial Staff submitted initial comments in support of the offer of settlement on May 28, 2013. A Commission letter order approving the settlement was issued on January 7, 2014.⁶⁵

II. Discussion

31. Based on the record before us, we affirm in part, and reverse in part, the determinations of the Presiding Judge. Specifically, we reverse the Presiding Judge's determination regarding Issues I.B.2., and I.B.3.⁶⁶ as discussed further below.

A. Whether the Initial Decision Erred by Misapplying the Burden of Proof and the Just and Reasonable Standard in a Section 205 Proceeding

1. Summary of Issue

32. The issue here is whether the Presiding Judge erred by misapplying the burden of proof and just and reasonable standard in a Federal Power Act (FPA) section 205 proceeding.

2. Initial Decision

33. In the Initial Decision, the Presiding Judge questions whether Ameren carried its burden to prove that the rates and charges set forth in the WDS Agreements are just and reasonable and not unduly discriminatory or preferential. The Presiding Judge notes that this issue "encompasses the ultimate conclusion in this hotly contested case." Generally, the Presiding Judge accepts Ameren's typical mile methodology but finds that in order for Ameren's rates and charges as set forth in its WDS Agreements to be just, reasonable, and not unduly discriminatory or preferential, it must make the specific corrections as set forth in the Initial Decision.⁶⁷

⁶⁵ *Midwest Indep. Trans. Sys. Operator, Inc.*, 146 FERC ¶ 61,005 (2014).

⁶⁶ The specific issues are identified as follows: Issue I.B.2. What is the average cost of poles to be used?; and Issue I.B.3. What is the average number of poles per mile to be used?

⁶⁷ Initial Decision, 141 FERC ¶ 63,014 at P 1469.

34. Regarding the specific cost components used in the typical mile method, Ameren argued for the Presiding Judge to accept its offered costs, while Trial Staff and the WDS Customer Group challenged certain cost features designated as issues by the parties. In response, the Presiding Judge finds, in general, that the arguments of the WDS Customer Group (as supported to some degree on some issues by Trial Staff) are substantially persuasive on many of these costs issues, but not all.⁶⁸

35. In addition, the Presiding Judge states that after considering all of the evidence, he agrees with the WDS Customer Group that Ameren has not refuted the data provided by the WDS Customer Group witnesses that the higher-voltage distribution lines that serve them are significantly more depreciated than the lines that provide service to Ameren's retail customers. The Presiding Judge states that Ameren had not shown that Ameren's system average accumulated depreciation for distribution assets is representative of the accumulated depreciation for the facilities that provided WDS.⁶⁹

3. Briefs on Exceptions

36. Ameren argues that it bears the burden of proof in this case to prove that the WDS Agreements, and the rates, terms, and conditions contained in them, are just and reasonable. Ameren asserts that since the WDS Customer Group offered an alternative methodology for WDS rates, the WDS Customer Group had the burden to prove that Ameren's typical mile methodology is not just and reasonable, and that the WDS Customer Group's methodology is just and reasonable. Ameren claims that the Presiding Judge fails to address this distinction in the burden of proof, and that the Commission must correct the Presiding Judge's error and address the burden of proof.⁷⁰

37. Ameren argues that the Presiding Judge erred by attributing to Ameren the burden of proof regarding the rate components and methodologies not sponsored by Ameren. Specifically, Ameren claims that the Presiding Judge found that Ameren had not refuted the data provided by the WDS Customer Group's witnesses that the higher-voltage distribution lines that serve them are significantly more depreciated than the lines that provide service to Ameren's retail customers. Ameren asserts that the WDS Customer Group claimed that the higher-voltage lines that serve them are significantly more depreciated than the lines that provide service to Ameren's retail customers. Thus,

⁶⁸ *Id.* P 1492.

⁶⁹ *Id.* P 1579.

⁷⁰ Ameren Brief on Exceptions at 29-30.

Ameren asserts that it did not have the burden of refuting the data provided by the WDS Customer Group.⁷¹

38. Ameren argues that the WDS Customer Group's claims regarding depreciation of Ameren's higher-voltage distribution lines are incorrect since the depreciation is based on Ameren's plant accounting records. Ameren asserts that the WDS Customer Group's argument that the WDS facilities that serve them are older than the WDS facilities that serve Ameren's retail customers is based on the WDS Customer Group's belief that Ameren focuses its construction and maintenance activities on the more densely populated areas of its system and neglects the less densely populated areas of its system. Ameren argues that it proved that this contention, as well as the contention that Ameren's higher-voltage distribution system is divided into urban and rural areas, is not true. Thus, Ameren claims that the Presiding Judge's statement that Ameren did not refute the WDS Customer Group on this point is untrue.⁷²

39. Additionally, Ameren argues that the WDS Customer Group offered the survey as an alternative methodology to Ameren's methodology in its answering testimony. Ameren claims that the Presiding Judge should not have faulted Ameren for failing to prove or disprove aspects of the WDS Customer Group's alternative methodologies. Ameren contends that it met its burden, which was to show that the proposed rates were just and reasonable, and to demonstrate that the WDS Customer Group had not disproved that showing. Ameren contends that the WDS Customer Group did not meet the dual burden of first proving that Ameren's method and resulting rates were not just and reasonable, and then proving that its proffered alternative was just and reasonable.⁷³

40. Ameren argues that it met its burden of proof by showing that the WDS Agreements, and the rates, terms, and conditions contained therein, are just and reasonable. Ameren contends that to show that a filed rate is just and reasonable, an applicant in a rate case must show only that its proposal is just and reasonable; the applicant need not show that its proposal is perfect or even that it is better than an alternative proffered by an intervenor. Ameren explains that it followed traditional, Commission-approved ratemaking principles, such as average costing and load ratio

⁷¹ *Id.* at 30-31.

⁷² *Id.* at 31-32.

⁷³ *Id.* at 29-33.

share allocation, and adhered to Commission-accepted methodologies where those were available.⁷⁴

41. Ameren also argues that its typical mile methodology provides far more actual cost evidence in support than the WDS Customer Group's alternative proposal. Ameren claims that the WDS Customer Group offered a different methodology, and the fact that these are two different methodologies that could be used for WDS rates does not mean that Ameren's methodology is unjust and unreasonable. Ameren argues that the Commission has broad authority to find rate making methodologies are just and reasonable and that there is ample evidence to support such a finding, and therefore, to reverse the Presiding Judge. Ameren maintains that even if the Presiding Judge is correct that the WDS Customer Group's methodology is "more precise," the existence of a methodology that is "more accurate" than Ameren's methodology would not establish that Ameren's methodology is unjust and unreasonable.⁷⁵

42. Ameren also claims that by comparing Ameren's methodology with the WDS Customer Group's alternative methodology with an emphasis on precision, the Presiding Judge invents a heightened standard of justness and reasonableness applied for the first time in this case, i.e., the "statistically probative" evidence standard. Ameren argues that this standard: (1) is contrary to Commission precedent on the justness and reasonableness standard under the FPA; and (2) adds a level of complexity and complication to the ratemaking process that is unnecessary. Ameren claims that under the survey-based methodology, utilities would need to expend inordinate amounts of time and money to hire statisticians and surveyors, design and perform surveys, tabulate and collate data and make estimations from the data. Thus, Ameren asks that the Commission reverse the Presiding Judge in this regard, and not establish survey-based ratemaking as precedent.⁷⁶

4. Briefs Opposing Exceptions

43. The WDS Customer Group claims that the Presiding Judge applied the law correctly as to the burden of proof and the just and reasonable statutory standard. The WDS Customer Group argues that under section 205(e) of the FPA,⁷⁷ the company bears

⁷⁴ *Id.* at 33-35.

⁷⁵ *Id.* at 35-36.

⁷⁶ *Id.* at 36-37.

⁷⁷ 16 U.S.C. § 824d (2012).

the burden of proof (sometimes referred to as the burden of persuasion) to show that its proposed rate increase is just and reasonable. It adds that any party challenging the company position must come forward with proof establishing *prima facie* that the company's rate is unreasonable, and offer an alternative reasonable rate. The WDS Customer Group asserts that while the burden of proof regarding the justness and reasonableness of a proposed tariff revision remains with the filing party, the Commission requires that a protesting party make an adequate proffer of evidence to call into question the reasonableness of the challenged revision. The WDS Customer Group adds that the Commission is not limited in using only one particular method of determining just and reasonable rates.⁷⁸

44. The WDS Customer Group further notes that Ameren's filing relied on a typical mile methodology to justify a significant increase in WDS rates, and that applying Ameren's methodology results in net plant in service values for poles and conductor that are in excess of the values of the actual material by which higher-voltage distribution service is being supplied. The WDS Customer Group states that it challenged as unjust and unreasonable many of the proxy costs resulting from Ameren's application of its typical mile approach. In this regard, the WDS Customer Group retained an expert (Ms. Best) who provided an analysis of the WDS Customer Group's survey which shows that the poles and conductor actually used to serve customers were substantially older, shorter, and more depreciated and thus less expensive than the proxy costs advanced by Ameren from its typical mile approach. The WDS Customer Group states that for the most part, the Presiding Judge found the WDS Customer Group's survey evidence persuasive, and the installed costs proposed by the WDS Customer Group to be just and reasonable.⁷⁹

45. The WDS Customer Group argues that Ameren attempts to undermine the extensive and well-grounded findings of fact of the Presiding Judge. It maintains that Ameren inaccurately refers to the WDS Customer Group's survey as an alternative methodology, and incorrectly stated that Ameren did not have an evidentiary burden to respond since the survey was irrelevant to this case under the proper construction of the burden of proof. The WDS Customer Group asserts that it did not propose an alternative methodology through the survey, but used it to demonstrate that Ameren's costs derived under the typical mile methodology and the data inputs underlying those cost estimates are unjust and unreasonable.⁸⁰

⁷⁸ WDS Customer Group Brief Opposing Exceptions at 16.

⁷⁹ *Id.*

⁸⁰ *Id.* at 17-18.

46. The WDS Customer Group also rejects Ameren's contention that the Presiding Judge replaced the statutory just and reasonable standard with a statistically probative standard for review of evidence. The WDS Customer Group asserts that, as the record shows, this criticism of the Presiding Judge bears no discernible relationship to the review of the evidence or application of traditional ratemaking principles under section 205 of the FPA. It notes that Ameren fails to identify any part of the Initial Decision in which the burden of proof is misconstrued. It claims that the statistical evidence provided in this proceeding is used by the WDS Customer Group to rebut Ameren's case. Moreover, it adds that the Presiding Judge, who reviewed all the testimony and heard substantial live testimony on the statistical evidence, found this evidence credible and does not create a statistically probative standard.⁸¹

47. Trial Staff argues that the Presiding Judge correctly applied the applicable burden of proof in this proceeding. Trial Staff asserts that while Ameren, in general, correctly summarizes the case law pertaining to the burden of proof in FPA section 205 proceedings, its arguments distort the application of these standards. Trial Staff explains that Ameren focuses on the WDS Customer Group's survey methodology used to determine the cost characteristics of the higher-voltage distribution plant used to serve the WDS Customers, and that Ameren argues that the Presiding Judge assigned it the burden of disproving the validity of the WDS Customer Group's survey methodology. However, Trial Staff asserts that Ameren's arguments confuse the ultimate burden of proof in this proceeding with its burden of going forward to rebut the evidence submitted by opposing parties.⁸²

48. Trial Staff notes that the Presiding Judge stated that the WDS Customer Group's survey showed that the higher-voltage distribution plant Ameren used to serve its WDS Customers is substantially more depreciated than the distribution plant Ameren used to serve its retail customers. In making this determination, the Presiding Judge ruled that the WDS Customer Group had met its burden of going forward with evidence rebutting Ameren's claim that its overall distribution plant was representative of that used to serve the WDS Customers, and that in failing to successfully counter the WDS Customer Group's evidence Ameren had failed to sustain its ultimate section 205 burden of proof on this issue. Trial Staff contends that the Presiding Judge's discussion reflects that the Presiding Judge both understood and correctly applied the law concerning burden of

⁸¹ *Id.* at 18.

⁸² Trial Staff Brief Opposing Exceptions at 11-12.

proof in weighing the conflicting evidence submitted by the parties with respect to the depreciation issue being examined.⁸³

49. In addition, Trial Staff argues that the Presiding Judge correctly applied the just and reasonable standard, and asks that the Commission reject Ameren's arguments. Trial Staff contends that the WDS Customer Group submitted statistical evidence not only to support its own determination of costs, but also to show that Ameren's typical mile cost methodology was inaccurate and discriminatory, and that Ameren thus failed to meet the just and reasonable standard. Trial Staff adds that in finding that the plant used to serve the WDS Customers was substantially more depreciated than Ameren's system average, the Presiding Judge adequately supported his finding that Ameren's methodology, which was premised on an average cost assumption, failed to meet the just and reasonable standard.⁸⁴

50. Trial Staff further explains that the underlying reason for the WDS Customer Group's presentation of the statistical analysis of survey-derived data in this proceeding is Ameren's failure to maintain cost data for much of the plant used to serve them. Thus, Trial Staff argues, Ameren's fear that statistical analysis will quickly assume an important role in electric ratemaking if the practice is sanctioned here is unrealistic.⁸⁵

5. Commission Determination

51. Under section 205 of the FPA, the burden of proof to show that the increased rate or charge is just and reasonable shall be upon the public utility.⁸⁶ The Commission, however, "must approve th[e increase] as long as the new rates are just and reasonable."⁸⁷ Under section 205(e) of the FPA, the utility bears the ultimate burden of proof (burden of

⁸³ *Id.* at 12-13.

⁸⁴ *Id.* at 13-15.

⁸⁵ Trial Staff Brief Opposing Exceptions at 15.

⁸⁶ 16 U.S.C. § 824d(e) (2012).

⁸⁷ *Southern Cal. Edison Co. v. FERC*, 717 F.3d 177, 181 (D.C. Cir. 2013); *Northern States Power Co. (Minnesota)*, 53 FERC ¶ 61,039, at 61,150 (1990) (a rate change is subject to section 205 of the FPA, and at hearing the utility bears the burden of establishing that the rate change proposed is just and reasonable).

persuasion) to show that its proposed rate increase is just and reasonable.⁸⁸ While the burden of proof regarding the justness and reasonableness of a proposed tariff revision remains with the filing party, the Commission requires that a protesting party make an adequate proffer of evidence to call into question the reasonableness of the challenged revision.⁸⁹

52. We affirm the Presiding Judge's finding that Ameren failed to meet its burden of proof to show that the WDS Agreements are just and reasonable and agree with the WDS Customer Group and Trial Staff that the Presiding Judge applied the law correctly as to the burden of proof. Under Commission precedent, when facilities are discrete and serve only certain wholesale customers (i.e., they are not integrated), as is the case with the facilities used to provide WDS in this proceeding, direct assignment is used to allocate the costs of those facilities to those customers who use the facilities.⁹⁰ However, Ameren did not keep accurate accounting records for ADS-related distribution lines used to serve WDS Customers and, thus, used cost data from its entire distribution system, including lower-voltage facilities used to provide retail service and not to provide WDS, to calculate its costs. While it is not possible to know the actual costs of these facilities used to provide WDS due to the nature of Ameren's accounting practices, the burden is Ameren's to demonstrate that its proposed methodology reasonably estimates the actual costs of the facilities used to provide WDS to the WDS Customers, so that WDS Customers pay only for the cost of the discrete facilities used to serve them, consistent with Commission precedent. Based on the record in this proceeding, we find that the Presiding Judge correctly concluded that the WDS Customers provided persuasive evidence that certain of the cost components used by Ameren in its cost of service calculation inaccurately reflect the cost of WDS. We agree that those components can and should be more accurately estimated. Therefore, in order to ensure just and reasonable rates under the WDS Agreements, we find it necessary to replace certain cost components of Ameren's proposed rates with amounts that more closely reflect actual costs as proposed by WDS Customers.

⁸⁸ *Illinois Power Co.*, 11 FERC ¶ 63,040, at 65,256 (1980); *see also City of Winnfield, Louisiana v. FERC*, 744 F.2d 871, 877 (D.C. Cir. 1984).

⁸⁹ *Cal. Indep. Sys. Operator Corp.*, 131 FERC ¶ 61,149, at P 20 (2010).

⁹⁰ *Southern Co. Servs., Inc.*, 116 FERC ¶ 61,247, at P 18 (2006) (the Commission generally requires direct assignment of costs for non-network facilities, such as radial lines); *Northeast Texas Elec. Coop. Inc.*, 108 FERC ¶ 61,084, at P 47 (2004); *Mansfield Municipal Elec. Dep't. v. New England Power Co.*, Opinion No. 454, 97 FERC ¶ 61,134 (2001), *reh'g denied*, Opinion No. 454-A, 98 FERC ¶ 61,115 (2002).

B. Whether by Accepting the Typical Mile Methodology, but Rejecting Most of the Cost Components of the Typical Mile, the Initial Decision is Internally Inconsistent

1. Summary of Issue

53. The issue here, which was raised in Ameren's brief on exceptions, is whether the Initial Decision is internally inconsistent by accepting Ameren's typical mile methodology for calculating cost of service as just and reasonable, while simultaneously rejecting most of Ameren's cost components in favor of the WDS Customer Group's cost components derived from its survey.

2. Initial Decision

54. In the Initial Decision, the Presiding Judge accepts Ameren's typical mile methodology construct as just and reasonable and not unduly discriminatory or preferential.⁹¹ The Presiding Judge finds that the methodology is based on Commission precedent and supported by Ameren's plant accounting records.⁹² However, the Presiding Judge rejects some of the cost components within the typical mile in favor of cost components based on the statistical analysis laid out in the WDS Customer Group's survey. The Presiding Judge concludes that the WDS Customer Group's arguments are substantially persuasive on many of the cost issues, but not all, finding multiple corrections are required.⁹³

3. Briefs on Exceptions

55. In its brief on exceptions, Ameren argues that accepting the typical mile methodology, but rejecting most of the cost components proffered by Ameren in favor of cost components compiled by the WDS Customer Group through a flawed survey, creates an unworkable hybrid that cannot be accurate.⁹⁴ Ameren argues that the Presiding Judge should be reversed on this issue and the cost components set forth by Ameren in its typical mile should be used instead.

⁹¹ Initial Decision, 141 FERC ¶ 63,014 at P 1491.

⁹² *Id.* P 1480.

⁹³ *Id.* P 1492.

⁹⁴ Ameren Brief on Exceptions at 38-40.

4. Briefs Opposing Exceptions

56. In its brief opposing exceptions, the WDS Customer Group states that, based on Ameren's lack of relevant WDS cost data, Ameren constructed a typical mile methodology that used cost information from its entire system, including the lower-voltage components used to provide service to retail customers. The WDS Customer Group argues that, consequently, Ameren's proposed methodology did not accurately reflect the costs associated with the 20 ADSs serving the WDS Customers.

57. The WDS Customer Group argues further that, because Ameren failed to maintain accurate records, the WDS Customers were deprived of objective proof by which to test the accuracy of Ameren's proxy data and that, by not applying an adverse inference against Ameren, the process would put the burden of producing accurate records on the WDS Customers in the form of a survey. The WDS Customer Group argues that after contemplating the evidence at hand, the Presiding Judge found in favor of the WDS Customer Group and confirmed that Ameren failed to meet its burden on these issues.

58. Finally, the WDS Customer Group adds that the survey results were not a competing methodology, but were a direct rebuttal of the key elements of Ameren's derived costs under its methodology.⁹⁵

5. Commission Determination

59. We find that the Presiding Judge's ruling in the Initial Decision is not internally inconsistent in accepting Ameren's typical mile methodology for certain cost components while simultaneously accepting individual cost components from the WDS Customer Group's survey. We agree with the Presiding Judge that Ameren's typical mile methodology is acceptable for certain cost components where it has been demonstrated to accurately reflect the actual cost of those components. However, the record in this proceeding shows that for certain cost components, the data Ameren used to produce its cost of service calculation inaccurately reflect the cost of WDS. We find certain components can and should be more accurately estimated, so that WDS customers pay only for the cost of the discrete facilities used to serve them, consistent with Commission precedent. Therefore, in order to ensure just and reasonable rates under the WDS Agreements, it is necessary to replace certain cost components of Ameren's proposed rates with amounts that more closely reflect actual costs as proposed by WDS Customers. Replacing certain cost components with amounts that more closely reflect actual cost amounts will not make the methodology unworkable. To the contrary, it can only help to

⁹⁵ WDS Customer Group Brief Opposing Exceptions at 18-22.

make the methodology more accurate. Therefore, we affirm the Presiding Judge on this issue.

C. Whether Survey-Based Ratemaking has Support in Commission Precedent and Will Lead to Bad Policy

1. Summary of Issue

60. The issue here, which was raised in Ameren's brief on exceptions, is whether survey-based ratemaking, as proposed by the WDS Customer Group, has support in Commission precedent and will lead to bad policy or precedent.

2. Initial Decision

61. In the Initial Decision, the Presiding Judge accepts Ameren's typical mile methodology as, in general, just and reasonable and not unduly discriminatory. However, the Presiding Judge rejects some of the cost components used in the typical mile methodology in favor of cost components based on the statistical analysis laid out in the WDS Customer Group's survey. The Presiding Judge concludes that the WDS Customer Group's arguments are substantially persuasive on many of the cost issues, but not all, finding multiple corrections are required.⁹⁶

3. Briefs on Exceptions

62. In its brief on exceptions, Ameren argues that "survey-based ratemaking" is a non-required, novel and untenable approach to ratemaking. First, Ameren argues that proper survey results are inordinately time consuming and expensive to design, implement and produce estimates. Second, Ameren argues that the Presiding Judge's ruling sets a dangerous precedent because the use of survey-based ratemaking would turn every rate case into a battle of statisticians over the intricacies of sampling frames, response rates and training protocols. Finally, Ameren argues that a survey-based methodology would lead to rate volatility as facilities are replaced because the costs will not be spread over all the customers.⁹⁷

4. Briefs Opposing Exceptions

63. In its brief opposing exceptions, the WDS Customer Group argues that Ameren failed to sufficiently support its typical mile methodology in the face of the WDS

⁹⁶ Initial Decision, 141 FERC ¶ 63,014 at PP 1469-1570.

⁹⁷ Ameren Brief on Exceptions at 38-40.

Customer Group's competing survey analysis. Further, the WDS Customer Group argues that in accepting the survey analysis, the Presiding Judge did not create a new ratemaking methodology or impose a new, more stringent, burden on Ameren beyond that required of FPA section 205.⁹⁸

64. In its brief opposing exceptions, Trial Staff argues that Ameren's fear that statistical analysis will become a dangerous precedent is unfounded. Trial Staff argues that the underlying reason for the statistical survey was Ameren's failure to produce adequate cost data in this proceeding. Therefore, Trial Staff argues, Ameren's argument that surveys will assume an important role in electrical ratemaking if the practice is allowed here is hardly realistic.⁹⁹

5. Commission Determination

65. We disagree with Ameren that the Initial Decision has no support in Commission precedent and that it will lead to bad policy. Ameren's principal argument is that surveys should not be used in this proceeding because they have no basis in Commission precedent and are time consuming, expensive and intricate. We find Ameren's arguments unpersuasive. Due to Ameren's admission that it did not preserve detailed accounting records for ADS-related distribution lines, the WDS Customer Group conducted a survey because it believed that Ameren's typical mile methodology was inaccurate. Again, given the Commission's preference that customers pay only for the cost of the discrete facilities used to serve them for services such as WDS, we find that it is both logical to inspect the costs proposed by Ameren in its typical mile methodology, and just and reasonable, and not inconsistent with Commission precedent, to use such alternate cost components if they are found to more closely reflect actual costs. Furthermore, we find that the Presiding Judge's ruling will not lead to bad policy or precedent as the circumstances necessitating the WDS Customer Group's survey are uncommon.

⁹⁸ WDS Customer Group Brief on Exceptions at 18-22.

⁹⁹ Trial Staff Brief Opposing Exceptions at 15.

D. Whether the WDS Customer Group's Survey is Fatally Flawed and Cannot be Used as a Basis to Set Rates

1. Summary of Issue

66. The issue here, which was raised in Ameren's brief on exceptions, is whether the WDS Customer Group's survey analysis is sound enough to be used as a basis to set rates.

2. Initial Decision

67. In the Initial Decision, the Presiding Judge accepts Ameren's typical mile methodology, but rejects some of the cost components used by Ameren in favor of cost components based on the WDS Customer Group's survey.¹⁰⁰

3. Briefs on Exceptions

68. In its brief on exceptions, Ameren argues that survey-based ratemaking suffers from major design and implementation flaws that render it unusable as a basis to set rates.

69. First, Ameren argues that the WDS Customer Group's witness Best, who designed the survey, admitted that she did not have all the data and records she needed to design and perform the survey. In this regard, Ameren notes that Ms. Best, when asked directly by the Presiding Judge whether she had produced a good product, replied that she had, but that it could have been better with a more complete sampling frame.¹⁰¹

70. Additionally, Ameren argues that Ameren's witness Batcher testified in rebuttal and sur-rebuttal to numerous design and implementation defects of the WDS Customer Group's survey, which the Presiding Judge failed to address. Dr. Batcher argued that the WDS Customer Group's survey is meaningless from a statistical perspective because it is based on a defective sample design that allows for overlapping sampling units. Ameren argues that this defect makes it impossible to verify the probabilities of selection for elements of the sample population. Ameren argues that this issue is confirmed by the fact that two different survey crews surveyed that same segment of line because it had been included in two different sampling units, meaning that a given portion of a circuit could fall into more than one sampling unit, thereby rendering the survey invalid. Moreover, Ameren argues that the fact that large amounts of the target population were never

¹⁰⁰ Initial Decision, 141 FERC ¶ 63,014 at PP 1469-1570.

¹⁰¹ Ameren Brief on Exceptions at 43-44.

eligible for sampling shows the WDS Customer Group's surveys and expert witness's incompetence.¹⁰² Finally, Ameren argues that whatever limited utility can be derived from the WDS Customer Group's survey should only be applied to the WDS Customers whose surveys were actually completed and used.

71. Ameren also argues that the WDS Customer Group's survey is flawed based on its implementation. Ameren claims that the WDS Customer Group's witness Best did not provide adequate training and instructions to the team of surveyors, which resulted in the survey teams implementing slightly different approaches. Ameren claims that Prairie's witness Chapman had his surveyors examine every pole if possible, IMEA's witness Wagner told his surveyors to examine every fifth or sixth pole, while Hoosier's witness Becher had his surveyors spot check pre-filled survey forms from pole inspection reports. Ameren claims that these varying approaches are a form of measurement bias that has rendered the surveys defective.¹⁰³

72. Ameren also argues that the Initial Decision failed to address numerous issues in the survey "processing" done by the WDS Customer Group's witnesses. First, Ameren argues that the survey processing was done without any data entry quality control, which contributed to a large number of corrections that were required weeks later. Second, Ameren argues that at least 68 percent of the data used in the survey came not from the WDS Customer Group's surveys, but from secondary sources such as Ameren's records, even though Ameren explained that these records were not appropriate for a survey. Lastly, Ameren argues that the Presiding Judge's statement that "processing of data favor[s]" Ameren, is incorrect. Ameren argues that there are many instances of data processing that does not favor Ameren and the fact that this is even an issue confirms the invalidity of the survey as a whole.¹⁰⁴

73. Finally, Ameren also argues that regardless of the quality of the survey's results, it questions the competency of WDS Customer Group's witness Best. For example, Ameren argues that Ms. Best changed her testimony several times regarding the goal of the survey, her target population and her sample population, and was confused about the difference between various types of Ameren records, which she had previously claimed were vital to her survey. Ameren claims that Ms. Best gave several excuses for incomplete surveys, including inclement weather, yet none of the WDS Customer Group members could remember any instances of inclement weather. Also, Ameren claims that

¹⁰² *Id.* at 50.

¹⁰³ *Id.* at 51-53.

¹⁰⁴ *Id.* at 53-55.

Ms. Best either had poor or selective memory on the witness stand as she failed to recall basic things such as how much time she spent in total on the survey. Ameren argues that the Initial Decision made a sweeping conclusion that Ms. Best was rehabilitated on redirect examination without addressing any of these asserted shortcomings.¹⁰⁵

4. Briefs Opposing Exceptions

74. In its brief opposing exceptions, the WDS Customer Group argues that Ameren failed to sufficiently support its typical mile methodology in the face of its survey analysis. Further, the WDS Customer Group argues that in accepting the survey analysis in the Initial Decision, the Presiding Judge did not create a new ratemaking methodology or impose a new more stringent burden on Ameren beyond that required of FPA section 205.¹⁰⁶

5. Commission Determination

75. We reject Ameren's argument that the WDS Customer Group's survey is fatally flawed and affirm the Presiding Judge's ruling that the survey can be used as a tool to assist in the setting of wholesale electric rates. As noted above, we agree that certain cost components of the typical mile methodology should be corrected if more accurate cost data are found in the record. In this situation, we find that it is necessary to use different cost components if they are found to be persuasive in order to produce just and reasonable rates.

76. We disagree with Ameren's claim that the WDS Customer Group's Best is not a competent witness. First, Ameren argues that the WDS Customer Group's Best is incompetent because her stated goal of the survey continued to change throughout her testimony. Ameren attempts to prove this by citing testimony where Ms. Best stated that the survey's goal was "to determine from observation in the field the age of the poles and conductors and the height of the poles and the material of the conductors and to look at the value of those."¹⁰⁷ Ameren also cited testimony where Ms. Best stated that the age of conductors was a goal of the study, but that it was determined from Ameren's records, not through actual observation.¹⁰⁸ We disagree. Such a minor mistake in hours of

¹⁰⁵ *Id.* at 44-47.

¹⁰⁶ WDS Customer Group Brief Opposing Exceptions at 18-22.

¹⁰⁷ Ameren Brief on Exceptions at 45 (citing Ex. AMS-48, Att. B).

¹⁰⁸ Tr. 757:20-759:4 (Best).

testimony does not render a witness incompetent. Further, we find that the fact that Ms. Best knew how she was to determine the age of the conductors demonstrates her competence, not her lack thereof.

77. Next, Ameren attempts to prove that Ms. Best is incompetent by citing testimony in which Ms. Best essentially testified that her goal in conducting the survey was not to prove that Ameren's facilities were old and in poor condition, but that she was hired to determine the age and height of the poles and conductors in the system that served the customers.¹⁰⁹ Ameren claims that this proves that the WDS Customer Group's Best is incompetent because she does "not know the ultimate goal of the [WDS Customer Group's] survey, i.e., what it was intended to demonstrate in this proceeding."¹¹⁰ The Commission disagrees. The WDS Customer Group's Best is not an incompetent witness because she recognizes the difference between her work assignment or goal and what her employer intends to prove with her work product. Furthermore, assuming, *arguendo*, that Ms. Best was an incompetent witness, we affirm the Presiding Judge's finding that she was sufficiently rehabilitated on redirect examination.

78. We also disagree with Ameren's argument that the WDS Customer Group's survey was based on a defective sample design that rendered the survey meaningless. First, Ameren argues that an overlap in the survey's data renders the survey invalid. Ameren's argument is based on the claim that IMEA's witness Casey and Wabash's witness Westfield surveyed the same six miles of a 20-mile line.¹¹¹ We disagree. An alleged overlap of six miles of data from a survey of 6,600 electrical poles and close to 340 miles of electrical line is not enough to render the entire exercise useless. That is, the impact of such an overlap would be *de minimis* to such an analysis.

79. We also disagree with Ameren's argument that the WDS Customer Group's survey is invalid because it allows for overlapping sampling units. Ameren argues that because the survey's design makes it impossible to know the probabilities of selection for elements of the population, the WDS Customer Group cannot use the probability theory that statistical sampling relies on. Ameren argues that surveyors did not survey entire circuits, but only the line segment from a delivery point to an Ameren substation, meaning parts of the population could fall into more than one sampling unit because any given segment of the line from an Ameren substation could have several delivery points

¹⁰⁹ Tr. 774:1-775:22 (Best).

¹¹⁰ Ameren Brief on Exceptions at 45.

¹¹¹ *Id.* at 48.

located along it.¹¹² Here, we affirm the Presiding Judge’s ruling that Ameren’s argument is theoretical, rebuttable and does not render the survey invalid. As the WDS Customer Group stated, it is common knowledge in the statistical world that perfect sample frames rarely occur and that an imperfect sample frame can be ignored if the duplications are small.¹¹³ In fact, Ameren’s witness Batcher admitted that “in practice, perfect frames do not exist.”¹¹⁴ Here, we find that the duplications, if any, were *de minimis* and thus did not render the survey invalid.

80. Further, we find that Ameren has not provided sufficient evidence to show that alleged sample frame imperfections or differences in survey theory are grave enough in the present survey to completely disregard the survey and any conclusions and analysis that rely on it. On the contrary, what the evidence does show is that the WDS Customer Group’s witness Best surveyed some 6,600 electrical poles and 340 miles of electrical line, and prepared a detailed analysis of the WDS Customer Group’s delivery points. The Commission agrees with the Presiding Judge that this data is relevant and provides a more precise and accurate understanding of the items and costs included in the typical mile methodology.

81. Additionally, we disagree that the WDS Customer Group’s survey’s conclusions and analysis should only be applied to the WDS Customers who actually completed and returned surveys. Ameren claims the fact that IMEA, Wabash, Prairie and Hoosier were included in the WDS Customer Group’s survey, while Southern Illinois and Norris were not, renders biased and invalid results.¹¹⁵ Ameren’s argument is essentially that, to be of any use, the WDS Customer Group’s survey must be based on collected data from the entire target population. While such a method is ideal in theory, in practice such accumulation of data is often impossible and, thus, it is necessary to establish a working population that is as close a representation as possible to the total population. Accordingly, as testified to by Ameren’s witness Batcher, if the characteristics of the target population are not “substantially different” from the sample population, then bias will be reduced to an acceptable level.¹¹⁶ Here, the WDS Customer Group’s witness Best used random samples of the target population in order to find an unbiased and statistically

¹¹² *Id.* at 47.

¹¹³ Ex. CG-47 at 4.

¹¹⁴ Tr. 331:16-332:14 (Batcher).

¹¹⁵ Ameren Brief on Exceptions at 50-51.

¹¹⁶ Ex. AMS-27 at 6.

sound representation of the total population. Additionally, Dr. Batcher testified that Ameren has not suggested that any poles or conductors for any customer or group of customers are more or less expensive than for any other customers,¹¹⁷ which further reinforces the argument that there is no substantial difference between the surveyed and non-surveyed customers. In conclusion, we affirm the Presiding Judge's finding that Ms. Best's survey sample was sufficiently representative of the target population and therefore, sufficient to establish accurate cost component estimates with respect to the target population.

82. We also disagree with Ameren's claim that the survey's implementation was fatally flawed. The basis for this claim rests on Ameren's argument that the WDS Customer Group's witness Best did not train or give all of the surveyors adequate instructions, which resulted in the survey teams taking slightly different approaches. Ameren cites Prairie's witness Chapman's testimony, in which Chapman did his own training and provided his own written instructions so that "each of the lead surveyors [he] had were clear on ... the data that we needed to collect, and that we got as accurate information as we could get."¹¹⁸ We are not persuaded by Ameren's argument. In short, the overall objective of the survey was to get information as accurate as possible. As Prairie's witness Chapman testified, that is exactly what was attempted, regardless of Ms. Best's contribution or lack thereof.

83. Ameren cites several out of context statements by several of the WDS Customers who performed surveys in an attempt to show the disparity in survey implementation. Yet, Ameren confirms that the WDS Customer Group's witness Best originally gave instructions that personnel should "physically inspect and record requested information"¹¹⁹ and only supplemented this information by giving "common sense instructions" that "items that don't change from pole to pole do not need to be entered in each line."¹²⁰ However, Ameren claims that the entire survey is useless because some of the surveyor's staff were instructed to complete the surveys by observing the poles from the road, by inspecting every fifth or sixth pole or by validating a pole inspection report at the time of the survey. We disagree. We find that these "variations in approach" are

¹¹⁷ Tr. 328:17-329:4 (Batcher).

¹¹⁸ Ameren Brief on Exceptions at 51 (citing Tr. 875:20-23 (Chapman)); *see also* Ex. AMS-41 (includes the instructions Prairie gave its surveyors).

¹¹⁹ *See* Ex. AMS-48 at 10 (citing Ex. CG-36 at 25:3-5).

¹²⁰ *See id.*(citing Ex. CG-36, Instruction Item 2).

not severe enough to completely bias the survey and that the analysis and conclusion reached from the survey is still sufficiently accurate.

84. Finally, Ameren argues that the numerous errors in the survey processing render the survey results invalid. First, Ameren asserts that the processing was done too quickly and had no quality control and, therefore, contained many errors. However, Ameren does not cite any specifics in its claims as to how much data, if any, is still wrong, only that the data collection was done quickly and corrections were made to fix any mistakes.¹²¹ That the data was allegedly entered “quickly” and with no “formal quality control processes or procedures” does not, in and of itself, render the data or much less the survey wrong or invalid. Further, assuming, *arguendo*, that there were errors in the processing of data, the fact, which is not disputed, that the WDS Customer Group made corrections to errors after processing would appear to improve rather than invalidate the survey results.

85. Ameren also claims that the survey data was not only entered quickly, but was “altered” during processing and that any subsequent corrections were not made in Ameren’s favor, as stated by the WDS Customer Group’s witness Best. We are not persuaded by this argument. Ameren has not provided enough specific evidence to rebut the idea that the processing of survey information, regardless of its faults, produced more accurate estimates of cost components in the typical mile scenario.

86. Therefore, we affirm the Presiding Judge’s ruling that the WDS Customer Group’s survey is not fatally flawed and can be used, in general, as a tool to set rates for specific cost components.

E. Issue I.B.2. — Which Estimate Should be Used to Determine the Average Cost of Poles

1. Summary of Issue

87. At the hearing, Ameren and the WDS Customer Group disputed the average cost of a pole in Ameren’s typical mile of facilities serving its WDS Customers. Ameren proposed a gross plant value of \$1,429.15 per pole,¹²² which with the system average accumulated depreciation of 44.4 percent applied, results in a net plant value of approximately \$795 per pole. The WDS Customer Group argued that the average pole

¹²¹ Ameren Brief on Exceptions at 53-54.

¹²² Ex. AMS-5 at 1.

cost is approximately \$1,645, but also that the poles are 54.3 percent depreciated, resulting in a net plant value of approximately \$751 per pole.¹²³

2. Initial Decision

88. The Presiding Judge explains that Ameren's average per pole cost is based on the weighted average costs in Ameren's plant accounts, while the WDS Customer Group's estimate is supported by the statistical analysis performed by WDS Customer Group's witness Best.¹²⁴ The Presiding Judge finds for the WDS Customer Group, determining Ms. Best's statistical analysis to be probative and more precise evidence.¹²⁵

3. Briefs on Exceptions

89. Ameren explains that it utilized actual plant accounting records to develop its weighted average cost of poles. Ameren contends that the WDS Customer Group's survey is not a proper basis for ratemaking.¹²⁶

4. Briefs Opposing Exceptions

90. The WDS Customer Group explains that its survey demonstrated an average cost per pole of \$1,645, with a net book value that is 45.7 percent of gross book value.¹²⁷ The WDS Customer Group points out that the Presiding Judge found the WDS Customer Group's survey to be more precise evidence than Ameren's weighted average cost on this issue.¹²⁸ The WDS Customer Group argues that Ameren presented no probative evidence to support its position on this issue and that the WDS Customer Group's survey is the only probative evidence regarding the cost of poles.¹²⁹

¹²³ Ex. CG-32 (Revised) at 15.

¹²⁴ Initial Decision, 141 FERC ¶ 63,014 at PP 1501-1503.

¹²⁵ *Id.* PP 1504-1505.

¹²⁶ Ameren Brief on Exceptions at 56.

¹²⁷ WDS Customer Group Brief Opposing Exceptions at 22.

¹²⁸ *Id.* at 22-23 (citing Initial Decision, 141 FERC ¶ 63,014 at P 1505).

¹²⁹ *Id.* at 23.

5. Commission Determination

91. We reverse the Presiding Judge's finding regarding the average cost per pole. While the WDS Customer Group's survey is probative in determining the number of poles per typical mile, we are not convinced that the survey accurately identified specific pole heights. We find the rebuttal testimony of Ameren's witness Starwalt to be probative on this issue. Mr. Starwalt explained that two different members of the WDS Customer Group surveyed the same line segment, and recorded significantly different results with regards to pole heights.¹³⁰ The WDS Customer Group's witness Best responded to Mr. Starwalt's criticism by pointing out that the individual pole height estimates are similar and that the resulting average is extremely close.¹³¹ While we agree that the difference between the average pole heights recorded in each survey is minimal, we note that the distribution of different pole heights is ultimately too important of a factor to overlook.¹³² For this reason, we are unconvinced that the WDS Customer Group's survey precisely estimated the heights and therefore the costs of the poles surveyed.

92. Ameren's estimate, on the other hand, is based on plant account records and average costing principles.¹³³ Ameren took the weighted cost of wood poles ranging from 50 feet high up to 79 feet high.¹³⁴ We find that, by excluding poles shorter than 50 feet and taller than 79 feet, Ameren made a reasonable attempt to represent the actual poles, within its distribution system, that serve WDS Customers. We find this approach and its resulting estimate of \$1,429.15 to be just and reasonable in the absence of an estimate that more closely reflects the actual cost of poles serving WDS Customers. We therefore reverse the Presiding Judge's finding that the average cost per pole is \$1,645.

93. The application of the proper accumulated depreciation to derive the net book value of typical mile components is addressed in Issue I.C., discussed below.

¹³⁰ Ex. AMS-29 (Corrected) at 14-15.

¹³¹ Ex. CG-47 at 20.

¹³² For example, using Ameren's plant records, the average cost of two 60 foot poles significantly differs from the average cost of one 50 foot pole and one 70 foot pole, despite the fact that both pairings result in an average pole height of 60 feet.

¹³³ Ameren Brief on Exceptions at 56.

¹³⁴ Ex. AMS-5 at 3.

F. Issue I.B.3. — Which Estimate Should be Used to Determine the Number of Poles per Mile

1. Summary of Issue

94. At the hearing, the parties disputed the number of poles per mile in Ameren's typical mile of facilities serving its WDS Customers. Ameren, the WDS Customer Group, and Trial Staff argued that the correct estimate is 20, 19.78, and 19.2, respectively.

2. Initial Decision

95. The Presiding Judge finds that Ameren failed to demonstrate that an average of 20 poles per mile is appropriate.¹³⁵ The Presiding Judge finds Trial Staff's position to be most probative, and that the number of poles per mile should be corrected to a more precise estimate of 19.2.¹³⁶

3. Briefs on Exceptions

96. Ameren contends that, of the three estimates, 19.2 is the number with the least supporting evidence. Ameren argues that the 19.2 poles per mile estimate offered by Trial Staff is based solely on a theoretical concern with Ameren's averages.¹³⁷ Ameren claims that Trial Staff's estimate was originally based on the WDS Customer Group's estimate of 19.2, which was subsequently refined to 19.78 poles per mile.¹³⁸ Ameren argues that there is significant evidence showing that there are many miles in the ADS with more than 20 poles.¹³⁹ Ameren argues that the Presiding Judge errs by stating that the WDS Customer Group's 19.78 poles per mile estimate "... erroneously skewed the number in Ameren's favor."¹⁴⁰ Ameren explains that the WDS Customer Group increased its initial estimate of 19.2 to 19.78 after correcting errors to "... provide the

¹³⁵ Initial Decision, 141 FERC ¶ 63,014 at P 1506.

¹³⁶ *Id.* PP 1507, 1514.

¹³⁷ Ameren Brief on Exceptions at 56-58.

¹³⁸ *Id.* at 57.

¹³⁹ *Id.* at 58.

¹⁴⁰ *Id.* at 59 (citing Initial Decision, 141 FERC ¶ 63,014 at P 1514 n.164).

best and most accurate survey results”¹⁴¹ Ameren asks the Commission to reverse the Initial Decision to find the correct poles per mile estimate to be 20 as originally requested.¹⁴²

4. Briefs Opposing Exceptions

97. Trial Staff argues that in lieu of identifying the actual number of poles per mile, Ameren substituted its current design standard of 20 poles per mile.¹⁴³ Trial Staff contends that a line is a continuous structure, and assuming a 20 poles per mile design standard, there would only be 19 poles per mile beyond the first mile.¹⁴⁴ Trial Staff explains that the actual pole count fell between 19 and 20 poles per mile, but that either antipode would be inappropriate, and that 19.2 poles per mile is a more appropriate estimate.¹⁴⁵ Trial Staff contends that its 19.2 poles per mile figure was reached independently and not based on the WDS Customer Group’s statistical work.¹⁴⁶

98. The WDS Customer Group argues that the Presiding Judge committed no error in finding the number of poles per mile to be 19.2.¹⁴⁷ The WDS Customer Group contends that there is probative evidence in the record supporting the 19.2 poles per mile average.¹⁴⁸ Finally, the WDS Customer Group points out that the Presiding Judge found that the testimony given by Ameren’s witness Starwalt was not probative.¹⁴⁹

¹⁴¹ *Id.* at 60 (citing Tr. 803:13-19 (Best)).

¹⁴² *Id.*

¹⁴³ Trial Staff Brief Opposing Exceptions at 15.

¹⁴⁴ *Id.* at 16 (citing Tr. 891:16-892:5 (Beasley)).

¹⁴⁵ *Id.* at 17 (citing Tr. 894:23-895:4 (Beasley)).

¹⁴⁶ *Id.* (citing Tr. 88:1-3 (Beasley)).

¹⁴⁷ WDS Customer Group Brief Opposing Exceptions at 24.

¹⁴⁸ *Id.*

¹⁴⁹ *Id.*

5. Commission Determination

99. We reverse the Presiding Judge's finding that Trial Staff's estimate of 19.2 poles per mile is the most accurate representation of the number of poles used in Ameren's typical mile. We find the value of 19.2 to be arbitrary and unfounded. Not only does it rely on an unsupported design estimate of 20 poles per mile, it relies on an average span length of 278 feet and an average line segment of 5 miles; however, there is no evidence or claim in the record to support that these design estimates are representative of Ameren's WDS facilities. For these reasons, we disagree with the Presiding Judge's finding that Trial Staff's position is most probative.

100. Further, we find that Ameren's 20 poles per mile estimate has not been sufficiently supported. Ameren explains that its 20 poles per mile estimate is based on its current design standard;¹⁵⁰ however, due to the lack of supporting evidence, we are unconvinced that Ameren's actual typical mile of WDS facilities is consistent with its current design standard.

101. We find that, of the three pole per mile estimates, only the WDS Customer Group's revised 19.78 poles per mile estimate is supported by substantive evidence. The WDS Customer Group's survey is an actual count of poles, which we find to be a more substantive approach than the estimate offered by Ameren. We find for the WDS Customer Group on this issue, setting the number of poles in a typical mile at 19.78.

G. Issue I.B.4. — Which Estimate Should be Used to Determine the Cost of Conductors

1. Summary of Issue

102. At the hearing, Ameren and the WDS Customer Group disputed the costs of conductors and conductor shield¹⁵¹ in Ameren's typical mile of facilities serving its WDS Customers. Ameren utilized a weighted average cost methodology, relying on plant records, to develop these estimates.¹⁵² Ameren argued that the gross average cost of conductors equals \$1.24 per foot, while the gross average cost of conductor shield equals \$1.91 per foot. The WDS Customer Group suggested a conductor cost of \$0.918 per foot

¹⁵⁰ Ex. AMS-28 (Corrected) at 29.

¹⁵¹ Conductor shield is a wire installed above the conductors to provide shielding from lightning. *See* Ex. SWC-1 at 21.

¹⁵² Ex. AMS-28, Attachment G at 15-16.

and a conductor shield cost of \$0.884 per foot.¹⁵³ The WDS Customer Group argued that the conductor and conductor shield are 69.4 percent and 64.4 percent depreciated, respectively, which differ from Ameren's composite estimate that the facilities are 44.4 percent depreciated.¹⁵⁴

103. While Ameren utilized a weighted average cost methodology to develop its average cost of conductors, Ameren adjusted the plant record quantities of certain conductors prior to calculating its average cost of conductors estimate. For example, Ameren weighted certain conductor types at 50 percent of their respective plant record quantities, claiming that these conductor types have been historically used for lower-voltage levels as well as higher-voltage distribution levels. Ameren also included 24 million feet (approximately 6.8 percent of the plant record amount) of conductor span¹⁵⁵ in its development of its per foot cost of conductor estimate. Ameren used a standard 100 percent weighting for all other conductors used in its cost of conductors estimate.

104. In developing its cost of conductor shield estimate, Ameren used a more standard weighted average cost approach. Four conductor shield types were used in the calculation, each weighted at 100 percent of its plant record amount. Ameren's witness Althoff clarified that conductor span was not one of the four conductor shield types used in the development of Ameren's cost of conductor shield estimate.¹⁵⁶

105. The WDS Customer Group contended that, in its cost of conductor estimate, Ameren understated the amount of conductor span on its system.¹⁵⁷ The WDS Customer Group alleged that, by underweighting the quantity of conductor span in its system,¹⁵⁸

¹⁵³ Ex. CG-32 (Revised) at 15.

¹⁵⁴ *Id.*

¹⁵⁵ Conductor span is a retirement code historically used by Illinois Power to represent all the various conductors and conductor shield installed in Illinois Power's system through 2004. Accordingly, the costs associated with conductor span are inclusive of the costs of the various conductors and conductor shield installed on Illinois Power's system through 2004. Tr. 430:16-431:6 (Althoff).

¹⁵⁶ Tr. 430:16-431:6 (Althoff).

¹⁵⁷ WDS Customer Group Joint Initial Post-Hearing Brief at 46.

¹⁵⁸ Ameren's plant records, provided in Ex. AMS-28, Attachment G at 15, indicate a total of 350,902,959 feet of conductor span, of which only 24,000,000 was considered in Ameren's per foot cost of conductors estimate.

Ameren unreasonably removed a significant amount of low-cost conductor from the calculation of its cost of conductors estimate, therefore resulting in an inflated cost of conductors estimate.¹⁵⁹

106. Further, the WDS Customer Group explained that Ameren completely excluded conductor span from its development of the cost of conductor shield. The WDS Customer Group argued that conductor shield is included in Illinois Power's conductor span and, therefore, Ameren erred by completely excluding conductor span from its conductor shield cost development.¹⁶⁰

2. Initial Decision

107. The Presiding Judge notes the various arguments made by Ameren and the WDS Customer Group. The Presiding Judge specifically describes the testimony of WDS Customer Group's witness Best and Prairie's witness Breden to be probative, while finding Ameren's arguments to be unpersuasive.¹⁶¹ The Presiding Judge finds for the WDS Customer Group, accepting the costs and levels of depreciation proposed by the WDS Customer Group.¹⁶²

3. Briefs on Exceptions

108. Ameren argues that the WDS Customer Group's survey is not a proper basis for ratemaking.¹⁶³ Ameren contends that the Presiding Judge erred by relying on arguments put forth in the WDS Customer Group Post-Hearing Initial Brief, while failing to address

¹⁵⁹ The per foot cost of conductor span is \$0.48. Ex. AMS-28 (Corrected) at 33. Conductor span includes both conductors and conductor shield; the cost of each must be no greater, and likely much less, than \$0.48 per foot. Tr. 430:2-5 (Althoff) Even if the entire cost of conductor span is assigned to conductors, as Ameren did in its estimate, increasing the weighting of conductor span would result in an average per foot cost of conductors estimate that is under Ameren's \$1.24 per foot cost of conductors estimate.

¹⁶⁰ WDS Customer Group Joint Initial Post-Hearing Brief at 46-47.

¹⁶¹ Initial Decision, 141 FERC ¶ 63,014 at P 1531.

¹⁶² *Id.* P 1533.

¹⁶³ Ameren Brief on Exceptions at 61.

the evidence in the Ameren Post-Hearing Initial Brief.¹⁶⁴ Specifically, Ameren argues that Wabash's surveyors recorded smaller conductors on the lines they surveyed, thus providing no basis for the Presiding Judge to justify the WDS Customer Group's conductor numbers.¹⁶⁵ Ameren also points out that WDS Customer Group's witness Best admitted that determining the age of the conductor was not even one of the objectives of the WDS Customer Group's survey.¹⁶⁶

109. Ameren also explains that the Presiding Judge was inconsistent in rejecting Ameren's proposed \$1.91 per foot cost of conductor shield, while at the same time adopting Ameren's cost per foot of lightning protection, which included shield conductor at a cost of \$1.91 per foot, finding Ameren's testimony to be probative on the issue.¹⁶⁷ Ameren explains that the Presiding Judge essentially adopted two different costs for the same component and that the conflicting findings on the same facilities should be resolved by accepting Ameren's typical mile methodology in full.¹⁶⁸

4. Briefs Opposing Exceptions

110. The WDS Customer Group explains that its survey analysis of the actual ADS facilities providing WDS demonstrated a lower cost of conductors and shield conductors.¹⁶⁹ The WDS Customer Group points out that additional evidence from Wabash and Prairie, which provided on-the-ground visual observations of more than 102 miles of line, corroborated the fact that Ameren's values grossly overstated the cost of the actual ADS facilities.¹⁷⁰

111. The WDS Customer Group identifies that the four arguments raised by Ameren on this issue are: (1) the Presiding Judge relied on flawed studies; (2) the Presiding Judge

¹⁶⁴ *Id.*

¹⁶⁵ *Id.* at 62.

¹⁶⁶ *Id.* at 62-63 (citing Tr. 757:20-23 (Best)).

¹⁶⁷ *Id.* at 63 (citing Initial Decision, 141 FERC ¶ 63,014 at P 1536).

¹⁶⁸ *Id.* at 64.

¹⁶⁹ WDS Customer Group Brief Opposing Exceptions at 25.

¹⁷⁰ *Id.*

mistakenly relied on Wabash's surveys; (3) the survey did not take into account the age of the conductors; and (4) the Presiding Judge did not understand the issue given his decisions as to conductors and the separate lightning arrestors.¹⁷¹

112. The WDS Customer Group claims that it has already debunked the argument that the Presiding Judge relied on flawed studies.¹⁷² The WDS Customer Group argues that Ameren overstates the Presiding Judge's reliance on Wabash's surveys and claims that the Presiding Judge's finding was based on the totality of the evidence.¹⁷³ The WDS Customer Group also contends that Wabash's surveyors are all experienced utility personnel and that they were transparent, specifically when unable to identify the conductor with certainty.¹⁷⁴ The WDS Customer Group insists that in cases of ambiguity, the analysis erred in favor of Ameren by identifying each conductor as larger than what was observed by Wabash's surveyors.¹⁷⁵ The WDS Customer Group argues that even when the results were skewed to Ameren's advantage, the results still showed Ameren's conductor costs to be grossly inflated.¹⁷⁶ The WDS Customer Group adds that there is substantial evidence in the record opposing Ameren's assumption that the cost of lower-voltage distribution conductors is less than the cost of higher-voltage distribution conductors and, therefore, should be weighted at only 50 percent.¹⁷⁷ The WDS Customer Group also argues that there was uncontroverted evidence that no conductor larger than 477 thousands of circular mils was serving Prairie.¹⁷⁸

113. Finally, the WDS Customer Group argues that the Presiding Judge's acceptance of Ameren's proposed cost per foot of lightning protection was based on the fact that it was

¹⁷¹ *Id.*

¹⁷² *Id.*

¹⁷³ *Id.* at 26.

¹⁷⁴ *Id.*

¹⁷⁵ *Id.*

¹⁷⁶ *Id.*

¹⁷⁷ *Id.*

¹⁷⁸ *Id.* at 26-27.

not contested by the WDS Customer Group or Trial Staff.¹⁷⁹ The WDS Customer Group concludes by contending that the evidence in the record supports the WDS Customer Group's proposed conductor costs, while the conductor costs created by Ameren are unjust and unreasonable as they were based on flawed proxies and estimates calculated to inflate the cost of conductor applied to the applicable ADS for WDS.¹⁸⁰

5. Commission Determination

114. We affirm the Presiding Judge's finding for the WDS Customer Group on the issue of conductor cost. We agree with the WDS Customer Group's assertion that Ameren's proposed conductor cost is inflated. We find that Ameren's witness Althoff failed to reasonably support Ameren's inclusion of only 24 million feet of conductor span in its cost of conductors estimate.¹⁸¹ According to the WDS Customer Group, Illinois Power represents 42.3 percent of the total ADS line miles; however, Ameren weighted Illinois Power's lower-cost conductor span at only 22.1 percent of the total feet of conductors used in developing its per foot cost of conductors estimate.¹⁸² Ameren failed to meet its burden to support such a low weighting of conductor span, especially considering Ameren's 100 percent weighting of many types of higher-cost conductor. We are similarly unconvinced by Ameren's justification for weighting the conductors that are used for lower-voltage distribution conductors at 50 percent. Ameren failed to provide evidence showing that each of these four lower-voltage conductors is divided equally between WDS and non-WDS facilities. We thereby find the weightings used by Ameren in its cost of conductors estimate to be unjust and unreasonable.

115. Moreover, the WDS Customer Group's survey results indicate that Ameren overstates the use of larger, more expensive conductor, thus effectively increasing the average per foot cost of conductor. We find the WDS Customer Group's measures in

¹⁷⁹ *Id.* at 27 (citing Initial Decision, 141 FERC ¶ 63,014 at P 1536).

¹⁸⁰ *Id.*

¹⁸¹ Ex. CG-AIC 6.12. Ms. Althoff explains that Ameren estimated the total amount of conductors to equal 108,575,748 feet, of which 84,772,021 feet consists of other conductor types. Ms. Althoff states that the difference of 23,803,727 was rounded upward to an even 24,000,000 to represent the amount of conductor span used in its cost of conductors estimate.

¹⁸² WDS Customer Group Joint Initial Post-Hearing Brief at 46.

place to estimate conductors, specifically when uncertainty exists, to be adequate,¹⁸³ further supporting the merits of the WDS Customer Group's survey. For these reasons, we accept the WDS Customer Group's proposed conductor cost of \$0.918 per foot.

116. We also affirm the Presiding Judge's finding for the WDS Customer Group on the issue of conductor shield cost. We are unconvinced that Ameren's weighted average approach, using only four retirement codes, is an accurate representation of its entire WDS system. Specifically, we agree with the WDS Customer Group's assertion that Ameren failed to reflect the actual costs of conductor shield installed in Illinois Power's system through 2004.¹⁸⁴ By properly including conductor span in the cost of conductor shield estimate, the per foot cost of conductor shield estimate would undoubtedly be significantly less than the \$1.91 average cost per foot of conductor shield proffered by Ameren.¹⁸⁵ We therefore find Ameren's proposed conductor shield cost to be unreasonably high.

117. We disagree with Ameren's argument that the Presiding Judge's determination here should be reversed because of a conflicting determination,¹⁸⁶ which we note was uncontested. Any issue brought to the Commission on briefs in this proceeding will be examined on the merits of the evidence. Based on the entire record, we find the WDS Customer Group's proposed conductor shield cost of \$0.884 per feet to be a more precise estimate and was properly adopted by the Presiding Judge.

118. The application of the proper accumulated depreciation to derive the net book value of typical mile components is addressed in Issue I.C., discussed below.

¹⁸³ WDS Customer Group Brief Opposing Exceptions at 26.

¹⁸⁴ See Tr. 429:16-430:5 (Althoff). Under cross examination, when asked if conductor shield was used by Illinois Power, Ms. Althoff stated that everything [including conductor shield] installed prior to 2004 on Illinois Power's system would be included in conductor span.

¹⁸⁵ We note that Ameren allocated the entire \$0.48 per foot conductor span cost to conductors; therefore, to avoid duplicative recovery of costs, the cost of conductor span attributable to conductor shield would actually be \$0.00 per foot for up to 42.3 percent of the total ADS line miles.

¹⁸⁶ Initial Decision, 141 FERC ¶ 63,014 at P 1536.

H. Issue I.B.8. — What Allocation, if any, for Costs of Foundations, Steel Towers Over 50 Feet, and Steel Towers and Tangents Should be Used

1. Summary of Issue

119. At the hearing, the parties disputed the cost of foundations, steel towers, and tangents in Ameren's typical mile of facilities serving its WDS Customers. Ameren proposed approximately \$197 per mile for foundations and approximately \$930 per mile combined for both tower items, and that these costs should be allocated solely to higher-voltage distribution service.¹⁸⁷ The WDS Customer Group and Trial Staff argued that Ameren failed to support its proposed allocation of costs for these facilities and, therefore, these costs should be excluded from WDS cost of service.

120. Ameren developed its typical mile estimates by dividing the total costs for these facilities, which are found in Uniform System of Accounts (USofA) Account 364, by 6,589.90 circuit miles, which is the number of overhead circuit miles found in Ameren's higher-voltage system.¹⁸⁸ Ameren defended its cost allocation by explaining that these costs are included in its distribution plant accounts and therefore are for distribution facilities and not transmission facilities. Further, Ameren explained that these facilities would not be used for lower-voltage distribution lines because lower-voltage distribution lines do not require the strength of these facilities.¹⁸⁹

2. Initial Decision

121. The Presiding Judge finds the testimony of Trial Staff's witness Beasley and WDS Customer Group's witness Reising to be probative on this issue, and disallows these costs.¹⁹⁰ The Presiding Judge advises Ameren to either make additional efforts to determine and re-submit these costs, or use the approximate numbers determined by the

¹⁸⁷ Ex. AMS-2 at 20.

¹⁸⁸ Ex. AMS-5 at 2.

¹⁸⁹ Ameren Initial Post-Hearing Brief at 43-44.

¹⁹⁰ Initial Decision, 141 FERC ¶ 63,014 at P 1559.

WDS Customer Group's survey.¹⁹¹ Moreover, the Presiding Judge states that in any event, Ameren's proposed costs are excessive and not supported by the record.¹⁹²

3. Briefs on Exceptions

122. Ameren asks the Commission to reverse the Initial Decision on this issue, arguing that the Presiding Judge's holding is wrong and inconsistent with other rulings in the Initial Decision.¹⁹³ Ameren claims that steel towers were not allocated solely to the ADS and that Ameren extracted these cost components from its plant records and divided these costs by the number of higher-voltage distribution miles on Ameren's entire higher-voltage distribution system.¹⁹⁴ Ameren asserts that the Presiding Judge is wrong to state that Ameren assigned all of the costs of foundations, steel towers over 50 feet, and steel towers and tangents to the typical mile serving the WDS Customers.¹⁹⁵ Finally, Ameren argues that the Initial Decision also ignores the costs of steel poles, and suggests that the Presiding Judge may have confused regular steel poles with steel towers over 50 feet and their appurtenant foundations and tangents, disallowing the costs of the latter.¹⁹⁶ Ameren alleges that this is an inconsistency in the Initial Decision that will complicate the compliance phase of the proceeding.¹⁹⁷

4. Briefs Opposing Exceptions

123. Trial Staff argues that Ameren's typical mile methodology allocates the entire cost of foundations, steel towers over 50 feet, and steel towers and tangents to higher-voltage distribution service.¹⁹⁸ Trial Staff argues that Ameren failed to support assignment of all of these costs to higher-voltage distribution and therefore, Trial Staff recommended the

¹⁹¹ *Id.*

¹⁹² *Id.*

¹⁹³ Ameren Brief on Exceptions at 64-65.

¹⁹⁴ *Id.* at 64.

¹⁹⁵ *Id.* at 65.

¹⁹⁶ *Id.*

¹⁹⁷ *Id.*

¹⁹⁸ Trial Staff Brief Opposing Exceptions at 17.

exclusion of these costs from the WDS cost of service.¹⁹⁹ Trial Staff notes that in the Initial Decision, the Presiding Judge directed Ameren to either strengthen its analysis and re-submit its costs or accept the proxy numbers determined by the WDS Customer Group's survey.²⁰⁰ Trial Staff insists that Ameren chose not to submit additional evidence, but instead maintained its stance devoid of factual support or coherent explanation.²⁰¹

124. The WDS Customer Group also adheres to its argument that Ameren failed to present evidence to support its cost allocation.²⁰² The WDS Customer Group notes that, as the Presiding Judge recognized, Ameren is in sole possession of the facts required to make a proper allocation of these costs and failed to provide that information.²⁰³ The WDS Customer Group alleges that Ameren has no answer to the Presiding Judge's finding that, because the costs it claimed covered more than WDS facilities, and, therefore, were in excess of the actual costs incurred in providing WDS, their inclusion would be unjust and unreasonable.²⁰⁴ The WDS Customer Group clarifies that the Presiding Judge's finding is based on Ameren's 100 percent allocation to higher-voltage distribution, which, as the WDS Customer Group argues, lacked proof.²⁰⁵

5. Commission Determination

125. We affirm the Presiding Judge on this issue. We are not convinced that these facilities only support higher-voltage distribution lines. We agree that Ameren did not adequately support its allocation of the entire cost of foundations, steel towers over 50 feet, and steel towers and tangents to higher-voltage distribution service. We find the testimony of Trial Staff's witness Beasley to be probative. There is a lack of evidence to justify Ameren's entire assignment of these costs to specific voltage levels. Even after

¹⁹⁹ *Id.* at 18-19 (citing Ex. S-8 at 10).

²⁰⁰ *Id.* at 19.

²⁰¹ *Id.*

²⁰² WDS Customer Group Brief Opposing Exceptions at 28 (citing Ex. CG-1 (Corrected) at 35-36).

²⁰³ *Id.* at 28-29.

²⁰⁴ *Id.* at 29.

²⁰⁵ *Id.*

the Presiding Judge disallowed these costs due to lack of substantive evidence, Ameren failed to provide any evidence to support its cost allocation in its brief on exceptions. We therefore agree with the Presiding Judge's decision to disallow these costs.

I. Issue I.B.9. — What Allocation of “Non-Unitized Costs” and “Unitization Tool Balance” Should be Used

1. Summary of Issue

126. At the hearing, Ameren argued that the allocation of a portion of non-unitized costs and unitization tool balance amounts recorded in plant records is just and reasonable. Ameren asserted that no party or participant in the proceeding has shown that such costs are associated with facilities that are not in service and being depreciated and that the costs are not associated with facilities that are not “used and useful” or that they are more commonly associated with one voltage level as opposed to another.²⁰⁶

127. Ameren further argued that the costs associated with these two retirement unit codes are booked to the appropriate accounts when the facilities are placed into service, so that the costs are for the relevant types of equipment, are for equipment of the appropriate function, and are for equipment that is used and useful.²⁰⁷

128. Ameren also asserted that the costs associated with these two retirement codes were allocated across all 63,300 circuit miles of distribution, so the amount that was brought into the typical mile cost determination is proportionate to the mileage of higher-voltage distribution compared to total distribution.²⁰⁸

129. The WDS Customer Group protested the inclusion of these costs in the typical mile methodology. It argued that Ameren is unable to identify what the assets associated with these costs are, what function the assets serve, whether the assets are associated with one voltage level more than another and whether the assets are used and useful in providing WDS.²⁰⁹

²⁰⁶ Initial Decision, 141 FERC ¶ 63,014 at P 1560.

²⁰⁷ *Id.* P 1561.

²⁰⁸ *Id.* P 1562.

²⁰⁹ *Id.* P 1563.

130. The WDS Customer Group further argued that because the retirement codes have not yet been assigned for non-unitized costs, Ameren's methodology results in a significant amount of assets used for providing service to retail customers to be allocated to WDS costs.

131. Trial Staff agreed with the WDS Customer Group and stated that the costs lack any evidentiary support, or reasoning, for their specific assignment to the applicable voltage lines.²¹⁰

2. Initial Decision

132. The Presiding Judge adopts the position of the WDS Customer Group and Trial Staff that non-unitized costs and unitization tool balances should be excluded from the calculation of WDS rates. The Presiding Judge finds the opinions of WDS Customer Group's witness Reising and Trial Staff's witness Beasley probative.²¹¹

133. The Presiding Judge agrees with the WDS Customer Group that Ameren made no distinction between lower voltage distribution and higher voltage distribution assets when booking assets to the appropriate 300-level account. Thus, equipment servicing both voltages, and therefore used to provide both retail service and WDS, is booked to the same accounts.

3. Briefs on Exceptions

134. Ameren states that the Initial Decision erred by rejecting the inclusion of the non-unitized costs and unitization tool balances.²¹² Ameren states that it demonstrated that the allocation of a portion of the costs to the WDS Customer Group is just and reasonable.

135. Ameren states that it addressed the "critical issues" raised by the WDS Customer Group. Ameren reiterates that the costs associated with these two retirement unit codes are booked to the appropriate accounts when the facilities are placed into service,

²¹⁰ *Id.* P 1568.

²¹¹ *Id.* P 1569.

²¹² Ameren Brief on Exceptions at 65.

indicating the costs are for the relevant types of equipment, equipment of the appropriate function and equipment that is used and useful.²¹³

136. Ameren further reiterates that since mass plant accounts for this distribution equipment do not, and are not required to, track for assets by voltage level, this claim is irrelevant and the Presiding Judge's concerns are misplaced.

4. Briefs Opposing Exceptions

137. The WDS Customer Group asserts that Ameren failed to provide evidence that the allocation of a portion of the non-unitized costs and unitization tool balance amounts to WDS Customers is just and reasonable.²¹⁴ The WDS Customer Group states that because retirement codes have not yet been assigned for non-unitized costs, Ameren has not shown that its methodology would not include assets used solely to provide service to retail customers.

138. Trial Staff states that the Presiding Judge properly rejected Ameren's inclusion of non-unitized costs and unitization tool balances in WDS rates and that Ameren failed to provide rational support for their inclusion.²¹⁵ Trial Staff states that Ameren's inability to differentiate the amount of non-unitized costs attributable to the portion of its higher-voltage distribution system is sufficient cause for the costs to be disallowed.

5. Commission Determination

139. We affirm the Presiding Judge's ruling that non-unitized costs and unitization tool balances should be excluded from the calculation of WDS rates. Ameren failed to support that its cost allocation methodology would appropriately exclude costs attributable to facilities used to serve retail service. Therefore, the exclusion of these costs from WDS rates is just and reasonable.

140. We reject Ameren's argument that the costs are booked to the appropriate accounts when placed in service and that the costs are thus for relevant types of equipment, for equipment of the appropriate function, and for equipment that is used and useful. Witness testimony from Ameren did not identify what assets are included in the specific accounts, what function those assets served, what voltage class the assets are in

²¹³ *Id.* at 66.

²¹⁴ Customer Group Brief Opposing Exceptions at 29.

²¹⁵ Trial Staff Brief Opposing Exceptions at 23.

and whether those assets are used and useful.²¹⁶ Without rationalization for assigning these costs to WDS, their inclusion in WDS rates would not be just and reasonable.

141. Further, we reject Ameren's claim that because mass plant records are not required to track costs by voltage level, the Presiding Judge's concern is irrelevant. Just and reasonable ratemaking is intended to align rates as closely as possible to the cost of providing service to which those rates relate.²¹⁷ Ameren's methodology of not identifying attributable amounts of non-unitized costs to specific voltage levels in its distribution system in their appropriate 300 level accounts fails to align the costs and service provided.

J. Issue I.C. — Accumulated Depreciation and Net Depreciated Plant in Service of Components Comprising “Typical Mile”

1. Summary of Issue

142. The issue here is what are the accumulated depreciation and resulting net depreciated plant components that should be used to make up the typical mile of higher-voltage distribution lines.

2. Initial Decision

143. The Presiding Judge adopts the position of the WDS Customer Group. The Presiding Judge finds that the WDS Customer Group provided a sufficient factual basis through probative testimony and analysis to support a finding that the levels of accumulated depreciation they presented should be used in developing the carrying charge for calculating WDS rates.²¹⁸

144. In its January 28, 2011 filing, Ameren submitted detailed cost of service data and exhibits detailing the calculation of its carrying charge. Ameren based its proposed rates on FERC Form 1 data for the test year ending December 31, 2009.

145. The Presiding Judge notes that Ameren used system wide Form 1 depreciation data as a percentage of total gross distribution plant in service, multiplied by its estimated

²¹⁶ Ex. CG-177 at 25, 35; Ex. AMS-32 at 4-6; Tr. 440:22-441:6 (Althoff); Tr. 442:14-18 (Althoff).

²¹⁷ *E.g., Alabama Elec. Coop., Inc. v. FERC*, 684 F.2d 20 (D.C. Cir. 1982).

²¹⁸ *Id.* P 1580.

cost of sub-transmission facilities, derived from the “typical mile” methodology in developing its proposed carrying charge.²¹⁹ Based on the aggregated data for the Legacy Companies that comprise Ameren, the percentage of distribution plant that had been depreciated by the end of 2009 was 44.4 percent.²²⁰

146. The Presiding Judge also notes that the WDS Customer Group argued that this is a significantly lower percentage of accumulated depreciation than is justified by the facts for the facilities that serve them. The WDS Customer Group conducted a survey of higher voltage distribution lines that provide WDS service and found that the poles on average were approximately 62 percent depreciated, the conductors on average approximately 83 percent depreciated; overall the facilities comprise an average circuit mile 69 percent depreciated.²²¹

147. Prairie provided a survey it conducted in response to Data Request AIC.PPI.DR-1.1, which indicated that the average age of the poles surveyed was 23 years old. Based on the 30-year depreciable life Ameren uses for poles, the poles in Prairie’s survey were 76 percent depreciated.

148. Trial Staff took no position on the issue.

3. Briefs on Exceptions

149. Ameren states that the Initial Decision erred in adopting the WDS Customer Group’s depreciation data and rejecting Ameren’s depreciation methodology.²²²

150. Ameren states that the WDS Customer Group’s survey, which the Presiding Judge accepted in his ruling, is not a proper basis for ratemaking, as discussed previously.²²³ As also previously discussed, Ameren states that the Initial Decision applies the wrong burden of proof on this issue. As a result, Ameren claims that the Initial Decision improperly faults Ameren for not refuting the data proffered by the WDS Customer Group, which shows that the high voltage distribution lines that serve the WDS Customer

²¹⁹ Ex. AMS-1 at 13.

²²⁰ Initial Decision, 141 FERC ¶ 63,014 at P 1572.

²²¹ *Id.* P 1573 (citing Ex. CG-30 (Corrected) at 28).

²²² Ameren Brief on Exceptions at 67.

²²³ *Id.*

Group are significantly more depreciated than the lines that provide service to Ameren's retail customers.

151. Ameren states that by siding with Ameren with respect to the use of composite depreciation rates for the applicable USofA in Issue I.G.6,²²⁴ and then by adopting the WDS Customer Group's position on this issue, the Presiding Judge disregards logic. In Issue I.G.6, the Presiding Judge found that the use of a weighted average depreciation for each account is just and reasonable. Therefore, Ameren states, the Presiding Judge should have found that the accumulated depreciation to be applied to the component of the typical mile is what Ameren calculated.²²⁵

152. Ameren further claims that the Presiding Judge relied upon statements and facts that were proven false during the proceedings. Therefore, the Commission should address these inconsistencies and reverse the Presiding Judge. Ameren states the Presiding Judge adopts the WDS Customer Group's claim that the non-ADS WDS facilities²²⁶ are newer and better equipped than the WDS facilities in the ADSs, but does not note that the WDS Customer Group never analyzed the non-ADS WDS facilities.²²⁷ Ameren further argues that the depreciation figures from the WDS Customer Group's survey imply that Ameren's high voltage distribution system outside the ADSs have been constructed or entirely replaced over the last five to ten years, which is inconsistent with Ameren's plant records that were presented during the proceedings. Lastly, Ameren states that the Initial Decision erred in relying on Southern Illinois/Norris's witness Blake's depreciation analysis because Dr. Blake acknowledged on cross examination that his analysis was flawed and that depreciation on a certain component should be lower.

²²⁴ Issue I.G.6. — Is Ameren's use of composite depreciation rates for the applicable USofA accounts just and reasonable and not unduly discriminatory or preferential?

²²⁵ *Id.*

²²⁶ The ADS facilities represent a subset (approximately two-thirds) of Ameren's higher-voltage distribution system. The remaining one-third of higher-voltage distribution facilities, found outside the 20 ADS, are referred to as non-ADS WDS facilities.

²²⁷ Ameren Brief on Exceptions at 68.

4. Briefs Opposing Exceptions

153. The WDS Customer Group asserts that the Presiding Judge correctly found that Ameren's system weighted average cost approach for determining accumulated depreciation and net plant amounts was not just and reasonable and that the WDS Customer Group's approach, which was based on its survey of high voltage distribution lines that provide service to them, should be adopted.²²⁸ The WDS Customer Group states that the Presiding Judge recognized that the WDS Customer Group presented probative evidence based on actual plant records that Ameren failed to credibly rebut.

154. The WDS Customer Group refutes Ameren's assertion that the Presiding Judge incorrectly applied the burden of proof, and further that Ameren failed to refute the WDS Customer Group's credible and probative evidence, thereby failing to meet its burden of persuasion.²²⁹

155. The WDS Customer Group also refutes Ameren's claim that use of composite depreciation rates for the applicable USofA is inconsistent with rejecting Ameren's accumulated depreciation amounts and net plant. The WDS Customer Group claims that Ameren's depreciation study was out-of-date and that the use of composite depreciation rates was an interim measure proposed by Ameren. The use of Ameren's weighted average cost approach was not proposed by Ameren as an interim measure, so the Presiding Judge was correct and not inconsistent in rejecting Ameren's position based on the presented evidence.

5. Commission Determination

156. We affirm the Presiding Judge's ruling that Ameren has not shown that the system average accumulated depreciation for distribution assets proposed by Ameren is representative of the accumulated depreciation for the facilities that provide wholesale distribution service. Ameren did not provide a sufficient factual basis through testimony or data that their proposed system average accumulated depreciation is representative. Therefore, we find that Ameren's proposed system average accumulated depreciation for use in developing WDS rates is not just and reasonable.²³⁰ The WDS Customer Group provided a sufficient factual basis through probative testimony to support the levels of accumulated depreciation appropriate for developing the carrying charge in their

²²⁸ WDS Customer Group Brief Opposing Exceptions at 31.

²²⁹ *Id.* at 32.

²³⁰ Initial Decision, 141 FERC ¶ 63,014 at P 1579.

claims.²³¹ Ameren did not refute the data provided by the WDS Customer Group demonstrating that the higher-voltage distribution lines that serve them are significantly more depreciated than the lower-voltage distribution lines that provide service to Ameren's retail service. Therefore, we find that the WDS Customer Group's approach for the levels of accumulated depreciation between WDS and retail service are just and reasonable and adopt their proposal for accumulated depreciation.

157. As discussed earlier, we reject Ameren's claim that the WDS Customer Group's survey is not a proper basis for ratemaking and agree with the Presiding Judge's finding that the survey can be used as a tool to assist in the settling of wholesale electric rates.²³² For Ameren's accumulated depreciation reserve, the survey more closely reflects the actual level of accumulated depreciation of the facilities used for the average circuit mile that serve the WDS Customer Group.²³³

158. Further, we reject Ameren's claim that accepting Ameren's use of composite depreciation rates for the applicable USofA accounts but not accepting Ameren's levels of accumulated depreciation is inconsistent. The Presiding Judge rejected the level of accumulated depreciation reported by Ameren for use in developing WDS rates, not the methodology used to determine the composite depreciation rates or the rationale advanced to justify their usage. The use of composite depreciation rates for determining depreciation for accounting purposes is well established, and Ameren provided sufficient information to support its use of these depreciation rates for the facilities used to serve the WDS Customers.²³⁴ However, at issue here is how to appropriately allocate the depreciation accumulated using composite depreciation rates to the particular facilities providing WDS to ensure just and reasonable rates. Therefore, it is not inconsistent to accept Ameren's use of composite depreciation, and reject its use of system average accumulated depreciation resulting from the composite depreciation rates to establish WDS rates.

159. We dismiss Ameren's earlier argument that the age of the conductors was not addressed by the WDS Customer Group's survey.²³⁵ Ms. Best stated in her testimony

²³¹ *Id.* P 1580.

²³² *See supra* P 75.

²³³ Ex. CG-30 (Corrected) at 28.

²³⁴ Initial Decision, 141 FERC ¶ 63,014 at P 1740.

²³⁵ *See supra* P 106.

that the age of the conductors “was determined from Ameren’s records that were supplied in discovery.”²³⁶ Therefore, Ameren’s argument that the age of the conductors was not addressed by the WDS Customer group’s survey is incorrect because Ameren’s own records were used in place of the field inspection.

K. Issue I.G.4.a. — Whether the Carrying Charge Factors Should Include \$40.7 Million in Prepayments of Income Taxes

1. Summary of Issue

160. At the hearing, the parties disputed whether a federal income tax refund can be included in the carrying charge calculation as a prepayment for a future year’s federal income tax. Ameren argued that the refund is a prepayment and should be included in rate base. The WDS Customer Group and Trial Staff contended that the tax refund should be excluded from rate base.

2. Initial Decision

161. The Presiding Judge finds the testimony of Trial Staff’s witness Mills to be probative on this issue, adopting the position of Trial Staff that a federal income tax refund applied to a future year is not a prepayment, but an account receivable, and should be excluded from rate base.²³⁷

3. Briefs on Exceptions

162. Ameren claims that the Presiding Judge denies Ameren the opportunity to recover reasonably-incurred costs, including tax prepayments.²³⁸ Ameren argues that the decision of the Presiding Judge is inconsistent with Commission precedent.²³⁹ Ameren stresses that there are no Account 165 instructions stating that income tax prepayments should be excluded.²⁴⁰

²³⁶ Tr. 758:11-12 (Best).

²³⁷ *Id.* P 1701.

²³⁸ Ameren Brief on Exceptions at 2.

²³⁹ *Id.* at 84-85 (citing *Southwestern Pub. Serv. Co.*, Opinion No. 337, 49 FERC ¶ 61,296 (1989)).

²⁴⁰ *Id.* at 84-85.

163. Ameren claims that the Presiding Judge misplaced reliance on Opinion No. 505, which concerns refunds for net operating loss carrybacks as opposed to income tax refunds attributable to excess prepayments.²⁴¹ In this case, Ameren states that it followed Internal Revenue Service (IRS) requirements by paying estimated tax amounts throughout the tax year, and that the estimated amounts were excessive due to a change in federal legislation that occurred late in 2009.²⁴²

164. Ameren insists that the prepayment amount provided benefit to customers and should be included in its base rate. Ameren argues that the Presiding Judge should be reversed on this issue.²⁴³

4. Briefs Opposing Exceptions

165. Trial Staff argues that Ameren's stance is directly contrary to recent precedent finding that an uncollected tax refund is an account receivable, not a prepayment.²⁴⁴ Trial Staff explains that Ameren challenged the applicability of Opinion No. 505 on the grounds that Ameren's income tax overpayment is related to the test year itself, whereas the tax overpayment in Opinion No. 505 related to net operating losses for prior periods. Trial Staff acknowledges this factual difference in the case of the income tax overpayment in Opinion No. 505 but contends that this fact is a distinction without a difference.²⁴⁵

166. Trial Staff explains that the Commission makes a clear distinction between prepayments of taxes other than income taxes and overpayment of income taxes. Trial Staff notes that the USofA Special Instructions for Accounts 409.1, 409.2 and 409.3 specifically exclude the use of Account 165, Prepayments, to record income taxes.²⁴⁶

²⁴¹ *Id.* at 84 (citing *Entergy Servs., Inc.*, Opinion No. 505, 130 FERC ¶ 61,023 (2010), *order on reh'g*, Opinion No. 505-A, 139 FERC ¶ 61,103 (2012)).

²⁴² *Id.* at 85.

²⁴³ *Id.* at 86.

²⁴⁴ Trial Staff Brief Opposing Exceptions at 10.

²⁴⁵ *Id.* at 47-48.

²⁴⁶ *Id.* at 48.

167. Trial Staff also notes that the USofA Special Instructions for Accounts 408.1 and 408.2 specifically permit overpayments of taxes other than income taxes to be recorded as prepayments in Account 165. Accordingly, Trial Staff urges affirmation of the Presiding Judge on this issue.²⁴⁷

168. The WDS Customer Group argues that the Initial Decision should be affirmed. The WDS Customer Group claims that Ameren's argument was based upon Ameren's decision to apply the refund towards income taxes for the following year, thus converting the refund (an account receivable) into a prepayment. The WDS Customer Group states that the refund is not a recurring expense and should be a reduction of the overall income tax expense required, not an expense that should be included in rate base.²⁴⁸

169. Moreover, the WDS Customer Group claims that inclusion of the \$40.7 million in the carrying charge rate calculation would unjustly distort WDS rates in a manner inconsistent with Commission precedent.²⁴⁹

170. The WDS Customer Group alleges that Ameren attempts to distinguish *Entergy* by arguing that refunds related to net operating loss carrybacks differ from those related to overpayments of taxes. The WDS Customer Group explains that in Opinion No. 505, the Commission specified that federal tax refunds are not prepayments but accounts receivable.²⁵⁰

5. Commission Determination

171. We affirm the Presiding Judge's decision that a federal income tax refund is an account receivable, not a prepayment, and should be excluded from rate base.²⁵¹ The Commission has defined prepayments included in Account 165 as expenses for a service or a supply paid in advance that will be consumed in future periods, such as rent and insurance. Accordingly, we find that Ameren's federal tax refund should not be booked to Account 165 (Prepayments), and instead be booked to Account 143 (Other Accounts Receivable).

²⁴⁷ *Id.* at 47-48.

²⁴⁸ WDS Customer Group Brief Opposing Exceptions at 45.

²⁴⁹ *Id.*

²⁵⁰ *Id.*

²⁵¹ Initial Decision, 141 FERC ¶ 63,014 at P 1701.

172. While the Account 143 text does not specifically identify federal income tax refunds as receivables, USofA item lists are intended to be representative, not exhaustive.²⁵² We recognize a federal income tax refund as an amount due to an entity and thus a federal income tax refund should be recorded consistently with receivables for the provision of goods and services. Accordingly, we agree that the Account 143 text warrants the recording of federal income tax refunds as receivables, regardless of the circumstances giving rise to the refund.

173. Further, the refund was for overpayment — not prepayment — of amounts paid to the IRS during 2009 to satisfy estimated tax liabilities. Account 236, Taxes Accrued, text requires that tax prepayments recorded in Account 165 should be paid in a current period and must be applicable to periods subsequent to the date of the balance sheet. The refund did not relate to prepayment of taxes, i.e., taxes applicable to periods subsequent to 2009. Rather, the refund was due to a change in federal legislation in 2009 related to bonus depreciation. Moreover, the Commission has found that “[t]he refund of the income taxes for the [net operating loss] carrybacks represents a reduction of income tax expense, not a prepayment of an expense.”²⁵³ We find that the same circumstance applies to the federal income tax refund at issue here. Consistent with the Commission’s findings in Opinion No. 505, we conclude that a federal income tax refund should not be classified and reported as a prepayment in Account 165, but instead should be classified as a receivable and recorded in Account 143.

174. Ameren argued that the Presiding Judge’s finding is inconsistent with Commission precedent by denying it the opportunity to recover reasonably incurred expenses, citing Opinion No. 337. First, we disagree that a federal tax refund can be considered an expense, finding that it should instead be classified as a receivable. Second, Ameren provides no justification for citing Opinion No. 337 as precedent. We dismiss the argument finding the applicability of Opinion No. 337 to be unclear. The same would be true if Ameren’s federal income tax refund here was included in its rate base. Further, according to Ameren, the federal tax refund was a result of a one-time, non-recurring, change in legislation. For these reasons, we find that the federal tax refund should be excluded from Ameren’s rate base.

²⁵² 18 C.F.R. Pt. 101, General Instruction No. 6, Item Lists (2012).

²⁵³ Opinion No. 505, 130 FERC ¶ 61,023, at PP 190-194.

L. Issue I.G.4.e. — Whether Injuries and Damages Reserve Amounts Should be Included in the Carrying Charge Rate and, if so, in What Amount

1. Summary of Issue

175. At the hearing, the parties disputed whether Injuries and Damages reserve amounts recorded to Account 925 can be included in the carrying charge calculation. Ameren argued that Injuries and Damages reserve amounts should be included in rate base, but if removed, there should be an expense adjustment to offset the reduction. The WDS Customer Group contended that the entire Injuries and Damages reserve balance along with the entire Law Expenses reserve balance recorded to Account 923 should be removed from rate base. Trial Staff argued against Ameren's requested Injuries and Damages expense adjustment.

2. Initial Decision

176. The Presiding Judge agrees with Trial Staff's position that Ameren's \$33 million Injuries and Damages reserves should be subtracted from rate base, but also finds that Ameren provided sufficient support for its proposed \$6 million expense adjustment offset. Accordingly, the Presiding Judge finds that the reserve balance with offset should be deducted from Ameren's rate base.²⁵⁴

3. Briefs on Exceptions

177. Ameren argues that the Presiding Judge errs by including Injuries and Damages reserve amounts as a rate base reduction for purposes of the carrying charge calculation. Ameren explains that the Presiding Judge fails to address the *Northeast Utilities Service Company* and *Wisconsin Electric Power Company* filings as precedent.²⁵⁵ Ameren points out that all of the requested adjustments proposed by the WDS Customer Group and Trial Staff, reduce, but never increase the rate base. Ameren states that the Presiding Judge

²⁵⁴ Initial Decision, 141 FERC ¶ 63,014 at P 1716.

²⁵⁵ Ameren Brief on Exceptions at 86 (citing Ex. AMS-28 at 53-54; *Northeast Utils. Serv. Co.*, Docket No. ER08-349-000, (Jan. 22, 2008) (delegated letter order); *Wis. Elec. Power Co.*, Docket Nos. ER10-911-000, *et al.*, (Apr. 30, 2010) (delegated letter order)).

does not address this “cherry-picking” concern and unquestioningly accepts Trial Staff’s recommendations throughout the Initial Decision.²⁵⁶

178. The WDS Customer Group asserts that the full Injuries and Damages reserve amounts should be excluded in calculating the carrying charge rate. The WDS Customer Group explains that permitting the \$6 million expense adjustment was clear error as there is no evidence in the record to support that finding.²⁵⁷ The WDS Customer Group also questions the Presiding Judge’s decision to round the amount of Injuries and Damages reserve to \$33 million. The WDS Customer Group argues that the correct amount is \$34,028,501, which includes the Law Expenses reserve funded from charges to Account 923 of \$532,899.²⁵⁸

179. Trial Staff explains that Ameren could not explain where the \$6 million in offsetting expenses had been documented. Trial Staff argues that given Ameren’s lack of evidentiary support, the \$6 million offsetting adjustment should be excluded from rate base.²⁵⁹

4. Briefs Opposing Exceptions

180. Ameren dismisses the claim by both the WDS Customer Group and Trial Staff that Ameren did not provide sufficient evidence to support the \$6 million expense offset against the Injuries and Damages reserve balance. Ameren points to the evidence presented by its witness Althoff and to public documents that buttress this evidence.²⁶⁰

181. The WDS Customer Group reiterates that the Presiding Judge was correct to offset the Injuries and Damages reserve amounts in the carrying charge rate.²⁶¹ The WDS Customer Group also argues that the Injuries and Damages reserve amount should be adjusted to \$34,028,501, which includes the Law Expenses reserve balance.²⁶² The WDS

²⁵⁶ Ameren Brief on Exceptions at 86.

²⁵⁷ WDS Customer Group Brief on Exceptions at 14.

²⁵⁸ *Id.* at 29-30.

²⁵⁹ Trial Staff Brief on Exceptions at 10.

²⁶⁰ Ameren Brief Opposing Exceptions at 3-4.

²⁶¹ WDS Customer Group Brief Opposing Exceptions at 46.

²⁶² *Id.* at 14.

Customer Group explains that these amounts represent cash available to the utility, funded by customer contributions, and thus do not belong in rate base.²⁶³

182. The WDS Customer Group questions Ameren's claim that the Commission has not required such a rate base reduction in other cases. The WDS Customer Group explains that the cases mentioned by Ameren were not litigated and the accepting letter orders expressively provided that they are not to be used as precedent.²⁶⁴

183. Trial Staff explains that subtraction of reserve balances from rate base is appropriate to reflect the cost-free use of ratepayer contribution.²⁶⁵ Trial Staff states that the remaining issue is whether Ameren provided sufficient evidence that it had incurred, but not yet paid, some \$6 million in injury and damage claims against the reserve during the test year. Trial Staff points out that it addressed this issue in its brief on exceptions.²⁶⁶

5. Commission Determination

184. The Commission has found that ratepayer-contributed amounts should be excluded from rate base because if included, ratepayers would be required to pay a return on ratepayer-contributed capital.²⁶⁷ It is undisputed that the Injuries and Damages reserve balance, along with the Law Expenses reserve balance, represents ratepayer-contributed capital. Accordingly, we agree with the Presiding Judge's finding that the Injuries and Damages reserve balance, offset by the Injuries and Damages expenses, should be deducted from rate base. We find that the Law Expenses reserve balance should similarly be deducted from rate base.

185. We reject Ameren's argument that the Presiding Judge erred by failing to address *Northeast Utilities Service Company* and *Wisconsin Electric Power Company* filings as

²⁶³ *Id.* at 6.

²⁶⁴ *Id.* at 14.

²⁶⁵ Trial Staff Brief Opposing Exceptions at 11.

²⁶⁶ *Id.*

²⁶⁷ *Southwestern Pub. Serv. Co.*, Opinion No. 337, 49 FERC ¶ 61,296, at 62,128 (1989), *aff'd on this issue*, Opinion No. 337-A, 51 FERC ¶ 61,130 at 61,368-69 (1990).

precedent. These are staff-issued delegated letter orders and do not constitute legal precedent that is binding on the Commission.²⁶⁸

186. The Presiding Judge rounded the Injuries and Damages reserve balance to \$33 million. The WDS Customer Group requests that the Commission clarify the Injuries and Damages reserve balance without rounding. The Injuries and Damages reserve balance, as recorded on page 112 of Ameren's 2010 FERC Form 1 at Line 28 Column d, is \$33,495,602. We will use this exact amount in determining the rate base deduction attributable to removing the Injuries and Damages reserve balance from rate base.

187. Trial Staff argued that Ameren failed to present sufficient evidence to support \$6 million in Injuries and Damages expenses. Ameren clarified in its brief opposing exceptions that the actual amount is provided on page 233 of Ameren's 2010 FERC Form 1 at Line 15 Column b. We find this evidence not only supports the "approximately \$6 million" referred to on the record by Ameren's witness Althoff and later accepted by the Presiding Judge, but also specifies the exact offsetting amount as \$6,213,805, which we will instead use in the below calculations.

188. As previously mentioned, the rate base reduction attributable to removing the Injuries and Damages reserve balance (\$33,495,602) from rate base should be offset by the Injuries and Damages expenses (\$6,213,805) prior to deduction from rate base. The rate base reduction attributable to removing the Injuries and Damages reserve balance is thereby equal to \$27,281,797.

189. The WDS Customer Group stressed that the Presiding Judge made no reference to the Law Expenses reserve balance in the Initial Decision and argued that it should be rate base deduction. We agree. No party has identified any offsetting expenses to the Law Expenses reserve balance; therefore, the entire \$532,899 should be deducted from rate base.

²⁶⁸ *E.g., Westar Energy, Inc.*, 124 FERC ¶ 61,057, at P 26 (2008); *Norwalk Power, LLC*, 122 FERC ¶ 61,273, at P 25 (2008). The Commission has explained that: "actions taken by its staff pursuant to delegated authority 'do not constitute Commission precedent binding the Commission in future cases' and the 'exercise of . . . delegated authority cannot serve to supplant the policies [the Commission has] established in [its] decisions and regulations.'" *Mid-Continent Area Power Pool*, 97 FERC ¶ 61,038, at 61,184 n.10 (2001) (citing *Phoenix Hydro Corp.*, 26 FERC ¶ 61,389, at 61,870 (1984), *aff'd*, 775 F.2d 1187, 1191 (D.C. Cir. 1985)).

190. As discussed above, we find that both the Injuries and Damages (offset by expenses) and the Law Expenses reserve balances are ratepayer-contributed capital and should therefore be excluded from rate base. Accordingly, a rate base reduction of \$27,814,696 should be applied. Using the distribution labor allocator of 0.77323, the distribution-related portion of this rate base reduction is \$21,507,157.

M. Issue I.G.5. — Whether the Carrying Charge Rate Should be Split into Two Components

1. Summary of Issue

191. At the hearing, Ameren argued that the entire carrying charge should be allocated on a gross plant basis, while the WDS Customer Group and Trial Staff argued that the carrying charge components for return and income taxes should be allocated on a net plant basis and the remaining components on a gross plant basis.

2. Initial Decision

192. The Presiding Judge adopts the WDS Customer Group's "hybrid" allocation methodology, which was based on the WDS Customer Group's survey, finding that return and income taxes should be calculated and allocated on a net plant basis, while other components are allocated on a gross plant basis. The Presiding Judge cites the testimony of Trial Staff's witness Mills and the WDS Customer Group's witness Reising as probative, while finding that Ameren has not demonstrated that the WDS Customer Group's survey results are flawed.²⁶⁹

3. Briefs on Exceptions

193. Ameren states that the Presiding Judge errs by splitting the carrying charge rate into two components.²⁷⁰ Ameren argues that the burden of proof for the WDS Customer Group's survey falls on the WDS Customer Group and not Ameren.²⁷¹ Ameren states that the Presiding Judge ignores the significant flaws in the WDS Customer Group's survey.²⁷²

²⁶⁹ Initial Decision, 141 FERC ¶ 63,014 at P 1735.

²⁷⁰ Ameren Brief on Exceptions at 86.

²⁷¹ *Id.* at 87.

²⁷² *Id.*

194. Ameren claims that the Presiding Judge and the Trial Staff witness both overlook the fact that the return and income taxes component of the carrying charge was calculated on a net basis and then allocated on a gross basis.²⁷³

4. Briefs Opposing Exceptions

195. Trial Staff explains that all parties recognize that return is calculated on a net plant basis. Trial Staff contends that the contested issue is whether this item should be allocated to Ameren's WDS Customers on a gross plant or a net plant basis.²⁷⁴ Trial Staff claims that if Ameren's WDS facilities are less robust and more depreciated than Ameren's overall higher-voltage distribution plant, then allocation of return and related taxes on a gross plant basis will result in an over-allocation.²⁷⁵

196. Trial Staff dismisses Ameren's assertion that the Presiding Judge and the Trial Staff witness do not properly understand the controversy.²⁷⁶ Trial Staff asserts that the Presiding Judge should be affirmed.²⁷⁷

197. The WDS Customer Group explains that the Presiding Judge's determination on this issue is exactly as required by Commission precedent.²⁷⁸ The WDS Customer Group states that if Ameren calculated these components on a net basis, there is no good reason for not applying these same components on a net basis.²⁷⁹

5. Commission Determination

198. We affirm the Presiding Judge's determination that the carrying charge components for return and income taxes should be calculated and allocated on a net plant basis, rather than a gross plant basis. We find that WDS facilities are further depreciated than the entire system average, which is in fact argued by Trial Staff. Ameren's gross

²⁷³ *Id.*

²⁷⁴ Trial Staff Brief Opposing Exceptions at 50.

²⁷⁵ *Id.* at 50-51.

²⁷⁶ *Id.* at 52.

²⁷⁷ *Id.*

²⁷⁸ WDS Customer Group Brief Opposing Exceptions at 47-48.

²⁷⁹ *Id.* at 48.

plant methodology would therefore result in over-collection by Ameren. The WDS Customer Group's approach of allocating return and income taxes on a net plant basis, while still allocating the other rate components on a gross plant basis, addresses this concern.

199. Ameren argued that Trial Staff and the WDS Customer Group overlook the fact that Ameren calculated the return and income tax components of the carrying charge on a net basis. However, both Trial Staff and the WDS Customer Group, in their respective briefs opposing exceptions, acknowledged that Ameren calculated the return and income taxes components of the carrying charge on a net basis and clarified that the issue is whether these components should be allocated on a net basis.

200. Ameren argued that the Presiding Judge incorrectly placed the burden of proof on Ameren. Here, Ameren did not meet its burden of proof to demonstrate that its proposal is just and reasonable. We find that the WDS Customer Group proposed and successfully supported a just and reasonable hybrid approach that better aligns rates with the actual cost of providing WDS. We thereby affirm the Presiding Judge's determination that return and income taxes should be calculated and allocated on a net plant basis.

N. Issue I.H. — Whether the Charges for Metering Equipment Set Forth in the WDS Agreements are Just and Reasonable and not Unduly Discriminatory or Preferential

1. Summary of Issue

201. Ameren developed its annual revenue requirement for metering by multiplying its total metering costs by the carrying charge rate used for the calculation of the WDS rates.²⁸⁰ Ameren explained that “[t]he same carrying charge percentage calculated in connection with the WDS charge . . . was applied to the meter set costs to determine the metering revenue requirement.”²⁸¹

202. The WDS Customer Group argues that the metering charges must be adjusted to reflect the carrying charge rate ultimately determined by the Commission in this proceeding to be just and reasonable, as opposed to the carrying charge rate initially proposed by Ameren.²⁸²

²⁸⁰ See Ex. AMS-8 at 1-11.

²⁸¹ Ex. AMS-2 at 29.

²⁸² WDS Customer Group Joint Initial Post-Hearing Brief at 80.

2. Initial Decision

203. The Presiding Judge finds for Ameren, stating that Ameren took the aggregate cost of the metering equipment from its plant accounting records, and then allocated those costs to the WDS Customers based on their equipment usage. The Presiding Judge concludes that the result is a just and reasonable allocation.²⁸³

3. Briefs on Exceptions

204. The WDS Customer Group explains that neither the WDS Customer Group nor Trial Staff took issue with the specific metering costs proposed by Ameren. The WDS Customer Group argues, however, that the final carrying charge rate, as determined by the Commission in this proceeding, should be used in the development of the metering charges.²⁸⁴

4. Briefs Opposing Exceptions

205. This issue was not addressed in any briefs opposing exceptions.

5. Commission Determination

206. We agree with the WDS Customer Group that the level of metering charges should be adjusted to reflect the Commission's findings concerning the components which are used to develop carrying charge rate. Therefore, we find that the charges for metering equipment set forth in the WDS Agreements must be adjusted to reflect the final carrying charge rate as determined herein.

O. Issue I.I.4. — What Level of Regulatory Expenses Should be Included, Should They be Amortized, and if so, Over What Period

1. Summary of Issue

207. At the hearing, the parties dispute the level of regulatory expenses to be included in rate base and the length of time over which these expenses should be amortized.

²⁸³ Initial Decision, 141 FERC ¶ 63,014 at P 1744.

²⁸⁴ WDS Customer Group Brief on Exceptions at 30-31.

Ameren proposed \$1.103 million to be amortized over a one-year period,²⁸⁵ while the WDS Customer Group and Trial Staff argue for a three-year amortization period.²⁸⁶

2. Initial Decision

208. The Presiding Judge finds for Ameren with regard to the amount of regulatory expenses to be included, but finds for the WDS Customer Group by concluding that such expenses should be amortized over a three-year period.²⁸⁷

3. Briefs on Exceptions

209. Ameren argues that the Commission must address the applicable precedent and reverse the Presiding Judge's finding to amortize rate base expense over three years.²⁸⁸ Ameren maintains that its best estimate of the duration of the rates at issue in this case, at the time Ameren filed its initial estimate, was one year. Ameren explains that it expected to file a superseding rate case with revised methodology in the timeframe of December 2011 or January 2012.²⁸⁹

210. Ameren states that the challenging party must not only show that its one-year amortization period estimate was wrong, but that its use would produce an unreasonable result.²⁹⁰ Ameren argues that not only did neither the WDS Customer Group nor Trial Staff meet this burden, no party even attempted to make the required showing, and therefore, the Presiding Judge's decision to change its one-year amortization period estimate to three years must be reversed.²⁹¹

²⁸⁵ In its January 28, 2011 filing, Ameren proposed to recover \$100,000 with a three-year amortization period. *See* Ex. AMS-6 at 10. In its October 14, 2011 filing, Ameren revised its estimated regulatory expenses to \$1.103 million and shortened the amortization period to one year. *See* Ex. AMS-7 at 13.

²⁸⁶ Ex. CG-1 at 15-16, Ex. S-1 at 4.

²⁸⁷ Initial Decision, 141 FERC ¶ 63,014 at P 1751.

²⁸⁸ Ameren Brief on Exceptions at 81.

²⁸⁹ *Id.* at 81-82.

²⁹⁰ *Id.* at 83 (citing *Southwestern Pub. Serv. Co. v. FERC*, 952 F.2d 555 (D.C. Cir. 1992) (*Southwestern*)).

²⁹¹ *Id.* at 83-84.

4. Briefs Opposing Exceptions

211. The WDS Customer Group states that the Presiding Judge properly found that Ameren's rate case expenses should be amortized over three years.²⁹² The WDS Customer Group explains that Ameren originally filed to recover \$33,333 in regulatory expenses to be recovered each year over a three-year amortization period. During the proceedings, however, Ameren changed course to require a one-year amortization period.²⁹³

212. The WDS Customer Group rebuts Ameren's claim that it planned to submit another rate case, calling the assertion speculative and contradicted by historical evidence. The WDS Customer Group expands on this claim by mentioning that Ameren stated that the WDS rates were last updated seven to 12 years before its filing in these consolidated dockets and that there were no plans to make a filing anytime soon.²⁹⁴

213. The WDS Customer Group claims that Ameren's only argument is that the Presiding Judge's finding is contrary to the *Southwestern* spot adjustment precedent. The WDS Customer Group explains that Ameren's arguments fail under the *Southwestern* rubric because Ameren switched from a three-year amortization period in its original filing to a one-year amortization period without any explanation.²⁹⁵

214. The WDS Customer Group states that whatever level of regulatory expense is ultimately determined to be just and reasonable, allowing the recovery of the full amount each year is inherently not just and reasonable; by definition it allows Ameren to over-recover these costs in year two and every year beyond.²⁹⁶

215. Trial Staff states that the Presiding Judge's ruling is consistent with Commission precedent; Ameren's one-year estimate was unreasonable when it was made, and even if

²⁹² WDS Customer Group Brief Opposing Exceptions at 42.

²⁹³ *Id.*

²⁹⁴ *Id.* at 43 (citing Ex. AMS-2 at 4).

²⁹⁵ *Id.* at 43-44.

²⁹⁶ *Id.* at 44.

it were reasonable when made, it has become unreasonable as it will allow a substantial over-collection prospectively.²⁹⁷

216. Trial Staff explains that Ameren's witness Power contradicts Ameren's proposed one year amortization period by: (1) acknowledging that year to year cost increases were part of the consideration for making a new filing; (2) admitting to having no idea whether these costs have increased to the point where it would warrant the filing of another case; (3) testifying, 18 months after Ameren's filings were initially made, that Ameren did not yet have superseding filings in progress for its WDS customers; and (4) admitting that he did not know how long after a corporate decision was made to initiate a proceeding it would actually take to file the purportedly anticipated rate design changes.²⁹⁸

217. Trial Staff claims that, assuming, *arguendo*, Ameren's one-year amortization period was reasonable when it was made, Trial Staff has clearly demonstrated that continued application of it is unreasonable. Trial Staff explains that under established precedent, spot adjustments to test period estimates are required when subsequent events demonstrate that continued application of the erroneous earlier estimate has become unreasonable and that the failure to adjust it in light of changed circumstances will result in an unreasonable effect on the overall rate.²⁹⁹

218. Trial Staff states that, given the past history of long intervals between WDS rate filings of Ameren's predecessor companies, it is left with the impression that Ameren's current rates may be in effect indefinitely. Trial Staff explains that if Ameren's one-year amortization horizon of its \$1.103 million rate case expense is adopted in lieu of the multi-year amortization period normally adopted by the Commission for rate case expenses, Ameren will begin over-recovering its rate case expenses within a year unless it files a superseding rate case. Trial Staff asserts that an over-recovery of this magnitude for an individual cost of service item is plainly unreasonable and should not be permitted.³⁰⁰

²⁹⁷ Trial Staff Brief Opposing Exceptions at 10.

²⁹⁸ *Id.* at 43-45.

²⁹⁹ *Id.* at 45.

³⁰⁰ *Id.* at 46.

5. Commission Determination

219. We affirm the Presiding Judge's determination that \$1.102 million³⁰¹ of regulatory expenses should be included and amortized over a three-year period.

220. We agree with Ameren's argument that the precedent in *Southwestern* should be used to determine whether an adjustment to Ameren's estimate of the amount and amortization period of regulatory expenses is just and reasonable. *Southwestern* cites to *Southern California Edison Company*, which states that the Commission's preference is to rely on test year data unless "it can be demonstrated that the estimates were either unreasonable when made or, if reasonable when made, subsequent events indicate that to use them as a basis for future projections would yield unreasonable results."³⁰²

221. The Commission has stated that regulatory expenses should be amortized over the period of time during which the rates at issue are expected to be in effect.³⁰³ Ameren's witness Power attempted to justify Ameren's one-year amortization period by explaining that Ameren intended to file a superseding rate case in the December/January time frame,³⁰⁴ nearly one year after the March 30, 2011 effective date. Ameren argued that its planned superseding rate case would employ an alternative rate methodology as a response to WDS Customer criticism of the ADS approach used in this case.³⁰⁵ We are unconvinced. We find Mr. Power's argument that Ameren planned to file a superseding rate case within one year to be unsupported. We note that the Existing WDS Agreements have been in effect for many years.³⁰⁶ It would be uncharacteristic of Ameren to file a

³⁰¹ Ex. S-13 at 3 shows the estimate of regulatory expenses to be \$1,102,363.75. Ameren rounded its estimate of regulatory expenses up to \$1.103 million, the total Account 928 amount listed in Ex. AMS-7 at 13; the Presiding Judge properly rounded the regulatory expenses down to \$1.102 million.

³⁰² See *Southern Cal. Edison Co.*, 8 FERC ¶ 61,099 (1979).

³⁰³ *Pub. Serv. Co. of New Mexico*, Opinion No. 133, 17 FERC ¶ 61,123, at 61,251 (1981), *order on reh'g*, Opinion No. 133-A, 18 FERC ¶ 61,036, *order on reh'g*, Opinion No. 133-B, 21 FERC ¶ 61,215 (1982), *aff'd in relevant part*, *Pub. Serv. Co. of New Mexico v. FERC*, 832 F.2d 1201 (1987), and *City College Station, Texas*, 86 FERC ¶ 61,165, at 61,582 (1999).

³⁰⁴ Ex. AMS-26 at 12.

³⁰⁵ Ameren Brief on Exceptions at 83.

³⁰⁶ Ex. AMS-1 at 3.

superseding rate case within one year, and for this reason, its one-year amortization period estimate was unreasonable when made.

222. Moreover, subsequent events have demonstrated that Ameren's one-year amortization period is indeed unreasonable. Trial Staff noted that more than one year has transpired since the rates went into effect on March 30, 2011.³⁰⁷ Ameren's witness Power testified that a superseding rate case was not filed as expected, due to a lack of resources, and that Ameren does not have a superseding rate case filing in progress.³⁰⁸ We therefore find that Ameren's one-year amortization period has been borne out by subsequent events to be unreasonable.

223. Further, we note that the one-year amortization period estimate would yield unreasonable results by allowing Ameren to recover the full amount of its regulatory expenses each year until a superseding rate case is filed. A one-year amortization period would guarantee Ameren over-collection of its regulatory expenses as the rates have been in effect for longer than one year and will remain in effect indefinitely until such time that a superseding rate case is filed. We, therefore, find that an adjustment to the length of the amortization period is necessary.

224. The WDS Customer Group and Trial Staff proposed a three-year amortization period for regulatory expenses.³⁰⁹ The WDS Customer Group stressed that Ameren originally filed for a three-year amortization period before, without good grounds, changing the amortization period to one year.³¹⁰ Trial Staff argued that a one-year amortization period is excessively short, and should be lengthened to prevent over-recovery by Ameren.³¹¹ We find that under a three-year amortization period, Ameren is less likely to over-recover its regulatory expenses.

225. We affirm the Presiding Judge's finding that regulatory expenses totaling \$1.102 million should be amortized over a three-year period.

³⁰⁷ Trial Staff Pretrial Brief at 23.

³⁰⁸ Tr. 306:15-24, 309:9-14 (Power).

³⁰⁹ The Commission has accepted a three-year amortization period for regulatory expenses in previous orders. *E.g.*, *Boston Edison Co.*, 8 FERC ¶ 61,077, at 61,281 (1979); *Tarpon Trans. Co.*, 58 FERC ¶ 61,354, at 62,183 (1992).

³¹⁰ WDS Customer Group Joint Initial Post-Hearing Brief at 70-73.

³¹¹ Trial Staff Initial Brief at 36-37, 40-41.

P. Issue I.G.2.a. — Whether Ameren’s Use of System-Wide Distribution O&M Expenses Divided by Gross Distribution Plant in Service Should be Used to Calculate the Level of Distribution O&M Expenses

1. Summary of Issue

226. The issue here is whether Ameren’s use of system-wide distribution O&M expenses divided by gross distribution plant in service should be used to calculate the level of distribution O&M expenses.

2. Initial Decision

227. In the Initial Decision, the Presiding Judge concludes, in concurrence with Trial Staff’s witness Beasley, that using the ratio of Ameren’s total transmission O&M expenses, excluding Account 565 (transmission for others), to total gross transmission plant in service as opposed to distribution O&M expense divided by total gross distribution plant, is appropriate in determining the carrying charge factor for distribution O&M expense.³¹² The Presiding Judge also adopts Mr. Beasley’s position that it is appropriate to reduce the distribution O&M expense level from Ameren’s proposed amount of \$190,272,025 to \$185,498,509³¹³ and reduce the carrying charge factor of 4.36 percent proposed by Ameren to 2.54 percent.³¹⁴

228. The Presiding Judge notes the WDS Customer Group’s argument that, in calculating its carrying charge, Ameren proposed to use a variety of expenses that relate to retail electric service rather than the WDS at issue in this proceeding.³¹⁵ For example, the Presiding Judge agrees with the WDS Customer Group’s witness Reising that overhead line expenses (Expense Accounts 583 and 593) and overhead line plant in service (Plant Accounts 364 and 365), which in Ameren’s proposed calculation, are not limited to the sub-transmission overhead lines (69 kV and 34.5 kV) that comprise the

³¹² Initial Decision, 141 FERC ¶ 63,014 at P 1633.

³¹³ *Id.* P 1631; Ameren 2010 FERC Form 1, Page 322, Line 156 (the difference in the two amounts is due to reductions in the 2009 amounts reported in the 2010 FERC Form 1 to eliminate intercompany transactions on the combined Ameren basis).

³¹⁴ Initial Decision, 141 FERC ¶ 63,014 at P 1631.

³¹⁵ *Id.* P 1618 (WDS Customer Group states that Ameren used the total expenses recorded in Accounts 580-589 for distribution operating expenses and in Accounts 590-598 for distribution maintenance expenses).

preponderance (approximately 98 percent) of all ADS, but also include O&M expenses and plant investment attributed to lower-voltage distribution facilities used to serve retail loads. The Presiding Judge also agrees with Mr. Reising that these lower-voltage distribution facilities are more expensive to maintain than higher-voltage distribution facilities because they have more parts and equipment, which require a greater amount of operation, maintenance and repair than higher-voltage distribution lines. Consequently, the Presiding Judge agrees with the WDS Customer Group's argument that if Ameren's proposal were adopted, the distribution O&M expense component that properly applies to WDS rates would be grossly overstated.³¹⁶

229. The Presiding Judge notes that Trial Staff stated that since Ameren does not have accurate data of the higher-voltage lines, a proxy must be used and that determining the correct methodology will hinge on whether the O&M expense activities related to the higher-voltage³¹⁷ distribution plant used to serve the WDS Customers are more like those required for Ameren's transmission plant or more like those required for its lower-voltage distribution plant.³¹⁸ The Presiding Judge notes that the WDS Customer Group's witness Reising argued that higher-voltage lines of 34.5 kV to 69 kV function more similar to transmission facilities than distribution facilities. For example, the higher-voltage facilities operate as an integrated system, as Ameren operates its transmission system, while the lower-voltage facilities operate in a radial, non-network fashion.³¹⁹ Further, the Presiding Judge states that Mr. Reising³²⁰ and Ameren's witness Starwalt confirmed that lower-voltage lines require more maintenance and thus have higher O&M expenses than higher-voltage lines.³²¹ Thus, the WDS Customer Group and Trial Staff reasoned that transmission, as opposed to distribution, should be used to compute O&M expense.

³¹⁶ *Id.* P 1620.

³¹⁷ Ameren's high voltage distribution lines are between 34,500 and 69,000 volts.

³¹⁸ Initial Decision, 141 FERC ¶ 63,014 at P 1627.

³¹⁹ Ex. CG-1 (Corrected) at 53 (citing Ex. No. AMS-12 at 3-14).

³²⁰ Initial Decision, 141 FERC ¶ 63,014 at P 1628 (citing Ex. CG-1 at 50) (“Lower-voltage lines are more likely to be located in residential areas requiring more extensive vegetation management and have more varied and more extensive equipment than high-voltage lines.”).

³²¹ *Id.* P 1629 (citing Tr. 8:611 (Starwalt)) (“On cross-examination AIC Witness Starwalt confirmed that lower-voltage lines have more terminating points, more

(continued...)

230. The Presiding Judge continues to note that Ameren contended that its proposed amount is based on calculations which are in line with Commission precedent,³²² use actual amounts from Ameren's books and records, and follow traditional rate making principles. Further, Ameren argued that neither the WDS Customer Group nor Trial Staff has shown that any other proposal is just and reasonable.

231. The Presiding Judge also notes Ameren's contention that there are several flaws in the WDS Customer Group's witness Reising's reasoning. First, Ameren stated that Mr. Reising's reasoning is flawed because his analysis is based on the year the Ameren facilities were reclassified from transmission to distribution (1999), but the expenses associated with those facilities were changed in Ameren's accounts in 2000.³²³ Further, Ameren stated that Mr. Reising fails to consider the many reasons O&M expense can fluctuate from year to year, including storm damage, regulatory pressures, and business pressures.³²⁴ Ameren also stated that Mr. Reising failed to include all necessary components of distribution O&M expense in his calculations.³²⁵ Finally, Ameren contended that the facilities at issue have been determined by the Commission to be distribution facilities based on the Commission's seven-factor test³²⁶ and, therefore, the

components per mile, more connectors to transformers, and more structures than high-voltage distribution lines.”).

³²² *Id.* P 1605. *Northeast Utils. Serv. Co.*, Docket No. ER08-349-000 (Jan. 22, 2008) (delegated letter order); *Wis. Elec. Power Co.*, Docket Nos. ER10-911-000, *et al.* (Apr. 30, 2010) (delegated letter order).

³²³ Initial Decision, 141 FERC ¶ 63,014 at P 1608.

³²⁴ *Id.* P 1610.

³²⁵ *Id.* P 1611 (Including, expenses that are either not part of transmission O&M expense (*e.g.*, meter O&M) or much reduced for transmission (*e.g.*, line patrolling expense)).

³²⁶ *See* Ameren Initial Post-Hearing Brief at 55-56 (Ameren notes that “this question was put squarely before the Commission in Docket Nos. EL00-7-000, EL00-16-000, ER99-4226-000, ER99-4415-000, ER99-4530-000, ER03-39-000 and ER04-1245-000 by the three [Ameren] Legacy Companies and the Commission agreed with the [Illinois Commerce Commission's] decisions approving the reclassification from transmission to distribution of the facilities at issue.”).

O&M expenses associated with these facilities must be booked in distribution accounts in order to comply with Commission rules and precedent.³²⁷

3. Briefs on Exceptions

232. In its brief on exceptions, Ameren states that the Presiding Judge erred in rejecting Ameren's proposed level of O&M expense, which uses distribution O&M expense and distribution plant, in favor of the WDS Customer Group and Trial Staff's proposed level, which uses transmission O&M expense and transmission plant.³²⁸ Ameren states that the Presiding Judge reclassifies the WDS facilities by overturning Commission precedent, which holds that the facilities at issue are distribution facilities not transmission facilities, without evidence or explanation. Ameren states that in seven previous dockets the Commission, based on its "seven factor test," approved of the reclassification, from transmission to distribution, of the facilities currently at issue. Ameren then states that, since they have been ruled to be distribution facilities, the facilities' O&M expense must be distribution-related, which are required, by the Commission's accounting rules, to be booked in distribution accounts (Accounts 580 through 598).³²⁹

233. Ameren further argues that the Presiding Judge incorrectly concludes that higher-voltage distribution lines are more similar to transmission facilities than distribution facilities. First, Ameren's witness Starwalt states that the argument that lower-voltage lines are more expensive to operate and maintain than higher-voltage lines is irrelevant in this proceeding because Ameren does not and is not required to maintain separate accounts for higher and lower-voltage facilities. Consequently, Ameren contends that it should not be required to develop rates for higher and lower-voltage distribution facilities. Next, Ameren states that there is no given explanation for the causal connection between the expense of lower-voltage distribution facilities and transmission O&M expense. Finally, Ameren argues that the relevant evidence here is that transmission facilities have less maintenance than distribution facilities.³³⁰

234. Next, Ameren argues that the Presiding Judge bases his reasoning on inaccurate evidence and testimony. Ameren states that the finding made by the Presiding Judge that there was no effort made to back out the distribution O&M expenses in accounts that

³²⁷ Ameren Brief on Exceptions at 73.

³²⁸ *Id.* at 72.

³²⁹ *Id.* at 73-74.

³³⁰ *Id.* at 74-76.

relate solely to retail electric service is not true. Ameren notes that Ameren's witness Althoff testified that Ameren did, in fact, "look at pulling out" of the numerator and denominator certain expenses associated with retail service, but that doing so would have increased the O&M carrying charge rate. Ameren states that its research showed that O&M expense for lower-voltage distribution is not always higher than O&M expense for higher-voltage distribution. Ameren also argues that the Presiding Judge ignored Ms. Althoff's testimony opposing the testimony of WDS Customer Group's witness Reising regarding the comparability of transmission O&M expense to higher-voltage distribution O&M expense.³³¹

235. Finally, Ameren argues that the Presiding Judge's holding would result in WDS Customers paying Ameren's transmission O&M expense twice, once for WDS and another time through Attachment O of the MISO Tariff.³³²

236. The WDS Customer Group states that the Presiding Judge failed to realize that a reduction in the carrying charge would "reduce the high-voltage distribution O&M expense as well by the intercompany expenses exposed by FERC Staff."³³³ Ameren states that the intercompany expenses referred to in the Initial Decision should be removed from distribution and transmission O&M expenses. Ameren states that because transmission O&M expense serves as the proxy for determining the higher-voltage distribution O&M expense, a further reduction of 0.02 percent, from the 2.54 percent carrying charge factor decided on in the Initial Decision, is necessary, resulting in a 2.52 percent O&M carrying charge.³³⁴

4. Briefs Opposing Exceptions

237. In its brief opposing exceptions, Ameren advances several reasons why the Presiding Judge was correct by not addressing the inter-company expenses raised in the WDS Customer Group's post-hearing reply brief. First, Ameren notes that since the cost of service elements were not on the Final Joint Stipulation of Issues, the Presiding Judge was correct not to address them. Second, Ameren notes that, even though it did concede that certain cost elements should be removed from distribution O&M and A&G expenses, it did not make similar concessions about the WDS Customer Group's transmission

³³¹ *Id.* at 77-78 (citing Initial Decision, 141 FERC ¶ 63,014 at PP 1608-1615).

³³² *Id.* at 78.

³³³ WDS Customer Group Brief on Exceptions at 27.

³³⁴ *Id.*

O&M proxy or its A&G proxy. Additionally, Ameren argues that no party, including the WDS Customer Group, ever addressed removing these elements from transmission O&M expense during the proceedings, which explains why the Presiding Judge did not make the adjustments. Ameren continues that it is illogical to remove such elements that are associated with distribution from a function that the costs were never associated with, transmission. Finally, Ameren argues that the WDS Customer Group failed to specify what amounts of the adjustments that Ameren agreed would be appropriate in the context of distribution O&M and A&G expenses would be appropriate for transmission O&M and A&G expenses. Ameren states that the different magnitudes would make an equal adjustment unreasonable.³³⁵

238. Trial Staff argues that a proxy for O&M expenses is necessary in this proceeding because Ameren lacks specific distribution O&M expense data for its ADS facilities. Trial Staff argues that the Commission precedent cited by Ameren does not necessarily render Ameren's proxy any more valid than that of WDS Customer Group and Trial Staff. Trial Staff again argues that the relevant issue here is whether O&M expense activities associated with Ameren's higher-voltage distribution system more closely resemble those for its transmission facilities or for its lower-voltage distribution facilities. Trial Staff also states that, as shown earlier through the testimony of WDS Customer Group's witness Reising and Ameren's witness Starwalt, the higher-voltage facilities more closely resemble transmission.³³⁶

239. Trial Staff notes, in response to Ameren's claim that the Presiding Judge ignored its evidence regarding the differences between transmission plant and higher-voltage distribution facilities, that the Presiding Judge devoted an entire paragraph of the Initial Decision to the issue and the fact that the Presiding Judge found other testimony to be more persuasive is not a sufficient basis for overturning the Initial Decision.³³⁷

240. Trial Staff also rebuts Ameren's claim that the Presiding Judge ignored Ameren's witness Althoff's testimony that Ameren contemplated removing certain O&M expenses that relate to retail-only plant, but determined that it would not necessarily achieve its goal of reducing the O&M carrying charge. Trial Staff argues that Ms. Althoff's testimony cannot conclusively show the impact of excluding retail-only activities because she only examined one retail-only activity, namely street lighting. Consequently, Trial Staff states that Ms. Althoff's testimony actually shows that Ameren's proxy for the

³³⁵ Ameren Brief Opposing Exceptions at 19-21.

³³⁶ Trial Staff Brief Opposing Exceptions at 27-29.

³³⁷ *Id.* at 29.

O&M component of its carrying charge is not reliable because it was computed using costs for facilities not used to provide WDS.³³⁸

241. Finally, Trial Staff argues that Ameren's argument that the Initial Decision would require the WDS customers to pay transmission O&M expenses twice "is at best tendentious." Trial Staff argues that the opposing proxy amounts are intended to reflect a proxy for Ameren's higher-voltage distribution O&M costs, not transmission costs. Further, Trial Staff argues that Ameren has presented no argument in its brief on exceptions that calls into question the soundness the finding in the Initial Decision.³³⁹

242. In its brief opposing exceptions, the WDS Customer Group argues that Ameren's argument that its estimates are sufficient because they are taken from its accounting records is flawed because the records lack the necessary specificity and Ameren made no effort to overcome such deficiencies. Next, the WDS Customer Group argues that using costs derived from the entire distribution system do not accurately reflect the costs for providing WDS service over Ameren's higher-voltage distribution system because while the 20 ADSs in this proceeding represent two-thirds of Ameren's higher voltage distribution system, approximately 85 percent of Ameren's total load is retail, with the remaining 15 percent being WDS load. Thus, the WDS Customer Group argues, Ameren's methodology could unjustly and unreasonably shift significant costs from retail service to WDS customers.³⁴⁰

243. The WDS Customer Group also states that following the Presiding Judge's ruling will not undo the Commission's classification of the WDS facilities from distribution to transmission as Ameren argues. The WDS Customer Group argues that there is ample evidence to support the Presiding Judge's decision. Primarily, the WDS Customer Group states, transmission O&M expense provides a more accurate estimate of the costs for higher-voltage distribution lines because Ameren's proposal to use all distribution lines would include significant amounts of retail electric service O&M which would grossly overstate the O&M component that properly applies to WDS rates. The WDS Customer Group states that the WDS Customer Group's witness Reising presented ample evidence to this point, which the Presiding Judge found persuasive.³⁴¹

³³⁸ *Id.* at 29-30.

³³⁹ *Id.* at 30-31.

³⁴⁰ WDS Customer Group Brief Opposing Exceptions at 37-38.

³⁴¹ *Id.* at 38-39.

5. Commission Determination

244. We affirm the Presiding Judge's decision that using the ratio of Ameren's total transmission O&M expenses excluding Account 565 (transmission for others), to total gross plant in service as opposed to distribution O&M expenses, is appropriate in determining the expenses and carrying charge factor for Ameren's distribution O&M expense.³⁴² Accordingly, we affirm the Presiding Judge's determination that the carrying charge factor should be changed from 4.36 percent to 2.54 percent.³⁴³ The Presiding Judge also finds that the distribution O&M expenses should be changed from \$190,272,025 to \$185,498,509 due to certain intercompany expenses being initially overstated. Since the Initial Decision adopts the use of transmission expense and transmission plant as the basis for O&M expense, this issue is moot with regards to the instant issue; however, because of the effect on subsequent issues we affirm the Presiding Judge's ruling that the distribution O&M expense should be reduced to the more accurate amount of \$185,498,509.³⁴⁴

245. First, we reject Ameren's argument that the WDS Customer Group, as the proponent of a new distribution O&M expense methodology, must prove that Ameren's distribution O&M expense method is not just and reasonable and that its own method is just and reasonable. Ameren claims that the Presiding Judge is silent as to the burden of proof. These consolidated proceedings are before the Commission under section 205 of the FPA to determine just and reasonable rates and terms and conditions of wholesale distribution service.³⁴⁵ As the Commission has made clear, "[u]nder section 205 of the Federal Power Act and § 35.13(e)(3) of the Commissions regulations, the utility bears the ultimate burden of proving that its rates are just and reasonable."³⁴⁶ This burden extends

³⁴² This calculation of the 2.54 percent carrying charge is computed by taking the ratio of total company transmission O&M, excluding Account 565, (\$21,040,510) to total company transmission plant in service (\$829,333,092).

³⁴³ Initial Decision, 141 FERC ¶ 63,014 at P 1633; Ex. S-8 at 10-11; Ameren Initial Brief at 50-77.

³⁴⁴ The difference in the two amounts is due to reductions in the 2009 amounts reported in the 2010 FERC Form 1 to eliminate intercompany transactions. The reduced distribution O&M amount of \$185,498,509 is accepted because it will affect the distribution A&G carrying charge rate.

³⁴⁵ March 29 Order, 134 FERC ¶ 61,242.

³⁴⁶ *Ohio Power Co.*, 39 FERC ¶ 61,098, at 61,285 (1987).

to non-rate terms and conditions as well. As stated earlier, based on the record in this proceeding, we find that Ameren has not demonstrated the reasonableness of the proposed rates in the WDS Agreements because the evidence shows that certain of the data Ameren used to produce its cost of service calculation inaccurately reflect the cost of WDS. We find certain components can and should be more accurately estimated. Therefore, in order to ensure just and reasonable rates under the WDS Agreements, we find it necessary to replace certain cost components of Ameren's proposed rates with amounts that more closely reflect actual costs as proposed by WDS Customers.

246. Accordingly, we also reject Ameren's argument that distribution O&M expense should be calculated with the ratio of total distribution O&M expense to total distribution gross (undepreciated) plant investment. As stated earlier, here, Ameren lacks specific O&M expense data for the higher-voltage facilities that service Ameren's WDS customers.³⁴⁷ When the Commission cannot readily determine or estimate a given unit's expense, it has traditionally accepted the use of a reasonable proxy for the purpose of assigning expenses to the unit.³⁴⁸ Ameren's proposal attempts to compute distribution O&M expenses using the distribution O&M expenses for its entire system. As Mr. Reising demonstrated, this computation includes costs to operate and maintain extensive portions of the distribution system that bear no relationship to the assets being used for WDS, thus grossly overstating higher-voltage distribution O&M. Specifically, in its proposal Ameren has used the total expenses recorded in accounts 580 through 589 for distribution operations expenses and in accounts 590 through 598 for distribution maintenance expenses, even though the majority of expenses in these accounts relate to retail electric service rather than WDS. Therefore, we agree that Ameren's proposed method of computing distribution O&M is not reasonable.

247. In determining the appropriate proxy, Trial Staff and the WDS Customer Group proposed using a ratio of Ameren's total transmission O&M expense (other than Account 565, transmission for others) to total transmission gross plant in service. We agree, as did the Presiding Judge, with this conclusion based on the WDS Customer Group's witness Reising's analysis. As Mr. Reising explained, transmission expense should be used as the proxy amount here because the higher-voltage 34.5 kV and 69 kV facilities used to service the WDS Customers are functionally more similar to transmission facilities, and thus will be a better proxy amount, than would the use of distribution O&M for Ameren's

³⁴⁷ Trial Staff Brief Opposing Exceptions at 27.

³⁴⁸ See, e.g., *ISO New England, Inc.*, 108 FERC ¶ 61,272, at P 16 (2004).

entire system, which is dominated by the O&M for lower-voltage distribution facilities used to provide service to retail customers.³⁴⁹

248. For example, as Mr. Reising explained, the O&M of overhead lines for lower-voltage facilities is radically different than the O&M of higher-voltage overhead lines used to service WDS Customers. First, lower-voltage distribution lines are much more extensive and complex than higher-voltage lines. In fact, there are a total of 47,000 miles of lower-voltage overhead lines compared to 6,300 miles of 34.5 kV and 69 kV overhead lines. Second, lower-voltage lines are more likely to be built in residential areas and on shorter poles, therefore requiring greater vegetation maintenance expense than higher-voltage lines. Lastly, lower-voltage overhead lines are more expensive to operate and maintain because they have more parts and equipment, which require more maintenance, repair and operations than higher-voltage lines. Therefore, as stated earlier, Ameren's proxy is not reasonable because if lower-voltage distribution expense is included, the distribution O&M expense will consist of many accounts not used to provide WDS, which would grossly overstate the WDS rates.

249. We also reject Ameren's argument that, since the Commission has previously determined that Ameren's WDS plant should be classified as distribution, based on the Commission's seven factor test, Ameren is required, pursuant to Commission accounting rules, to book the O&M expenses associated with these facilities in its distribution accounts. However, the fact that the Commission has reclassified Ameren's facilities as distribution facilities is not in and of itself decisive in this matter. It is well established that accounting practices are not controlling for ratemaking purposes and deviations from normal accounting practices must be made where necessary to ensure that rates established by the Commission are just and reasonable.³⁵⁰ Therefore, based on the evidence before us that *total* distribution O&M expense is not a just and reasonable representation of distribution O&M expenses for WDS, a deviation from accounting practices to establish WDS rates is necessary here.

250. We also reject Ameren's argument that the Presiding Judge ignored many of the operational realities of the WDS facilities and Ameren's recordkeeping. First, Ameren claims that, since it is not required to maintain separate accounts for higher and lower-voltage facilities, it cannot be expected to develop separate rates for its higher and lower-

³⁴⁹ Ex. CG-1 (Corrected) at 53.

³⁵⁰ *Consolidated Gas Supply Corp.*, 14 FERC ¶ 61,029, at 61,053-54 (1981); *Williston Basin Interstate Pipeline Co.*, 56 FERC ¶ 61,104, at 61,369 (1991).

voltage facilities.³⁵¹ However, as noted above, accounting practices are not controlling for ratemaking purposes and deviations from normal accounting practices must be made where necessary to ensure that rates established by the Commission are just and reasonable.

251. Second, Ameren argues that the Presiding Judge failed to explain how lower-voltage distribution facilities' being more expensive than higher-voltage distribution facilities justifies the adoption of O&M expense for transmission rather than O&M expense for the actual function to which the rates will apply.³⁵² We disagree. As stated above, since there is no detailed data for the higher-voltage distribution lines at issue, it is not possible to use the "O&M expense for the actual function to which the rates will apply," justifying use of a proxy. The Presiding Judge explicitly cited evidence from the WDS Customer Group's witness Reising's testimony demonstrating why Ameren's proposed ratio is unreasonable and why the differences in higher and lower-voltage distribution facilities should prompt the Commission to adopt transmission O&M expense as a reasonable proxy.³⁵³ For example, as stated above, the Presiding Judge noted that lower-voltage lines are more likely to be located in residential areas requiring more extensive vegetation management and have more varied and more extensive equipment than higher-voltage lines.³⁵⁴ Additionally, the Presiding Judge noted that Ameren's witness Starwalt confirmed on cross-examination that lower-voltage lines have more terminating points, more components per mile, more connectors to transformers, and more structures than higher-voltage distribution lines, all of which could require more maintenance.³⁵⁵ Consequently, the Presiding Judge then stated that it "agrees with those corrections [of Ameren's filed distribution O&M expense] by Mr. Reising at Exhibit CG-1, at 49-57."³⁵⁶ Thus, the Presiding Judge did not fail to explain its rationale for adopting transmission O&M expense as a proxy in this proceeding.

³⁵¹ Ameren Brief on Exceptions at 75.

³⁵² *Id.*

³⁵³ Initial Decision, 141 FERC ¶ 63,014 at PP 1618-1630; *supra* PP 240-244.

³⁵⁴ *Id.* P 1628 (citing Ex. CG-1 (Corrected) at 50).

³⁵⁵ *Id.* P 1629 (citing Tr. 8:611 (Starwalt)).

³⁵⁶ *Id.* P 1632; *supra* PP 236-237.

252. Next, Ameren argues that it is unfair for distribution lines to be expensed according to voltage level when transmission lines are not.³⁵⁷ We disagree. Transmission is an integrated network where individual facilities do not serve discrete functions, and accordingly Commission policy favors rolling in all costs of network transmission facilities operating at different voltages. In contrast, WDS facilities serve a discrete function, and Commission policy is that rates for such service should be based on direct assignment of the cost of facilities used to provide WDS. It has been established that Ameren's higher-voltage distribution facilities largely provide WDS and its lower-voltage distribution facilities largely provide retail service.³⁵⁸ Therefore, it is necessary to determine what the O&M expenses are for the higher-voltage distribution facilities used to serve WDS customers. As stated above, since there is no accurate data for higher-voltage distribution facilities a proxy must be used and the Presiding Judge concluded, based on the evidence before him, that the total O&M expenses for transmission provided a more accurate representation of WDS costs because using total distribution, including retail-based costs, overstated distribution O&M, and high voltage facilities used to provide WDS function more like transmission for the purpose of performing O&M than low voltage distribution facilities.³⁵⁹

253. Ameren also argues that the Presiding Judge conspicuously ignored the evidence in the record that there are substantial operational differences between transmission and distribution level overhead lines, as well as the bulk substations.³⁶⁰ On the contrary, the Presiding Judge explicitly referenced this argument in the Initial Decision³⁶¹ and refuted it by citing the WDS Customer Group's argument that Ameren's witness "Starwalt ignores the even larger differences between the O&M for higher voltage distribution facilities that provide WDS and the O&M for lower voltage distribution facilities that

³⁵⁷ Ameren Brief on Exceptions at 75.

³⁵⁸ Trial Staff Brief Opposing Exceptions at 28; Ex. CG-1 (Corrected) at 50.

³⁵⁹ *Supra* PP 240-242.

³⁶⁰ Ameren Brief on Exceptions at 76; Ex. No. AMS-29 (Corrected) at 4; Ex. AMS-28 (Corrected) at Tr. 8:18-21.

³⁶¹ Initial Decision, 141 FERC ¶ 61,014 at P 1613 ("As Mr. Starwalt explained, operations and maintenance of distribution facilities is considerably more complicated, time consuming and expensive than operating and maintaining transmission facilities, because distribution facilities have more points of connection, more corners and more switches than transmission facilities do.").

provide retail service.”³⁶² Further, the Presiding Judge did not ignore this argument, but simply finds the evidence proffered by the WDS Customer Group’s witness Reising more persuasive.

254. Ameren further argues that the testimony from the WDS Customer Group’s witness Reising, which the Presiding Judge cited as probative, is inaccurate for a variety of reasons and therefore not reliable. First, Ameren claims that Mr. Reising failed to consider the many reasons O&M expense can fluctuate from year to year and also omits meter O&M and line patrolling expenses which would produce an inaccurate analysis. We find this argument unpersuasive. Mr. Reising’s analysis was not meant to prove that higher-voltage distribution facilities “mirrored” transmission facilities, as Ameren claims, but simply that O&M expenses associated with higher-voltage distribution facilities are more similar to transmission facilities than lower-voltage distribution facilities. Thus, the fact that O&M expenses can fluctuate or that Mr. Reising omitted a single account in his analysis would not affect his overall conclusion that transmission O&M expenses would be a better proxy in this proceeding than total distribution O&M expenses.

255. Second, Ameren argues that Mr. Reising’s mislabeling of the column headings in his Table 6 and Table 7 leaves his analysis inaccurate. However, when asked this question on direct examination Mr. Reising stated, “It became evident to me that I had mislabeled two tables in my testimony. Ameren’s Althoff is correct, that the refunctionalization of the transmission facilities for the Illinois Power and [Central Illinois Public Service] system occurred in 1999, not 1998. *That doesn’t change my analysis*, but my table 6 and 7 were mislabeled.”³⁶³ Nevertheless, Ameren continues that Mr. Reising’s Table 7 is blatantly wrong because it confuses the year the facilities were reclassified (1999) with the year the accounting for expenses associated with those facilities changed in the Legacy Companies’ accounts (2000). We disagree. There is no evidence that the tables prepared by Mr. Reising did not take into account the proper accounting year. In fact, Table 7 shows the ratio of overhead lines O&M to overhead lines gross plant in service for the four years before and after the year of each Ameren Legacy Companies’ asset refunctionalization.³⁶⁴ Thus, the table would take into account the year the accounting expenses associated with those facilities changed in the companies’ accounts as well as other years. In conclusion, we find that this mistake did not cause any information to be “inaccurate” as Ameren claims.

³⁶² *Id.* P 1624.

³⁶³ Tr. 712:22-25; 713:1-2 (Reising) (emphasis added).

³⁶⁴ Ex. CG-1 (Corrected) at 54-55.

256. Ameren states that the Presiding Judge ignored Ameren witness Althoff's testimony that Ameren did attempt to pull out several O&M distribution retail-only expenses from the numerator of its O&M expense only to find that doing so would actually increase the O&M component of its carrying charge.³⁶⁵ However, as Trial Staff pointed out, it appears that Ms. Althoff only pulled out a single retail-related activity, street lighting, from the carrying charge when conducting her analysis. Such a limited analysis cannot possibly be extrapolated to represent the entirety of distribution retail-only O&M expenses included in the carrying charge rate. Further, the fact that Ameren knew that its proposed carrying charge rate included accounts that the WDS Customers did not benefit from only bolsters the Presiding Judge's final determination in the Initial Decision.

257. Ameren also argues that if transmission O&M expense is used as a proxy in this proceeding, Ameren's WDS Customers, all of which take transmission service from Ameren, would end up paying Ameren's transmission O&M expense twice. That is, the WDS Customers would pay once for WDS and once through Attachment O-AIC to the MISO Tariff, which factors in Ameren's transmission O&M expense.³⁶⁶ We disagree. As the Commission Trial Staff stated in its brief opposing exceptions, the proxy at issue is intended to reflect Ameren's higher-voltage distribution O&M costs, not transmission costs. The WDS Customers will not be paying for transmission twice. The WDS Customers will pay for transmission service once and then for distribution service once. Thus, the Commission finds that Ameren's argument has no merit.

258. We decline, as did the Presiding Judge, to reduce the carrying charge rate below 2.54 percent for distribution O&M. The WDS Customer Group argued to reduce the rate to 2.52 percent due to certain distribution expenses being overstated due to certain intercompany transactions. We find, due to our decision to use transmission expenses as a proxy for distribution O&M, that the certain intercompany expenses in distribution O&M at issue will not affect the applicable carrying charge rate. We also find that the Initial Decision was correct not to address these cost of service elements because it was agreed to remove them from the Final Joint Stipulation of Issues.³⁶⁷ Further, we find that

³⁶⁵ Ameren Brief on Exceptions at 77.

³⁶⁶ *Id.* at 78.

³⁶⁷ See Preliminary Joint Stipulation of Issues, Docket No. ER11-2777-002, *et al.* (Mar. 23, 2012). For example, Issue G.2.b, in reference to the level of O&M expense to be used, "Should there be an adjustment for intercompany-expenses?" The parties removed this issue from the Final Stipulated Issues List, which was included in the Initial Decision.

Ameren did not make any concessions with regard to removing these cost of service elements, and we are otherwise not persuaded to reduce the carrying charge rate absent these concessions.

259. For the above reasons, we affirm the Presiding Judge's determination in the Initial Decision.

Q. Issue I.G.2.b. — Whether Transformer Rewinds Should be Included in O&M Expenses

1. Summary of Issue

260. The issue is whether Ameren's inclusion of \$2.6 million worth of transformer rewind costs in its distribution O&M expense is proper.

2. Initial Decision

261. In the Initial Decision, the Presiding Judge concludes that transformer rewind costs are non-recurring costs³⁶⁸ that should not be included in distribution O&M expenses, but instead should be capitalized and depreciated, thus reducing Ameren's proposed distribution O&M expenses by \$2.6 million.³⁶⁹

262. The Presiding Judge notes Ameren's argument that it has traditionally included transformer rewind costs in distribution O&M expenses and that this practice has reduced Ameren's transformer plant investment, which resulted in a benefit to customers by reducing the carrying charge calculation.³⁷⁰ The Presiding Judge also notes Ameren's claim that the expenses for test year 2009 were incurred in that year as recorded and should not be adjusted due to the accounting change that occurred the following year.³⁷¹ In response to these arguments, the Presiding Judge states that Ameren's witness Althoff acknowledged on cross-examination that major rehabilitation projects having a useful life of more than one year should be capitalized, that Ameren had in fact begun to capitalize

³⁶⁸ Initial Decision, 141 FERC ¶ 63,014 at P 1641.

³⁶⁹ *Id.* P 1644.

³⁷⁰ *Id.* P 1639.

³⁷¹ *Id.* P 1638.

its transformer rewind costs in 2010, and that the rate impact of expensing its transformers rewind costs would continue until it changed rates in a future proceeding.³⁷²

263. The Presiding Judge also notes that Ms. Althoff argued that the plant account should be increased correspondingly if transformer rewind costs are not included in distribution O&M expense, otherwise Ameren would be uncompensated for the expense.³⁷³ However, the Presiding Judge rejected this argument, siding with Trial Staff, who cited Ms. Althoff's concession that Ameren would be able to reconstruct its accounting for the test year, so as to reflect capitalization and depreciation treatment for the transformer rewind costs.³⁷⁴

3. Briefs on Exceptions

264. In its brief on exceptions, Ameren states that the Presiding Judge promoted inconsistent obligations when it ordered Ameren to use the WDS Customer Group's transmission proxy for distribution O&M expenses, but then ordered Ameren to reconstruct its accounting for 2009 to reflect the capitalization and depreciation treatment for transformer rewind costs. Ameren argues that there would be no point to the accounting reconstruction if it were to use its transmission O&M expense in lieu of distribution O&M expense, in as much as the rewind costs are not included in transmission O&M expense.³⁷⁵

4. Briefs Opposing Exceptions

265. In its brief opposing exceptions, Trial Staff rebuts Ameren's argument in its brief on exceptions that the Initial Decision promotes inconsistent obligations by stating that, regardless of whether the O&M expense component of the carrying charge is transmission-based or distribution-based, the carrying charge will be applied to Ameren's ADS gross plant to determine each customer's O&M expense share of Ameren's total WDS O&M expense costs.³⁷⁶

³⁷² *Id.* P 1643.

³⁷³ *Id.* PP 1639, 1644.

³⁷⁴ *Id.* P 1644.

³⁷⁵ Ameren Brief on Exceptions at 79.

³⁷⁶ Trial Staff Brief Opposing Exceptions at 33-34.

5. Commission Determination

266. Since the Initial Decision adopted the use of transmission expense and transmission plant as the basis for O&M expense, the issue of excluding transmission rewind expenses from the test year distribution O&M is moot. However, we disagree with the Presiding Judge's determination that transformer rewind costs are nonrecurring costs. We view these costs as ordinary costs of operation because rewinding is a typical and normal activity performed to refurbish or maintain the condition of plant assets and is likely to recur in the foreseeable future. We note that the Presiding Judge did not cite evidence that these costs were nonrecurring items nor did the Presiding Judge cite evidence justifying why these costs are unrepresentative of future expense of normal utility operation. In order for these costs to be considered nonrecurring, they have to be one-time, accidental, or unusual costs of utility business. Additionally, in determining whether an event is likely to recur in the foreseeable future, past occurrence of this event may provide guidance. The Presiding Judge noted Ameren's statement that it has traditionally included transformer rewind costs in distribution O&M expenses. This fact alone is indicative that Ameren's rewind activities are not accidental or unusual and are normal part of Ameren's maintenance practices. However, we emphasize that the fact that a certain cost is characterized as a nonrecurring operating expense is irrelevant in determining whether particular work constitutes maintenance expense or instead should be capitalized. The key criterion is the nature or type of work performed and not its frequency. The work operations listed for maintenance refer to the type of work performed, and not to its frequency. Similarly, the relevant instruction for additions and retirements of electric utility plant, Electric Plant Instruction (EPI) No. 10, *Additions and Retirements of Electric Plant*, also does not refer to the frequency of work.

267. Under EPI No. 10, paragraph C (3), when a minor item of depreciable property is replaced independently of the retirement of the unit of which it is a part, the cost of replacement must be charged to maintenance expense, unless the replacement results in a substantial betterment (i.e., the property affected becomes more useful, more efficient, of greater durability, or of greater capacity).³⁷⁷ Also, under Operating Expense Instruction (OEI) No. 2, *Maintenance*, work performed specifically for the purpose of preventing failure, restoring serviceability or maintaining the life of the plant is chargeable to maintenance expense. OEI No. 2 also provides that the replacement or addition of minor

³⁷⁷ Electric Plant Instruction No. 10(C)(3), Additions and Retirement of Electric Plant.

items of plant which do not constitute a retirement unit is chargeable to maintenance expense, consistent with EPI No. 10.³⁷⁸

268. Based on the facts presented in this case, we do not believe that Ameren's transformer rewind work results in substantial betterment to its plant assets nor does it result in Ameren's plant assets becoming more useful, more efficient, of greater durability, or of greater capacity than originally designed. In fact, according to our understanding of the rewinding process, a rewind transformer has negligible impact, if at all, on the capacity as compared to the total refurbished transformer capacity or a new transformer. Further, although Ameren noted that the rewind work extends the useful life of a transformer, we believe that this work does not extend the useful life of the transformer beyond its initially expected estimated life but rather, has the effect of maintaining its original life. Accordingly, we find that transformer rewind costs are appropriately expensed.

269. While the Presiding Judge's decision to exclude transformer rewind expenses from distribution O&M expenses is moot, we find it beneficial to provide the above clarifications.

R. Issue I.G.3. — Whether Ameren's Proposed Level and Method of Calculating A&G Expenses Should be Used

1. Summary of Issue

270. The issue here is whether Ameren's proposed level and method of calculating A&G expenses should be used in determining Ameren's cost of service.

2. Initial Decision

271. In the Initial Decision, the Presiding Judge finds that Trial Staff's witness Beasley and WDS Customer Group's witness Reising's testimony was probative on this issue and therefore adopted their position of calculating A&G expenses using a ratio of ADS A&G expense to ADS gross plant in service, which results in a carrying charge rate of 1.45 percent on a gross plant basis.³⁷⁹ Specifically, this percentage was computed by

³⁷⁸ Electric Plant Instruction No. 2, Maintenance.

³⁷⁹ Initial Decision, 141 FERC ¶ 63,014 at PP 1652, 1660.

multiplying the WDS Customer Group derived ADS O&M expense³⁸⁰ as a percentage of total distribution O&M expense of 5.43 percent times total distribution-related A&G expense of \$109,032,083, with the resulting amount of ADS A&G expense of \$5,921,220 being divided by the WDS Customer Group derived ADS gross plant in service of \$407,290,774 resulting in a carrying charge of 1.45 percent.³⁸¹ Accordingly, the Presiding Judge rejects Ameren's position that A&G expenses should be calculated using the ratio of total distribution A&G expenses to total distribution gross plant in service,³⁸² which resulted in a level of distribution A&G expense equal to \$109,032,083 and an associated carrying charge of 2.50 percent.³⁸³

272. The Presiding Judge finds that Ameren did not meet its burden of proof regarding the use of system-wide averages for allocating A&G expenses to the ADS because it failed to provide any reasonable analysis to support its A&G carrying charge and failed to rebut the detailed analysis and expert opinions of Trial Staff's witness Beasley or the WDS Customer Group's witness Reising.³⁸⁴

273. The Presiding Judge notes that Ameren argued that the allocation methodology that it used for distribution O&M expense should be adopted for distribution A&G expense as well.³⁸⁵ Consequently, Ameren determined its 2.50 percent carrying charge by dividing its total distribution related A&G expense by its gross distribution plant.³⁸⁶ Ameren defends this position by arguing that: (1) it is consistent with Commission

³⁸⁰ The WDS Customer Group's ADS O&M expense is derived from the relationship of transmission O&M expense to gross transmission plant. *See* Ex. CG-5 at 5, lines 1-12.

³⁸¹ *Id.* P 1649 (citing Ex. CG-5 at 5-6).

³⁸² Hoosier Protest at 11; IMEA Protest at 22; Prairie Protest at 43; and Wabash Protest at 31.

³⁸³ Initial Decision, 141 FERC ¶ 63,014 at P 1645.

³⁸⁴ *Id.* P 1663.

³⁸⁵ *Id.* P 1653.

³⁸⁶ *Id.* P 1658.

precedent; (2) it uses Ameren's actual book values for the test year; and (3) it results in a just and reasonable allocation of distribution A&G expense.³⁸⁷

274. The Presiding Judge agrees with Trial Staff's witness Beasley and the WDS Customer Group's witness Reising who stated that Ameren's position is unreasonable because it incorrectly assumes that O&M expenses and the labor portion thereof for higher-voltage distribution facilities have the same relationship to gross plant investment as exists for lower-voltage distribution facilities.³⁸⁸ As both Mr. Beasley and Ms. Reising stated, lower-voltage distribution plant is more labor-intensive and therefore more expensive than the higher-voltage plant used to service the WDS Customers. Thus, Ms. Reising and Mr. Beasley stated that transmission data provides a more accurate basis for determining A&G expense than distribution data.³⁸⁹

3. Briefs on Exceptions

275. In its brief on exceptions, Ameren states that, contrary to the Presiding Judge's claims, it has rebutted the WDS Customer Group's methodology of computing A&G expense with a ratio of transmission O&M expense to ADS plant in its post-hearing reply brief and that, in any event, there is no basis for adopting transmission expense as a proxy for distribution expense.³⁹⁰ Further, Ameren states that the Presiding Judge misconstrued the applicable burden of proof.

276. The WDS Customer Group states that there are three modifications required by the Initial Decision which, if applied, would further reduce the carrying charge by a total of 0.25 percent. First, the WDS Customer Group argues that the carrying charge of 1.34 percent should be reduced to 1.33 percent to reflect the removal of Edison Electric Institute dues, intercompany expenses and employee severance expense. Second, the WDS Customer Group argues that given the Presiding Judge's adoption of the WDS Customer Group's A&G calculation, General and Intangible Plant (G&I) Depreciation expenses should be allocated on the same basis. The WDS Customer Group claims that

³⁸⁷ *Id.* P 1653.

³⁸⁸ *Id.* P 1659.

³⁸⁹ *Id.*

³⁹⁰ Ameren Brief on Exceptions at 80 (citing Ameren Post-Hearing Reply Brief at 69-71).

the applicable carrying charge factor for G&I should be 0.04 percent.³⁹¹ Finally, the WDS Customer Group argues that a factor for other taxes of 0.93 percent should be used for calculating the carrying charge.³⁹²

4. Briefs Opposing Exceptions

277. In its brief opposing exceptions, Trial Staff states, first, that Ameren is incorrect in arguing that the Initial Decision did not appropriately apply the burden of proof. Trial Staff states that the Presiding Judge analyzed all the evidence, including Ameren's, but found the WDS Customer Group's witness Reising's testimony persuasive, not Ameren's. Thus, according to Trial Staff, Ameren failed to meet its burden of proof under section 205.³⁹³

278. Trial Staff next rebuts Ameren's argument that the Initial Decision's choice to use transmission data rather than distribution data in developing its proxy for A&G costs was unjust and unreasonable. First, Trial Staff states that Ameren's lack of data for O&M expenses associated with providing WDS service necessitates the developing of a proxy amount for A&G expenses. To establish a proxy Trial Staff states it is necessary to determine "which type of data most closely reflects the actual cost of providing WDS service." Trial Staff argues, that since lower-voltage distribution is more labor-intensive, "high-voltage distribution bears a closer resemblance to transmission than it does to low-voltage distribution." Thus, Trial Staff states that, using transmission A&G expense as a proxy gives a more accurate assessment of the higher-voltage distribution services. If Ameren were allowed to use a combination of lower and higher-voltage distribution A&G expense as a proxy, Trial Staff states that an excessive higher-voltage distribution expense would result. Thus, transmission A&G should be used in lieu of total distribution A&G data to determine the A&G component of Ameren's carrying charge percentage.³⁹⁴

279. The WDS Customer Group states that Ameren's "traditional ratemaking approach" was rebutted by the evidence, which shows that it would be unjust and unreasonable to shift costs from Ameren's retail customers to the WDS Customer Group. Further, the WDS Customer Group states that it costs more per dollar of gross plant for

³⁹¹ WDS Customer Group Brief on Exceptions at 28-29 (citing Ex. CG-5 (Corrected) "G&I Depr" Worksheet).

³⁹² *Id.* at 29 (citing Ex. CG-5 (Corrected), "Total" and "Other Taxes" Worksheets).

³⁹³ Trial Staff Brief Opposing Exceptions at 36.

³⁹⁴ *Id.* at 37-39.

Ameren to operate and maintain its lower-voltage distribution facilities, because the facilities are older and more depreciated than the system average. Thus using a system-wide average would be unjust and unreasonable.³⁹⁵

280. As stated above, Ameren advances several reasons why the Presiding Judge should not address the inter-company expenses and related adjustments raised in the WDS Customer Group's post-hearing reply brief. First, Ameren notes that since the cost of service elements were not on the Final Joint Stipulation of Issues, the Presiding Judge was correct not to address them. Second, Ameren notes that, even though it did concede that certain cost elements should be removed from distribution O&M and A&G expenses, it did not make similar concessions about the WDS Customer Group's transmission O&M proxy or its A&G proxy. Additionally, Ameren argues that no party, including the WDS Customer Group, ever addressed removing these elements from transmission O&M expense during the proceedings, which explains why the Presiding Judge did not make the adjustments. Ameren continues that it is illogical to remove such elements that are associated with distribution from a function that the costs were never associated with, transmission. Finally, Ameren argues that the WDS Customer Group failed to specify what amounts of the adjustments that Ameren agreed would be appropriate in the context of distribution O&M and A&G expenses would be appropriate for transmission O&M and A&G expenses. Ameren states that the different magnitudes would make an equal adjustment unreasonable.³⁹⁶

5. Commission Determination

281. We affirm the Presiding Judge's decision to reject Ameren's test year distribution A&G expense in favor of the WDS Customer Group methodology, developed by Mr. Reising. Mr. Reising's methodology was computed by, first, calculating the ratio of ADS O&M expense (which is generally based on Ameren's transmission O&M expense and plant) to Ameren's total distribution O&M expense. Mr. Reising then applied that ratio to distribution-related A&G expense to determine ADS-related A&G expense. Finally, he determined his ADS A&G carrying charge percentage by dividing ADS-related A&G expense by ADS gross plant in service, which yielded a figure of 1.45 percent.³⁹⁷ As explained below, Ameren's final rate and carrying charge should also

³⁹⁵ WDS Customer Group Brief Opposing Exceptions at 40-41.

³⁹⁶ Ameren Brief Opposing Exceptions at 19-21.

³⁹⁷ Initial Decision, 141 FERC ¶ 63,014 at P 1660 (citing Ex. CG-1 (Corrected) at 60).

reflect the removal of certain intercompany expenses and the exclusion of severance program expenses.

282. We disagree with Ameren's argument that the Initial Decision did not appropriately apply the burden of proof. As the Presiding Judge indicated in the Initial Decision, Ameren, not the WDS Customer Group, has the burden of proof in this case.³⁹⁸ The Presiding Judge found Ameren's rationale unpersuasive and, further, found that Ameren failed to rebut a majority of the detailed analyses provided by Trial Staff's witness Beasley and WDS Customer Group's witness Reising.

283. Further, we agree with the Presiding Judge and Mr. Reising concerning the methodology that should be used to calculate distribution A&G expenses and the resulting carrying charge percentage of 1.45 percent. Ameren proposed to calculate distribution A&G expense by computing a ratio of distribution related A&G expenses to total gross distribution plant. We find that this proposal is unreasonable because it is based on the unsupported assumption that O&M expenses and the labor portion thereof for higher-voltage facilities have the same relationship to gross plant investment as is true for lower-voltage distribution facilities. Consistent with our findings above on distribution O&M, since actual O&M expenses of higher-voltage distribution facilities, and the labor portion of those expenses, is not available, the relationship of transmission O&M expenses to total gross transmission plant should be used to develop a proxy for the O&M expense of higher-voltage distribution facilities used to provide WDS.

284. Therefore, as Trial Staff and the WDS Customer Group argued, A&G expenses should be allocated to higher-voltage distribution facilities comprising the ADS based on the ratio of ADS-related O&M expenses, derived from the relationship of transmission O&M expenses to gross transmission plant, to Ameren's total distribution O&M expenses.³⁹⁹ The resulting ADS-related A&G expenses, divided by the ADS gross plant in service, yields an A&G carrying charge component of 1.45 percent.⁴⁰⁰

285. The Commission finds that the reduction in distribution O&M expense due to the removal of certain intercompany expenses and the Commission's subsequent ruling to exclude \$2.715 million of employee severance expenses should ultimately be reflected in Ameren's rates and carrying charge where applicable. With regards to all other

³⁹⁸ *Id.* P 1663.

³⁹⁹ Mr. Reising utilized the 5.43 percent factor developed by the WDS Customer Group to determine the amount of A&G expenses that should be allocated to the ADS.

⁴⁰⁰ Initial Decision, 141 FERC ¶ 63,014 at P 1649.

arguments to reduce the carrying charge rate, we find that the Initial Decision was correct not to address these cost of service elements because it was agreed to remove them from the Final Joint Stipulation of Issues.⁴⁰¹ Further, we find that Ameren did not make any concessions with regard to removing these cost of service elements, and we are otherwise not persuaded to reduce the carrying charge rate absent these concessions.

S. Issue I.G.3.b. — Whether Employee Severance is Properly Booked to A&G Expenses

1. Summary of Issue

286. The issue here is whether Ameren has appropriately included \$2.715 million in expenses associated with its employee severance program in its distribution A&G expense account. Trial Staff and the WDS Customer Group disagree and believe that severance expenses have been improperly included in Ameren's distribution A&G expenses.

2. Initial Decision

287. The Presiding Judge agrees with Trial Staff's witness Beasley's testimony that Ameren improperly included \$2.715 million worth of employee severance expenses in distribution A&G expense account and that this amount should be excluded.⁴⁰²

288. The Presiding Judge bases his determination on several factors. First, he notes that Trial Staff's witness Beasley testified that Ameren reversed the severance expense in 2010, the year after the test year, and transferred it into a regulatory asset account.⁴⁰³ Second, as Ameren's witness Althoff conceded on cross-examination, severance expense is typically a non-recurring expense that is conducted periodically on an as-needed basis and related to different employees.⁴⁰⁴ Third, the Presiding Judges notes the employee

⁴⁰¹ See Preliminary Joint Stipulation of Issue, Docket No. ER11-2777-002, *et al.* (Mar. 23, 2012). For example, Issue G.3.b, in reference to the level of A&G expense to be used, "Should there be an adjustment for intercompany expenses?" and Issue G.3.e, "Whether EEI dues are properly charged to A&G?" The parties removed this issue from the Final Joint Stipulation of Issues List, which was included in the Initial Decision.

⁴⁰² Initial Decision, 141 FERC ¶ 63,014 at P 1672.

⁴⁰³ *Id.* P 1668.

⁴⁰⁴ *Id.* P 1669.

severance program was related to the merger of Illinois Power and Central Illinois Light into Central Illinois Public Service to form Ameren and was a unique event that is unlikely to be repeated in the future.⁴⁰⁵ Finally, the Presiding Judge determines that severance programs may drive down costs to future customers, but only if Ameren's rates are changed in a new filing made after the purported benefits of the severance program are realized.⁴⁰⁶

289. The Presiding Judge notes Ameren's argument that employee severance expenses should be included in distribution A&G because they are just and reasonable costs associated with running the utility and are legitimate costs associated with programs designed to drive down ongoing costs, which ultimately lead to customer benefits.⁴⁰⁷

290. The Presiding Judge further notes that Ameren argues that the WDS Customer Group did not address the issue in its pre-hearing brief and thus any argument made in its Initial Brief should be given no weight.⁴⁰⁸ However, the Presiding Judge concludes that since Trial Staff presented evidence on the issue, the WDS Customer Group may formulate a position contrary to Ameren based on this evidence.⁴⁰⁹

3. Briefs on Exceptions

291. In its brief on exceptions, Ameren states that no party has shown that the severance expenses were not incurred during the test year or that the expenses were not reasonable. Ameren also states that, while the Presiding Judge called the costs "improper," no party made such an argument prior to the Initial Decision. Ameren states that removing these expenses would be contrary to Commission precedent and therefore they should be included.⁴¹⁰ Finally, Ameren claims that even if the costs are non-recurring, it is entitled to recover them over a reasonable amortization period.

⁴⁰⁵ *Id.* P 1670.

⁴⁰⁶ *Id.* P 1671.

⁴⁰⁷ *Id.* P 1664.

⁴⁰⁸ *Id.* P 1666.

⁴⁰⁹ *Id.* P 1667.

⁴¹⁰ Ameren Brief on Exceptions at 81 (citing *Sw. Pub. Serv. Co.*, Opinion No. 337, 49 FERC ¶ 61,296 (1989)).

4. Briefs Opposing Exceptions

292. In its brief opposing exceptions, Trial Staff reiterates that the employee severance program is indeed non-recurring as is conceded by Ameren's witness Althoff. Trial Staff also argues that while Ameren notes in its brief on exceptions that the Commission frequently permits recovery of non-recurring costs, it depends on the nature of the costs for which recovery is sought. Trial Staff notes Ms. Althoff's testimony that, in line with Commission precedent,⁴¹¹ the severance costs should be included because they produced benefits to customers. Trial Staff rebuts this argument by stating that Ms. Althoff provided no evidence to support her claim. Further, Trial Staff states that the severance program will actually harm customers since they will have to bear the cost of the program after its implementation through their rates, and will benefit Ameren since it will reduce labor costs. Trial Staff states that a potential benefit for customers will only exist if Ameren files a new rate case with the lower labor costs. Trial Staff notes that there is no evidence that Ameren has a new rate case on the horizon and it may already be recouping its costs through the reduced labor costs.⁴¹²

293. The WDS Customer Group states that Ameren's argument that there was no showing that Ameren did not incur these expenses during the test year or that they were not reasonable is irrelevant because the costs were shown to be non-recurring and non-beneficial to customers. Further, the WDS Customer Group states that Ameren's argument that, even if the expense is non-recurring, it must still be amortized over a reasonable period was waived because it was untimely, noting that Ameren did not make this argument during hearing and failed to make the necessary factual showing to support it.⁴¹³

294. The WDS Customer Group also rebuts Ameren's argument that *VEPCO* supports its position. The WDS Customer Group states that when read in context *VEPCO* allows a specific cost to be recoverable in rates "for the purpose of projecting representative level of such costs that would be incurred during the periods the rates are in effect." The WDS Customer Group states that Ameren failed to provide evidence that it would continue

⁴¹¹ Trial Staff Brief Opposing Exceptions at 40 (citing *Virginia Elec. and Power Co.*, 128 FERC ¶ 61,026 (2009) (*VEPCO*)).

⁴¹² *Id.* at 39-41.

⁴¹³ WDS Customer Group Brief Opposing Exceptions at 41.

with severance programs after the rates become effective and thus does not fall into the *VEPCO* exception.⁴¹⁴

5. Commission Determination

295. We affirm the Presiding Judge's ruling that Ameren's proposed \$2.715 million of severance expenses should not be included in the determination of Ameren's distribution A&G expense.

296. We reject Ameren's argument that severance expenses are recurring expenses that should be included in its distribution A&G expense. The Commission's regulations and precedent state that non-recurring costs are permitted in a utility's cost of service depending on the nature for which the cost recovery is sought.⁴¹⁵ Here, we find that expenses associated with Ameren's severance program are non-recurring and therefore should not be included in its cost of service. First, as Southwestern's witness Kumar and Trial Staff's Beasley both noted, Ameren apparently reversed its employee severance expense in 2010 and reclassified it as a regulatory asset.⁴¹⁶ Thus, even Ameren appeared to believe that these costs should be normalized for rate recovery. Further, as the Presiding Judge noted, Ameren's witness Althoff admitted that employee severance is an item that does not occur every year and is only conducted on an as-needed basis. Most importantly, Ms. Althoff conceded that the employee severance program was related to the merger of Illinois Power and Central Illinois Light into Central Illinois Public Service to form Ameren, which is not a recurring event. Therefore, we affirm the Presiding Judge's determination that Ameren's severance program was a unique event that is

⁴¹⁴ *Id.* at 42.

⁴¹⁵ See *VEPCO*, 128 FERC ¶ 61,026 (the Commission allowed recovery of RTO start-up costs on the grounds that the RTO is designed to produce efficiency benefits to future ratepayers); see also 18 C.F.R. § 154.303(a)(4) (2013) ("The base period factors must be adjusted to eliminate nonrecurring items. The company may adjust its base period factors to normalize items eliminated as nonrecurring."); *Williston Basin Interstate Pipeline Co.*, 84 FERC ¶ 61,081, at 61,368 (1998) ("In general, non-recurring costs may not be included in the cost-of-service because they distort the level of representative expenses that are expected to be incurred in the future."); *Tarpon Trans. Co.*, 59 FERC ¶ 61,241, at 61,820 (1992) ("Moreover, if a cost is not one that is expected to recur as part of its ordinary recurring cost of service, the Commission's regulations provide that the pipeline is not entitled to recover that cost even if it falls within the test period.").

⁴¹⁶ Ex. S-8 at 12; Ex. S-30 at 11; Initial Decision, 141 FERC ¶ 63,014 at P 1668.

unlikely to reoccur in the future and, therefore, severance expenses should not be included in distribution A&G expenses.

297. We also reject Ameren's argument that *VEPCO* supports the notion that severance expenses should be included in its distribution A&G expense. On the contrary, the Commission's ruling in *VEPCO* stands for the proposition that an expense may be included in a test period to project representative levels of costs that would be incurred during the period the rates are in effect.⁴¹⁷ That is, the expenses may be included if they will reoccur during the period the rates are in effect. As stated earlier, we find that expenses of Ameren's severance programs are non-recurring. Ameren has provided no evidence that it plans to continue conducting severance programs after the rates become effective. Thus, Ameren's severance expenses should not be included in A&G expenses.

298. We also reject Ameren's argument that because its severance program will benefit future ratepayers, Ameren should be allowed to include severance expenses in A&G expense. We agree with Trial Staff that Ameren has provided no evidence to corroborate this statement. As Trial Staff noted in its brief opposing exceptions, Ameren's witness Althoff's only explanation for her claim that severance programs provide benefits to ratepayers is that "severance expense incurs when companies offer programs to drive down ongoing costs so, over the coming years, customers benefit."⁴¹⁸ We are not persuaded by this conclusory statement and find that it does not adequately explain how severance expenses provide a benefit to future ratepayers.

299. On the contrary, we agree with the Presiding Judge that severance programs will only benefit future ratepayers if Ameren's rates are changed in a new filing made after the purported benefits of the severance program are realized. Until the rates are changed, any benefit will not be felt by future ratepayers who will continue to pay increased rates due to severance expenses. Thus, since no benefit will result while the rates established in this proceeding remain in effect, Ameren cannot include severance expenses in its distribution A&G expenses.

300. We also disagree with Ameren's argument that, even if the costs are non-recurring, Ameren is entitled to recover them over a reasonable amortization period. As stated by the WDS Customer Group, this claim is untimely, as it was raised for the first time in Ameren's brief opposing exceptions. In line with Commission precedent, any material that appears for the first time in a post-hearing brief may not be relied on by the

⁴¹⁷ *VEPCO*, 128 FERC ¶ 61,026, at 61,109.

⁴¹⁸ Ex. AMS-28 (Corrected) at 57-58.

Commission in making its final determination.⁴¹⁹ Here, Ameren has proposed an amortization of its severance expenses for the first time in its brief opposing exceptions, which is a post-hearing brief and not on the record. Therefore, the evidence is impermissible. We also reject Ameren’s argument that *VEPCO* entitles Ameren to amortize the severance expenses because the expenses provide a benefit to customers.⁴²⁰ As explained earlier, we find that the severance programs will not provide a benefit unless a new rate case is filed. Therefore, Ameren is not permitted to amortize its severance expenses in its rates established in this proceeding.

301. Finally, we reject Ameren’s claim that no party made an argument prior to the Initial Decision that to include severance expenses in A&G expense would be “improper.” On the contrary, the WDS Customer Group and Trial Staff both stated on several occasions prior to the Initial Decision that A&G expense must be reduced due to, among other things, the improper inclusion of severance expenses.⁴²¹ Therefore, we find that this argument has no merit.

302. For the above reasons, we affirm the Presiding Judge’s decision to exclude \$2.715 million of employee severance expenses from Ameren’s distribution A&G expense and, accordingly, order Ameren to reflect this decision in its rates.

T. Issue II. — Whether the Non-Rate Terms and Conditions Set Forth in the WDS Agreements are Just, Reasonable and not Unduly Discriminatory or Preferential

1. Summary of Issue

303. The issue here is whether non-rate terms and conditions set forth in the WDS Agreements are just, reasonable and not unduly discriminatory or preferential.

⁴¹⁹ *Office of Consumers’ Counsel, State of Ohio v. FERC*, 783 F.2d 206 (1986) (in this case, it was adjudicated that the Commission unlawfully relied on data introduced for the first time in a Brief Opposing Exceptions in order to make its final determination).

⁴²⁰ Ameren Brief on Exceptions (citing *VEPCO*, 128 FERC ¶ 61,026, at P 21).

⁴²¹ Ex. SWC-5 at 66; WDS Customer Group Joint Initial Post-Hearing Brief at 70; Trial Staff Initial Brief at 34-35; Trial Staff Pretrial Brief at 22.

2. Initial Decision

304. In the Initial Decision, the Presiding Judge agrees with Ameren that the non-rate terms and conditions set forth in the WDS Agreements are just, reasonable and not unduly discriminatory or preferential, because they are based on terms carried over from the prior WDS Agreements, which the Commission found just and reasonable.⁴²²

305. The Presiding Judge explains that Trial Staff argued that because many of the WDS Agreements are different, interconnection provisions should be added or, in the alternative, a new agreement similar to an interconnection agreement should be used. The Presiding Judge also notes WDS Customer Group's witness Reising's argument that any new provisions should provide for the safe and reliable use of existing facilities and how new facilities or facility upgrades are to be planned, built and funded.

306. The Presiding Judge states that Ameren's witness Power addressed these concerns by arguing in his rebuttal testimony that the WDS Agreements are intended to address existing facilities only, not to incorporate provisions for maintenance and future interconnection construction and pricing. However, the Presiding Judge notes that Mr. Power stated that Ameren is in the process of developing a new Distribution Interconnection Agreement, which will address operational provisions with the WDS Customer Group.

307. The Presiding Judge concludes, as Ameren argued, that the non-rate terms and conditions in the WDS Agreements are just, reasonable and not unduly discriminatory because they are based on prior WDS Agreements, which were all accepted by the Commission. Further, the Presiding Judge agrees with Ameren's argument that the WDS Agreements contain non-rate terms and conditions that are standard contract provisions that are frequently included in similar Commission-approved agreements.

308. The Presiding Judge also concludes that Ameren's witness Power persuasively argued that the rates at issue in this proceeding concern the existing facilities and are not intended to address pricing of future upgrades. Further, the Presiding Judge concludes that issues concerning future interconnections, maintenance and construction pricing should be addressed in future agreements.⁴²³

⁴²² See January 28, 2011 Filing for the orders accepting the Prior WDS Agreements.

⁴²³ Initial Decision, 141 FERC ¶ 63,014 at PP 1751-1768.

3. Briefs on Exceptions

309. In its brief on exceptions, Trial Staff argues that in the Initial Decision the Presiding Judge neglected to address Trial Staff's argument that Ameren bears the burden of proof to demonstrate that its proposal is just and reasonable because Ameren deleted the option, in its existing WDS Agreements, for WDS Customers to pay for an upgrade in a lump sum. According to IMEA's witness Wagner, the new WDS Agreements replaced this right with a requirement that Ameren be compensated for the new facilities through an annual charge that includes a rate of return component.

310. Trial Staff further argues that Ameren's witness Power's argument that Ameren's proposed agreements are intended to cover existing facilities only is irrelevant because the change proposed by Ameren will have rate implications. Thus, Ameren has the burden to demonstrate that its proposed change is just and reasonable.⁴²⁴

311. In its brief on exceptions, the WDS Customer Group argues, first, that Ameren modified, without reason or authorization, its prior practice of providing an up-front payment alternative, which is clearly a change of rates that must be scrutinized under section 205 of the FPA. Second, the WDS Customer Group argues that this issue was squarely presented during these proceedings and relevant evidence was put into the record.

312. The WDS Customer Group states that IMEA's witness Wagner testified that Ameren, on two separate occasions, has refused to offer a lump sum, up-front option for paying for new delivery point facilities or even put its proposals for new delivery point facilities in writing. The WDS Customer Group's witness Reising also argued that without such an up-front provision, Ameren would be allowed a windfall with respect to new facilities because it could collect many times the actual and reasonable costs associated with such facilities.

313. Based on the un rebutted testimony of Messrs. Wagner and Reising, the WDS Customer Group argues that: (1) Ameren's action was a change in rates that must be scrutinized under section 205 of the FPA; (2) the issue and relevant evidence was squarely presented during these proceedings; and (3) the elimination of the up-front payment option will result in significantly higher costs for new facilities that would be directly assigned to WDS Customers.

314. Furthermore, the WDS Customer Group argues that the Presiding Judge's finding that the rates at issue only pertain to existing facilities, as opposed to the future upgrades,

⁴²⁴ Trial Staff Brief on Exceptions at 16-18.

is wrong. The WDS Customer Group argues that this proceeding also involves new direct-assigned facilities because at issue is the methodology and the carrying charge rate that will be applied by Ameren when it imposes its perpetual annual or monthly charges for new facilities that are directly assigned to individual WDS Customers as specified in the unexecuted WDS Agreements. The WDS Customer Group states that the Presiding Judge's conclusion that this issue is more appropriately addressed in future interconnection agreements assumes that there will be future interconnection agreements when in fact Ameren refuses to coordinate on the possibility of new facilities.⁴²⁵

4. Briefs Opposing Exceptions

315. In its brief opposing exceptions, Ameren argues that the up-front payment option is not within the scope of this proceeding because it was not in the prior WDS Agreements.

316. Further, Ameren rejects the claim that future interconnection agreements will not come before the Commission by noting that Ameren has maintained throughout the proceeding that it is in the process of filing a distribution interconnection agreement between Ameren and the WDS Customers. Ameren states that it has tendered draft versions of the agreement to several WDS Customers and that Ameren intends to file the agreement in the coming months.

317. Third, Ameren argues that assuming, *arguendo*, that the up-front payment provisions were in the prior WDS Agreements, there is still no obligation for Ameren to offer this option because the WDS Customer Group cannot dictate the non-rate terms and conditions to be included in the WDS Agreements without filing a separate section 206 complaint or meeting the heightened section 206 burden of proof in this proceeding.

318. Finally, Ameren argues that the WDS Customer Group's argument that Ameren will recover unjust and unreasonable rates without the up-front payment option reflects a general misunderstanding of traditional ratemaking by the WDS Customer Group. Ameren argues that under traditional ratemaking, every customer pays more than original cost in order to ensure a return on the utility's investment.⁴²⁶

⁴²⁵ WDS Customer Group Brief on Exceptions at 14-18.

⁴²⁶ Ameren Brief Opposing Exceptions at 9-13.

5. Commission Determination

319. We affirm the Presiding Judge's determination that the non-rate terms and conditions set forth in the WDS Agreements are just, reasonable and not unduly discriminatory or preferential.

320. We disagree with Trial Staff and the WDS Customer Group's argument that Ameren changed the payment options in its WDS Agreement, rendering the agreements unjust and unreasonable. We agree with Ameren that the prior WDS Agreements did not contain an up-front payment provision, which allowed a party to pay for the cost of new facilities in a lump sum. Further, as the Presiding Judge explained, the proposed WDS Agreements are not rendered unjust and unreasonable solely because non-rate terms and conditions viewed as favorable to the WDS Customer Group are not included. Further, we agree that rates in the instant proceeding are intended to address existing facilities only and any issues concerning future interconnections, maintenance, and construction pricing should be addressed in future interconnection agreements. Ameren's witness Power stated that Ameren is in the process of developing and intends to file a new agreement that will be used in the future to outline operational provisions with the WDS Customers. We find that Ameren must file any new agreement under section 205 of the FPA and subsequent to such a filing, each WDS Customer shall have the opportunity to raise with the Commission any concerns it has; however, until such time comes, the issue is beyond the scope of these proceedings.

U. Issue III.C. — Whether the Costs of the Turriss Tap Delivery Point Should be Assigned to Prairie

1. Summary of Issue

321. The issue here is whether the cost of the Turriss Tap delivery point should be assigned to Prairie based on the typical mile methodology. Through this methodology, Ameren assigned the costs associated with the Turriss Tap to Prairie at a rate of \$840,943.

2. Initial Decision

322. The Presiding Judge concludes that Ameren should be allowed to collect the costs from Prairie, but that it should be required to use the actual costs based on its 1998 FERC Form 1 data as opposed to the amount calculated by Ameren's typical mile methodology.

323. The Presiding Judge notes that the WDS Customer Group stated that the costs of the Turriss Tap should not be paid by Prairie for several reasons. First, the WDS Customer Group argued that the Turriss Tap serves demand at transmission level voltages, which, according to Ameren's witness Althoff, were not included in Ameren's 2009 historical billing demands used to develop the WDS rates. Second, the WDS Customer Group argued that the Turriss Tap delivery point was reclassified to the transmission

function in 1999 and at no point since then has it been billed as a distribution asset. Third, Prairie argued that Ameren is double charging Prairie since the costs for the Turriss Tap are already recovered as a transmission line expense. Finally, even if Prairie is assigned the costs, the WDS Customer Group argued that the costs should be calculated using Ameren's actual 1998 FERC Form 1 data, not its typical mile methodology, because the data is readily accessible. The WDS Customer Group stated that using the 1998 FERC Form 1 data, the costs of the Turriss Tap are approximately \$300,000 less than Ameren's original figure of \$840,943 without consideration for depreciation.

324. The Presiding Judge notes that Ameren's witness Althoff stated that, through an administrative oversight, the costs for the Turriss Tap were not recovered as transmission or distribution charges from 1999 through 2011, and, consequently, Ameren should be able to recover the costs through WDS charges.⁴²⁷

325. The Presiding Judge agrees with Ms. Althoff that Ameren is not double collecting and would not be able to collect these costs otherwise.⁴²⁸ However, the Presiding Judge agrees with the WDS Customer Group that Ameren should recover these costs based upon the 1998 FERC Form 1 data since it is available and readily accessible, as opposed to the typical mile methodology.

3. Briefs on Exceptions

326. In its brief on exceptions, Ameren argues that it should not be required to use Ameren's 1998 FERC Form 1 data to establish the cost for the Turriss Tap 138 kV facility because use of such data could result in under-recovery for the cost of the line. Ameren notes that its witness Althoff testified that the 1998 FERC Form 1 data would not include any major additions or repairs made to the lines since they were reclassified from transmission to distribution and, consequently, Ameren would not be properly compensated.⁴²⁹

327. The WDS Customer Group argues that the Presiding Judge was correct in ordering Ameren to use its 1998 FERC Form 1 data to calculate the costs of the Turriss Tap for several reasons. First, prior to the 1999 reclassification of the facilities, Ameren's predecessor Illinois Power had been recovering the Turriss Tap costs through transmission rates under its OATT and including original cost information on Turriss Tap facilities in

⁴²⁷ AMS-28 (Corrected) at 65; Tr. 450:22-25 (Althoff).

⁴²⁸ Initial Decision, 141 FERC ¶ 63,014 at P 1787.

⁴²⁹ Ameren Brief on Exception at 87-88.

the Illinois Power FERC Form 1. Second, the WDS Customer Group claims that the 1998 FERC Form 1 data shows that if Ameren used its typical mile methodology, it would collect over \$300,000 more than its original book cost.

328. The WDS Customer Group also states that the Presiding Judge did not address what depreciation rate should be applied to the costs. The WDS Customer Group argues that when Ameren calculates the net plant value of the Turriss Tap costs to be directly assigned to Prairie, it should use either the FERC Form 1 annual depreciation factor of 2.3 percent, calculated against the baseline original costs of the facilities on an amortized basis since 1982, or the ratio of accumulated depreciation to undepreciated gross plant in service of 61 percent determined for Ameren's WDS facilities in this proceeding.⁴³⁰ The WDS Customer Group claims that the accumulated depreciation ratio to gross plant of 61 percent reflects the adjustments proposed by the WDS Customer Group's witness Best as accepted by the Presiding Judge in the Initial Decision.⁴³¹

4. Briefs Opposing Exceptions

329. In its brief opposing exceptions, Ameren reiterates that, for the reasons given in its brief on exceptions, the Initial Decision should be reversed and Ameren should be allowed to allocate the costs of the Turriss Tap to Prairie based on its typical mile methodology. Ameren further argues that the depreciation methodology proposed by the WDS Customer Group in its brief on exceptions must be rejected. Ameren states that (1) nothing in the records supports the methodology; (2) no evidence was put forth on this issue by any party; (3) depreciation for Turriss Tap was not on the Final Joint Stipulation of Issues; and (4) the WDS Customer Group's presentation of and the Commission's reliance on this new methodology is unlawful since courts have held that non-record evidence submitted through post-initial decision briefs constitutes prohibited *ex-parte* communication.⁴³²

330. The WDS Customer Group states that the 1998 FERC Form 1 data should be used to calculate the costs of the Turriss Tap as opposed to the typical mile methodology because the 1998 FERC Form 1 data produces a pre-depreciation cost of \$530,130, which is approximately \$300,000 less than the amount Ameren's typical mile methodology produced.

⁴³⁰ WDS Customer Group Brief on Exceptions at 31-34.

⁴³¹ Initial Decision, 141 FERC ¶ 63,014 at P 1580.

⁴³² Ameren Brief Opposing Exceptions at 22-23.

331. Further, the WDS Customer Group claims that Ameren's argument that the 1998 FERC Form 1 data is insufficient because it does not capture additions and repairs to the facility is irrelevant because Ameren introduced no record evidence that any such improvements or additions were made since the facility was switched from transmission to distribution in 1999.⁴³³

5. Commission Determination

332. We affirm the Presiding Judge's ruling that recovery of the costs of the Turriss Tap delivery point is warranted, that the costs should be assigned to Prairie and that the costs should be based upon Ameren's 1998 FERC Form 1 data as opposed to Ameren's typical mile methodology.

333. We reject Ameren's argument that use of its 1998 FERC Form 1 data to calculate the amount of Turriss Tap costs would be inappropriate. As stated earlier, prior to 1999 Ameren's predecessor Illinois Power had been recovering the Turriss Tap costs through transmission rates under its Open Access Transmission Tariff and including original cost information on Turriss Tap facilities in the Illinois Power FERC Form 1. Ameren, in turn, stated that its 1998 FERC Form 1 data shows that if Ameren used its typical mile methodology it would collect over \$300,000 more than its original book cost. Therefore, we agree with the Presiding Judge that Ameren should use the actual costs in Ameren's 1998 FERC Form 1 data because it is readily available and will produce a more accurate representation of the Turriss Tap costs.

334. We reject Ameren's argument that use of the 1998 FERC Form 1 data to calculate the cost might result in under-recovery because it might not capture additions to the Turriss Tap delivery point since the time of their reclassification in 1999. As the WDS Customer Group noted, Ameren did not introduce any evidence to that effect and, on cross-examination, Ameren's witness Althoff acknowledged that she could not say whether there have in fact been any improvements or additions since the test year ended.⁴³⁴ Therefore, since there has been no evidence of any additions or repairs we reject Ameren's argument.

335. We agree that Ameren would not be double collecting the Turriss Tap costs if allowed to recover the costs from Prairie because, as the Initial Decision notes, since the reclassification of the Turriss Tap delivery point in 1999, the associated costs have not

⁴³³ WDS Customer Group Brief Opposing Exceptions at 49-50.

⁴³⁴ Tr. 459:6-7, 11-13 (Althoff).

been recovered in transmission charges.⁴³⁵ Thus, the costs would only be recovered as distribution charges as is being proposed.

336. Further, we agree with the WDS Customer Group that a depreciation rate should be applied in determining the appropriate costs to be included in Ameren's direct assignment charges on a net plant basis. As stated earlier, the WDS Customer Group proposed that one of two depreciation rates should be adopted. First, the WDS Customer Group proposed the adoption of an annual depreciation factor of 2.3 percent, which was utilized by Illinois Power prior to the reclassification of the Turriss Tap Facilities. Alternatively, the WDS Customer Group proposed that Ameren should use the accumulated ratio of accumulated depreciation to undepreciated gross plant in service of 61 percent determined for Ameren's WDS facilities in this proceeding.⁴³⁶ We find that the ratio of accumulated depreciation to undepreciated gross plant in service of 61 percent should to be applied to the Turriss Tap facilities in this proceeding when determining the appropriate costs to be included in Ameren's direct assignment charges. This depreciation rate reflects the adjustments submitted by Ms. Best and accepted in the Initial Decision. As stated earlier, we affirm that the WDS Customer Group and Ms. Best provided a sufficiently reliable analysis in this proceeding and therefore we will adopt the depreciation rate as proposed.

337. For the above reasons, we affirm the Presiding Judge's decision that the Turriss Tap expenses should be allocated to Prairie based on the actual 1998 FERC Form 1 data and utilizing the depreciation factor of 61 percent proposed by Ms. Best.

V. Issue III.E. — Whether the Proposed Agreements Terminated or Modified the Existing WDS Agreements

1. Summary of Issue

338. In the March 29 Order, the Commission noted that Hoosier, IMEA, Prairie, Southwestern, and Wabash argued that the proposed agreements were new agreements that superseded and terminated the Existing WDS Agreements. Thus, they maintained that Ameren was required to provide 12-months advanced written notice per the terms of

⁴³⁵ Initial Decision, 141 FERC ¶ 63,014 at P 1786.

⁴³⁶ As applied specifically to 138 kV wood poles (applicable to the Turriss Tap facilities), the ratio of accumulated depreciation to gross plant in service of 61 percent reflects the application of Ms. Best's recommendations, which resulted in the 69 percent average referenced in the Initial Decision, in Ex. CG-7 (*See* Ex. CG-4 at 5, line 72, column D).

the Existing WDS Agreements.⁴³⁷ The Commission did not address this issue, but the WDS Customer Group raised this issue in its request for rehearing of the March 29 Order.

2. Initial Decision

339. The Presiding Judge did not address this issue.

3. Briefs on Exceptions

340. The WDS Customer Group argues that each of the Existing WDS Agreements contains a 12-month notice of termination clause, and that Ameren violated this provision. Thus, they assert that, as a result, no change in rates should become effective until the 12-month notice requirement has been satisfied. The WDS Customer Group claims that the Commission ignored this issue in setting the proceeding for hearing, and that the WDS Customer Rehearing Group's request for rehearing on this issue is pending.

341. The WDS Customer Group contends that, during the hearing, they introduced factual evidence to support its legal argument on this termination issue, including: (1) Ameren's statements that the new WDS Agreements superseded the Existing WDS Agreements; (2) redline drafts of the new WDS Agreements demonstrating that they replaced the Existing WDS Agreements with substantially different rates and terms; and (3) Ameren's admission that the new WDS Agreements terminated the Existing WDS Agreements. The WDS Customer Group argues that the Presiding Judge completely ignored this issue in the Initial Decision. The WDS Customer Group contends that, for the reasons set forth in the Joint Rehearing Request and as supported by the evidence in this proceeding, the Commission should conclude that the new WDS rates that were the subject of this rehearing should not become effective until one year after filing, i.e., January 28, 2012, rather than March 30, 2011.⁴³⁸

4. Briefs Opposing Exceptions

342. Ameren argues that the Presiding Judge was correct to "completely ignore" the issue of whether Ameren violated the termination provisions of the Existing WDS Agreements and terminated them without giving 12-months' notice. Ameren asserts that this issue was not before the Presiding Judge, but is a legal issue before the Commission on rehearing. Ameren maintains that, in the March 29 Order, the Commission rejected

⁴³⁷ March 29 Order, 134 FERC ¶ 61,242, at P 9.

⁴³⁸ WDS Customer Group Brief On Exceptions at 25-26.

the WDS Customer Group's 12-month notice argument holding that the WDS Agreements would become effective on March 30, 2011, and that the WDS Customer Rehearing Group's request for rehearing on this issue is pending before the Commission.

343. Ameren also adds that the Commission must reject the WDS Customer Rehearing Group's request for rehearing. In this regard, Ameren asserts that the Existing WDS Agreements grant Ameren section 205 rights to file for increased rates. Ameren cites one of the prior WDS Agreements as follows: ". . . this Service Agreement . . . shall continue until terminated by mutual agreement or upon twelve (12) months advance written notice by either Party, or modified by either Party pursuant to their rights under the Federal Power Act (emphasis added)." ⁴³⁹ Ameren claims that it did what the prior WDS Agreements allowed it to do, i.e., make a section 205 filing pursuant to its rights under the FPA. Ameren adds that it has made numerous filings, and the Commission has accepted revisions to similar WDS Agreements, and in none of those proceedings did any of the customers argue that Ameren must provide 12-months' notice to modify and supersede a WDS Agreement. ⁴⁴⁰

5. Commission Determination

344. We agree with Ameren that this is a legal issue raised in WDS Customer Rehearing Group's request for rehearing. Therefore, we will address this issue below, when we address the WDS Customer Rehearing Group's request for rehearing in this proceeding.

W. Compliance Filing

345. Ameren is hereby directed to file a compliance filing within 30 days from the date of the issuance of this order, as discussed in the body of this order.

X. WDS Customer Rehearing Group's Request for Rehearing

1. Summary of Issue

346. On April 25, 2011, the WDS Customer Rehearing Group filed a joint request for rehearing of the March 29 Order. The WDS Customer Rehearing Group argues that the Commission erred in permitting Ameren to terminate the Existing WDS Agreements

⁴³⁹ Ameren Brief Opposing Exception at 14 & n.42 (citing the WDS Agreement between Ameren and IMEA).

⁴⁴⁰ Ameren Brief Opposing Exceptions at 13-16.

without giving 12-months' advance notice, despite recognizing that the revised agreements would supersede Existing WDS Agreements. In this regard, they contend that MISO's filings seek to completely replace the existing WDS Agreements, and that the terms of each of the Existing WDS Agreements require 12-months' written notice prior to such unilateral termination. The WDS Customer Rehearing Group asserts that it has shown that Ameren did not merely revise Existing WDS Agreements, but terminated them in contravention of the Existing WDS Agreements' 12-months' prior notice requirement.⁴⁴¹

347. The WDS Customer Rehearing Group also asserts that cancellation or termination fails to comport with the Commission's regulations requiring 60 days' notice prior to cancelling or terminating a rate schedule, tariff, or service agreement. In support the WDS Customer Rehearing Group cites to *Southern California Edison Company*,⁴⁴² in which the Commission found that the company's proposed material amendments to a transmission service agreement effectively cancelled the agreement. Therefore, the Commission held that the company should have provided notice in accordance with the Commission's regulations. Likewise, the WDS Customer Rehearing Group argues that, because the Commission has determined that material amendments to an existing agreement can be deemed to constitute cancellation, Ameren's filings superseding the Existing WDS Agreements were subject to the prior notice requirements under the Commission's regulations. The WDS Customer Rehearing Group asserts that Ameren failed to provide either the required notice or adequate justification for cancellation. Therefore, it argues that Ameren's attempt to cancel or terminate the Existing WDS Agreements should have been rejected.

348. In addition, the WDS Customer Rehearing Group maintains that Ameren's proposed rate increase has been shown to be substantially excessive. Therefore, it argues that the Commission should have applied a five-month suspension in accordance with Commission precedent and policy. The WDS Customer Rehearing Group claims that, in the March 29 Order, the Commission failed to provide any rationale for departing from Commission practice of granting a full five-month suspension. The WDS Customer Rehearing Group contends that the policy articulated in *West Texas Utilities Co.*,⁴⁴³ provides 10 percent as the margin of error or imprecision that the Commission will allow utilities, in that costs that exceed this ten percent threshold will result in a five-month suspension. The WDS Customer Rehearing Group asserts that Ameren is trying to obtain

⁴⁴¹ Request for Rehearing of the WDS Customer Rehearing Group at 5-8.

⁴⁴² 98 FERC ¶ 61,174, at 61,561 (2002) (*SoCal Edison*).

⁴⁴³ 18 FERC ¶ 61,189 at 61,375 (1982) (*West Texas*).

on average a 111 percent rate increase from the WDS Customers without providing the required cost support and without following applicable Commission precedent. Therefore, the WDS Customer Rehearing Group contends that the March 29 Order's deviation from applicable precedent and policy compel an immediate reversal with respect to the suspension length imposed.⁴⁴⁴

349. The WDS Customer Rehearing Group also argues that the Commission erred in allowing the rate design changes proposed by Ameren to become effective March 30, 2011, rather than requiring that those changes be effective only prospectively. Citing to *Consumers Energy Company*,⁴⁴⁵ the WDS Customer Rehearing Group claims that the Commission's long-standing policy has been to allow a change in rate design to take effect prospectively only. The WDS Customer Rehearing Group notes that in several of the filings in these consolidated cases, Ameren filed to change its rate design from a fixed rate to a dollar-per-kilowatt charge, yet the Commission allowed these proposed rates to become effective March 30, 2011. The WDS Customer Rehearing Group argues that to provide adequate ratepayer protection as well as to be consistent with its own precedent, the Commission should grant rehearing and make clear that any rate design changes will be allowed into effect only on a prospective basis.⁴⁴⁶

350. On May 10, 2011, Ameren Services Company, on behalf of Ameren, filed an answer to the request for rehearing.

2. Commission Determination

351. Rule 713(d)(1) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.713(d)(1) (2013), provides that the Commission prohibits an answer to a request for rehearing. Accordingly, we will reject Ameren's answer to the request for rehearing.⁴⁴⁷

352. As discussed below, we deny the WDS Customer Rehearing Group's request for rehearing.

⁴⁴⁴ Request for Rehearing of the WDS Customer Rehearing Group at 9-16.

⁴⁴⁵ Opinion No. 429-A, 89 FERC ¶ 61,138 (1999) (*Consumers*).

⁴⁴⁶ Request for Rehearing of the WDS Customer Rehearing Group at 17-28.

⁴⁴⁷ *Primary Power, LLC v. PJM Interconnection, L.L.C.*, 143 FERC ¶ 61,204, at P 12 (2013).

i. Federal Power Act Section 205 Filing Rights

353. We disagree with the WDS Customer Rehearing Group's assertion that the Commission should not have accepted the WDS Agreements because Ameren did not merely revise existing agreements, but terminated them in contravention of the Existing WDS Agreements' 12-months' prior notice requirement. We find that all of the Existing WDS Agreements unambiguously provide that they "shall continue until terminated by mutual agreement or upon twelve (12) months advance written notice by either Party, or modified by either Party pursuant to their rights under the Federal Power Act." As the Commission noted in the March 29 Order, the current agreements feature WDS rates that were most recently updated by the Legacy Companies, i.e., Central Illinois Light, Central Illinois Public Service, and Illinois Power, using test-year cost data from 1997, 1998, and 2002, respectively; and that Ameren states that it is making the instant filing to consolidate its WDS rates and agreements and to update its costs for WDS.⁴⁴⁸ Therefore, we find that Ameren exercised its FPA section 205 rights to file amended agreements to modify the rates, terms, and conditions of continuing service. Consequently, we find that Ameren's filing modified the Existing WDS Agreements, and did not terminate the services provided.

354. Moreover, the *SoCal Edison* decision, cited by the WDS Customer Rehearing Group, does not support its argument since the facts in *SoCal Edison* are distinguishable from those presented here. In *SoCal Edison*, the utility deleted all provisions relating to certain service and charges for that service. In the present proceeding, Ameren's revisions to the Existing WDS Agreements did not terminate the agreements or service under those agreements or service thereunder. Instead, Ameren exercised its FPA section 205 rights under the Existing WDS Agreements to modify the rates, terms, and conditions of service.

ii. Length of Suspension

355. We also reject the WDS Customer Rehearing Group's argument that Ameren's proposed rate increase has been shown to be substantially excessive and, therefore, the Commission should have applied the maximum five-month suspension in accordance with Commission precedent and policy.

356. The Commission generally does not reconsider its decisions regarding the length of suspension periods since suspension decisions are made in a statutorily-defined and

⁴⁴⁸ March 29 Order, 134 FERC ¶ 61,242 at P 3.

relatively short time frame based on only the parties' preliminary arguments and the Commission's preliminary analysis.⁴⁴⁹ The Commission stated that the suspension decision is a discretionary one which must be made within the statutory time limits on the basis of a "first cut" preliminary analysis. Moreover, the Commission has stated that it does not find it appropriate or conducive to orderly or efficient administrative procedures to reconsider such decisions on the basis of subsequent analysis of the rate filing.⁴⁵⁰

357. Likewise, in this proceeding, it was reasonable for the Commission to suspend the WDS Agreements for a nominal period. In the March 29 Order, the Commission denied the WDS Customer Group's request for a five-month suspension. Instead, citing to *West Texas*, the Commission found that its preliminary analysis indicated that the WDS Agreements proposed rates were not substantially excessive. We see no reason to reverse this finding here.⁴⁵¹

iii. Rate Design Changes

358. WDS Customer Group's argument that we should not have made the rates effective March 30, 2011, but instead should have made them effective the date of this opinion, amounts to a request that we suspend that aspect of the rates for almost three years. The statute does not grant us such authority, however filings made pursuant to section 205, as this filing was, may be suspended for no more than five months — not almost three years.⁴⁵² Accordingly, we reject this argument. Moreover, the courts have held that the rule against retroactive ratemaking does not extend to cases in which the customers are on notice that resolution of some specific issue may later cause an adjustment to the rate being collected at the time of service.⁴⁵³ We find that the WDS Customer Rehearing Group was on notice of the change in rate design as a result of Ameren's January 28, 2011 filing. Moreover, we note that the Commission's policy is

⁴⁴⁹ *Southern Cal. Edison Co.*, 116 FERC ¶ 61,099, at PP 9-12 (2006).

⁴⁵⁰ *Boston Edison Co.*, 14 FERC ¶ 61,013, at 61,022 (1981).

⁴⁵¹ March 29 Order, 134 FERC ¶ 61,242 at P 26 & n.39.

⁴⁵² 16 U.S.C. § 824d(e) (2012).

⁴⁵³ See, e.g., *Consolidated Edison Co. of New York, Inc. v. FERC*, 347 F.3d 964, 968-70 (D.C. Cir. 2003); see also *Midwest Indep. Transmission Sys. Operator, Inc.*, 108 FERC ¶ 61,203, at PP 20-22 (2004). In *Consumers*, in contrast, the change in rate design was not a company-filed change, but a later Commission-ordered change.

discretionary, and that, in the March 29 Order, Ameren's proposed rates were accepted and made effective subject to refund.

The Commission orders:

(A) The Initial Decision is hereby affirmed in part and reversed in part, as discussed in the body of this order.

(B) The WDS Customer Rehearing Group's request for rehearing is hereby denied, as discussed in the body of this order.

(C) Ameren is hereby directed to file a compliance filing within 30 days from the date of the issuance of this order, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.