

156 FERC ¶ 61,209
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Ameren Illinois Company

Docket No. ER16-1169-000

ORDER DENYING FORMAL CHALLENGE

(Issued September 22, 2016)

1. On March 14, 2016, Ameren Illinois Company (Ameren Illinois) submitted its annual informational formula rate update and true-up (2016 Annual Update), as required by the formula rate protocols set forth in Attachment O-AIC of Midcontinent Independent System Operator, Inc.'s (MISO) Open Access, Transmission, Energy and Operating Reserve Markets Tariff (Tariff).¹ On April 15, 2016, Southwestern Electric Cooperative, Inc. (Southwestern Electric) and Southern Illinois Power Cooperative (Southern Illinois) (together, Challenging Parties) submitted a formal challenge pursuant to Rule 206 of the Commission's Rules of Practice and Procedure² and section IV of Attachment O-AIC to the MISO Tariff, challenging certain inputs of Ameren Illinois' formula rate. As discussed below, we deny the Formal Challenge.

I. The Formula Rate and Protocols

2. Attachment O of the MISO Tariff sets forth the formula rate templates and protocols under which Ameren Illinois and other MISO transmission owners recover their respective annual transmission revenue requirements, and through which they establish charges for transmission service for facilities they own that are under MISO's functional control.

¹ Ameren Illinois Informational Filing of Annual Formula Rate Update, Transmittal Letter at 1.

² 18 C.F.R. § 385.206 (2016).

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

4. Informal and formal challenges are limited to seven avenues of inquiry listed in section IV.D of the protocols: (1) the extent or effect of an accounting change; (2) whether the annual true-up or projected net revenue requirement fails to include data properly recorded in accordance with these protocols; (3) the proper application of the formula rate and procedures in these protocols; (4) the accuracy of data and consistency with the formula rate of the calculations shown in the annual true-up and projected net revenue requirement; (5) the prudence of actual costs and expenditures; (6) the effect of any change to the underlying Uniform System of Accounts or FERC Form No. 1; or (7) any other information that may reasonably have substantive effect on the calculation of the charge pursuant to the formula. Section IV.J states that the annual true-up and projected revenue requirement shall not be subject to challenge for the purpose of modifying the formula rate, and that modifications to the formula rate will require, as applicable, a filing under section 205 or section 206 of the Federal Power Act (FPA).

II. Background

5. Challenging Parties state that Southwestern Electric is an electric distribution cooperative that serves rural consumers in Illinois, and Southern Illinois is a member-owned generation and transmission cooperative utility that provides electric energy to its member distribution cooperatives in a 24-county region.³ Challenging Parties state that Southwestern Electric is a MISO transmission customer located within the Ameren Illinois rate zone and Southern Illinois is a MISO transmission customer which serves load located in MISO's Ameren Illinois Local Balancing Authority Area.⁴

³ Motion to Intervene and Formal Challenge of the Southwestern Electric Cooperative, Inc. and Southern Illinois Power Cooperative, Inc., at 2-3 (Formal Challenge).

⁴ *Id.* at 3.

6. Challenging Parties assert that, on October 30, 2016, in Docket No. ER16-197, MISO submitted to the Commission on behalf of certain MISO transmission owners, including Ameren Illinois, an FPA section 205 application seeking approval of a change in the Attachment O rate formula used to calculate transmission rates of the affected transmission owners.⁵ They state that the proposed revisions, which, according to MISO, were spurred by regulations of the Internal Revenue Service (I.R.S.), revised the Attachment O formula rate's treatment of Accumulated Deferred Income Tax (ADIT) balances that are used in the Attachment O formula rate as a rate base reduction. Challenging Parties state that, on November 30, 2015, Southwestern Electric submitted a protest of MISO's filing (Docket No. ER16-197 Protest) challenging the proposed revisions to the rate base components of the Attachment O formula rate and raising other issues of concern with the structure of the Attachment O formula rate.⁶ Challenging Parties note that the Commission accepted MISO's proposed revisions on December 30, 2015, conditioned on Ameren Illinois revising its proposal to ensure that the newly proposed treatment for ADIT applies only to the projected, and not the trued-up, ADIT amounts. Challenging Parties explain that the Commission rejected Southwestern Electric's arguments in the Docket No. ER16-197 Protest, but stated that, for some of its objections related to the inputs into the formula rate, Southwestern Electric may have options pursuant to the annual update of the formula rate.⁷

III. Formal Challenge

7. As an initial matter, Challenging Parties note that, during the informal challenge process conducted pursuant to section IV of Ameren Illinois' protocols, Ameren Illinois contended that the informal challenge was a collateral attack on the Attachment O formula rate itself and was therefore outside the scope of the annual update process.⁸ Challenging Parties dispute this view, pointing to two cases in which the Commission concluded that the transmission customers challenging inputs into the formula rates raised questions that were not sufficiently answered by the respective utilities, and set a number of issues for hearing and settlement judge procedures.⁹ Challenging Parties point

⁵ *Id.*

⁶ *Id.* at 4.

⁷ *Id.* (citing *Midcontinent Indep. Sys. Operator, Inc.*, 153 FERC ¶ 61,371 (2015)).

⁸ *Id.* at 5-6.

⁹ *Id.* at 6 (citing *Delmarva Power and Light Co.*, 145 FERC ¶ 61,055 (2013) (*Delmarva*) and *PPL Elec. Utils. Corp.*, 149 FERC ¶ 61,231 (2012) (*PPL*)).

to a Commission statement that “[p]arties can challenge the inputs to the formula rate in the same way as they can challenge costs in a stated rate case.”¹⁰

8. Challenging Parties state that Ameren Illinois’ 2016 Annual Update produces a total revenue requirement of 214.4 million dollars.¹¹ As further discussed below, Challenging Parties argue that the 2016 Annual Update suffers from several faults that render this revenue requirement unjust and unreasonable.

IV. Notice and Responsive Pleadings

9. Notice of the Formal Challenge was published in the *Federal Register*, 81 Fed. Reg. 23,696 (2016), with interventions or protests due on or before May 6, 2016.

10. Timely motions to intervene were filed by Wabash Valley Power Association, Inc. and Prairie Power, Inc. The Illinois Commerce Commission and the Missouri Public Service Commission filed notices of intervention.

11. On April 27, 2016, Ameren Illinois filed a motion requesting that the Commission extend the due date for responses to the Formal Challenge by an additional two weeks, to May 20, 2016. On May 4, 2016, the Commission granted the request for an extension of time, extending the deadline to and including May 20, 2016.

12. On May 20, 2016, Ameren Illinois filed an answer to the Formal Challenge. On June 6, 2016, Challenging Parties filed an answer to Ameren Illinois’ answer. On June 24, 2016, Ameren Illinois filed an answer to Challenging Parties’ answer.

V. Discussion

A. Procedural Matters

13. Pursuant to Rule 214 of the Commission’s Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2016), the notices of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. Rule 213(a)(2) of the Commission’s Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2016), prohibits an answer to a protest or answer unless otherwise ordered by the decisional authority. We accept the answers filed by Challenging Parties and Ameren Illinois as they have provided information that assisted us in our decision-making process.

¹⁰ *Id.* at 7 (citing *Delmarva*, 145 FERC ¶ 61,055 at P 22).

¹¹ *Id.* at 8.

B. Substantive Matters**1. Sufficiency of Formal Challenge****a. Formal Challenge and Answers**

14. Ameren Illinois argues that the Formal Challenge's claims and requests for relief should be denied for both procedural and substantive reasons. Procedurally, Ameren Illinois argues that Challenging Parties' informal challenge to Ameren Illinois' 2016 projected net revenue requirement was insufficient to form the basis of the Formal Challenge because it lacked the requisite level of specificity and improperly attempted to bootstrap arguments from another docket into this proceeding.¹² Ameren Illinois states that the informal challenge failed to identify any specific objectionable cost items, and instead merely identified account numbers and categories of costs that Challenging Parties believe should be excluded from Ameren Illinois' 2016 net transmission revenue requirement.¹³ Ameren Illinois explains that the informal challenge also improperly pointed to the Docket No. ER16-197 Protest to support its challenge, and contends that the protest fails to qualify as a legitimate challenge to Ameren Illinois' 2016 projected net revenue requirement under the protocols because the specific items contained in the protest relate to prior rate periods, which are not at issue in this proceeding. Ameren Illinois thus contends that Challenging Parties gave it no opportunity to demonstrate the reasonableness of its rate inputs prior to the filing of its Formal Challenge because it never made any specific challenges to any cost item contained in the 2016 rates.¹⁴

15. Ameren Illinois contends that arguments regarding Ameren Illinois' 2016 projected net revenue requirement are premature because the values comprising Ameren Illinois' 2016 projected net revenue requirement are subject to true-up, and asserts that it would be more appropriate for Challenging Parties to raise such arguments after Ameren calculates the Annual True-Up for 2016.¹⁵ Challenging Parties respond that nothing in the protocols limits formal challenges to only the true-up values. Challenging Parties further contend that the issues raised relate to Ameren Illinois' recording and treatment of a number of costs and expenses that are inappropriately included and allocated in the

¹² Ameren Illinois' Answer to the Formal Challenge at 3.

¹³ *Id.* at 4.

¹⁴ *Id.* at 6.

¹⁵ *Id.* at 7.

formula rate, so the use of actual data will not have any effect on the issues raised by the Formal Challenge.¹⁶

16. Ameren Illinois requests that the Commission summarily decide matters raised in the Formal Challenge that are issues of policy or law, such as where Challenging Parties are not challenging the level of an expense, but are instead challenging whether any amount from a particular account or in a particular category should be included in Attachment O-AIC.¹⁷

b. Commission Determination

17. We reject Ameren Illinois' arguments that the Formal Challenge is premature because it seeks changes to projected inputs that are subject to true-up. Section IV.D of Ameren Illinois' protocols clearly contemplates challenges to the projected revenue requirement, as it states that formal challenges "shall be limited to all issues that may be necessary to determine... whether the [a]nnual [t]rue-[u]p or projected net revenue requirement fails to include data properly recorded..."¹⁸ Consequently, we do not find this to be a reason to deny the Formal Challenge.

18. We also reject Ameren Illinois' arguments that the informal challenge gave it no opportunity to demonstrate the justness and reasonableness of its rates prior to the Formal Challenge. While Challenging Parties pointed to issues with the 2015 revenue requirement in the informal challenge and the Docket No. ER16-197 Protest, these concerns were general in nature. Thus, we do not find this to be a reason to deny the Formal Challenge, except as discussed below.

2. Matters Resolved Summarily

19. In response to the Formal Challenge, Ameren Illinois agrees with Challenging Parties to exclude the following items from the 2016 True-Up: (1) Accrued Tax Debt; (2) Merger Costs Debt Integration; (3) Regulatory Asset Amortization; and (4) Regulatory Liabilities- Allowance for Funds Used During Construction.¹⁹

¹⁶ Challenging Parties' Answer to Ameren Illinois' Answer at 2-3.

¹⁷ Ameren Illinois' Answer to the Formal Challenge at 8.

¹⁸ MISO Tariff, Attachment O-AIC Protocols at section IV.D.

¹⁹ Ameren Illinois' Answer to the Formal Challenge at 23-24 (citing Formal Challenge at PP 21(d), 23(a), 23(c) and 28(d)).

20. Because Ameren Illinois agrees to exclude these items from the 2016 True-Up, and Challenging Parties do not take issue with their exclusion, we find that the Formal Challenge on these issues is resolved.

3. Account 190

a. Use of Consolidated versus Stand-Alone Tax Methodology

i. Formal Challenge and Answers

21. Challenging Parties contend that some of the Account 190, Accumulated Deferred Income Taxes, entries are a result of the use of a consolidated tax approach and not the stand-alone approach.²⁰ Challenging Parties allege that, in accounts related to tax payments in other tax periods, Ameren Illinois did not show a corresponding tax loss when computing its income tax expense and tax credit carry forward in Attachment O, which Challenging Parties contend mixes Ameren Illinois' tax computations with ratemaking computations.²¹

22. Ameren Illinois responds that Challenging Parties' argument amounts to questioning the propriety of Ameren Illinois' determination of its net operating loss carryforward (NOLC).²² Ameren Illinois asserts that Challenging Parties have confused the stand-alone methodology of tax allocation with the "separate return" methodology, which the Commission has explicitly rejected for determining income tax expense when an entity files as part of a consolidated group.²³ Ameren Illinois states that its allocated NOLC adheres to the Commission's stand-alone policy, and that the inclusion of NOLC in Account 190 is consistent with Commission precedent.²⁴ Ameren Illinois adds that it is not surprising that its Account 190 balance has increased since 2008, as that is the year that Congress reinstated bonus depreciation, which yielded large increases in tax deductions for utilities.²⁵ Ameren Illinois explains that these deductions increased

²⁰ Formal Challenge at 10-11.

²¹ *Id.* at 11.

²² Ameren Illinois' Answer to the Formal Challenge at 12-13.

²³ *Id.* at 13.

²⁴ *Id.* at 14-15 (citing *Kern River Gas Transmission Co.*, 117 FERC ¶ 61,077 (2006) (*Kern River*)). Ameren Illinois states that, under the separate return approach, its Account 190 balance would have been approximately 100 million dollars higher.

²⁵ *Id.* at 15-16.

Account 282, Accumulated Deferred Income Taxes – Other property, and, to the extent that they could not be used to reduce the consolidated group’s income tax liability because the deductions exceeded the group’s taxable income, the deductions also increased Account 190 balances. Ameren Illinois further explains that the net result is that Ameren Illinois’ rate base is less than it would have been without these deductions, even though some of them produced NOLCs.

23. Challenging Parties answer that Ameren Illinois’ treatment of NOLCs results in increased transmission rates and is thus not a benefit to consumers.²⁶ Challenging Parties contend that Ameren Illinois’ response did not address the issue of whether Ameren Illinois is mixing tax computations with ratemaking computations. Challenging Parties contend that the I.R.S ruled in a private letter ruling that if a utility does not allocate a part of NOLC in computing the income tax allowance for ratemaking, it can exclude the entire balance of ADIT related to NOLC from rate base.²⁷ Challenging Parties allege that Ameren Illinois’ tax accounting policy and practice result in customers paying a return and income taxes resulting from Ameren Illinois’ accounting approach, despite Ameren Illinois not having paid income taxes for many years. Challenging Parties assert that this results in amounts that are pure windfall to Ameren Illinois since it will not be paying taxes.²⁸ Challenging Parties allege that the situation that gave rise to the Commission setting *Delmarva* for hearing and settlement procedures is present here.²⁹

24. Ameren Illinois responds that it calculates its NOLC in conformance with the Commission’s stand-alone methodology, and further contends that following the stand-alone methodology actually results in a lower rate base than under Challenging Parties’ proposed separate return methodology.³⁰ Ameren Illinois contends that Challenging Parties have presented no evidence of a contravention of Commission policy and that there is no need for a hearing.³¹

²⁶ Challenging Parties’ Answer to Ameren Illinois’ Answer at 5-6 (citing *Northern Border Pipeline Co.*, 67 FERC ¶ 61,194, at 61,610 (1994)).

²⁷ *Id.* at 6-7 (citing I.R.S. Private Letter Ruling 2014-18-024 (May 2, 2014)).

²⁸ *Id.* at 7-8.

²⁹ *Id.* at 5 (citing *Delmarva*, 145 FERC ¶ 61,055 at PP 42, 60; *PPL*, 149 FERC ¶ 61,231 at P 63).

³⁰ Ameren Illinois’ Answer to Challenging Parties’ Answer at 10-11.

³¹ *Id.* at 12-13.

25. Ameren Illinois contends that tax timing differences do not affect a utility's tax allowance whether or not they give rise to a NOLC and regardless of how large a NOLC they might produce. Therefore, Ameren Illinois claims, there can be no factual issue regarding the interplay between Ameren Illinois' tax allowances and its NOLC.³²

26. Ameren Illinois contends that its NOLC ought to be reflected in its ADIT calculation because doing so accurately reflects its economic position and is proper ratemaking. Further, Ameren Illinois contends that Challenging Parties misconstrued the private letter ruling they cite, and that the private letter ruling allowed for the utility to either reflect the NOLC in ADIT or include its tax effect as a deferred tax expense while not reflecting it in ADIT.³³ Ameren Illinois also contends that, since the issuance of that private letter ruling, the I.R.S. has issued six other private letter rulings that concluded that the subject utility's NOLCs had to be recognized in its ADIT calculation.³⁴

ii. Commission Determination

27. We find no evidence to suggest that Ameren Illinois is not appropriately using the stand-alone methodology. Despite the assertions of Challenging Parties, it is improper for Ameren Illinois' NOLCs to affect Ameren Illinois' income tax allowance because the tax is deferred, not avoided. The Commission has previously provided guidance on how the ADIT related to NOLC is included in the ADIT accounts.³⁵ Therefore, Ameren Illinois must include NOLC in rate base to reflect the fact that the company is unable to take full advantage of its favorable tax timing difference. Thus, we deny the Formal Challenge as it relates to this issue.

³² *Id.* at 8-9.

³³ *Id.* at 13-14 (citing I.R.S. Private Letter Ruling 2014-18-024 (May 2, 2014)).

³⁴ *Id.* at 14 (citing I.R.S. Private Letter Ruling 2015-48-017 (Aug. 19, 2015); I.R.S. Private Letter Ruling 2015-34-001 (May 13, 2015); I.R.S. Private Letter Ruling 2015-19-021 (Feb. 4, 2015); I.R.S. Private Letter Ruling 2014-38-003 (June 12, 2014), I.R.S. Private Letter Ruling 2014-36-037 (May 22, 2014), and I.R.S. Private Letter Ruling 2014-36-038 (May 22, 2014)).

³⁵ *Kern River*, 117 FERC ¶ 61,077 at PP 229-230.

b. Other Account 190 items

i. Formal Challenge and Answers

28. Challenging Parties allege that Ameren Illinois has inappropriately included Account 190 items related to its generation and distribution functions.³⁶ Ameren Illinois explains that Attachment O-AIC employs a Net Plant allocator to functionalize particular costs to transmission, and that Ameren Illinois uses the Net Plant allocator to determine the amount of the total account that is attributable to transmission.³⁷ As such, Ameren Illinois contends that Challenging Parties' argument that Ameren Illinois should conduct a line-by-line review of specific entries to eliminate generation or distribution-related items, as opposed to employing the Net Plant allocator, is a collateral attack on the Commission's orders accepting the generic Attachment O and Attachment O-AIC.³⁸ Challenging Parties respond that Ameren Illinois' response did not contradict the Formal Challenge's assertions that certain Account 190 entries are related to generation and distribution, not transmission.³⁹ Challenging Parties contend that Ameren merely repeated that it is allocating these amounts as per its formula.

29. Challenging Parties allege that some Account 190 amounts arise due to over-collection of expenses from customers or amounts that Ameren Illinois has collected from customers but not yet paid.⁴⁰ Ameren Illinois contends that these items are standard "unfavorable book/tax timing differences" and that Challenging Parties have provided no basis for these items not to be included in Account 190.⁴¹ Challenging Parties respond that Ameren Illinois should simply collect from customers the actual expenses it incurs and not the amounts it may incur in the future.⁴² Ameren Illinois answers that

³⁶ Formal Challenge at 11.

³⁷ Ameren Illinois Answer to the Formal Challenge at 11-12.

³⁸ *Id.* at 17-18.

³⁹ Challenging Parties' Answer to Ameren Illinois' Answer at 9.

⁴⁰ Formal Challenge at 12-13.

⁴¹ Ameren Illinois' Answer to the Formal Challenge at 21 (citing Financial Accounting Standards Board Accounting Standards Codification 740-10-25-29).

⁴² Challenging Parties' Answer to Ameren Illinois' Answer at 9.

Challenging Parties' proposal to use an "actual expenses" policy would increase the tax expense charged to consumers.⁴³

30. Challenging Parties allege that Account 190 includes amounts that have been either disallowed by the I.R.S. or the Commission.⁴⁴ Specifically, Challenging Parties allege that Ameren Illinois should not include Account 190 entries for Pensions Expenses Allowed/Disallowed and Unamortized Investment Tax Credit.

31. Ameren Illinois contends that Challenging Parties oppose inclusion of Unamortized Investment Tax Credit in Account 190, but that they have confused this item, which represents the deferred tax asset associated with Unamortized Investment Tax Credit, with the investment tax credit itself.⁴⁵ Ameren Illinois states that it properly placed the deferred tax asset in Account 190, and that Challenging Parties fail to point to any computation errors or any Commission precedent or I.R.S. regulation that prohibits inclusion of this amount.⁴⁶ Ameren Illinois also states that Account 190 properly reflects future tax benefits of two types: those associated with items that are expensed for book purposes before they are deducted for tax purposes⁴⁷ and the future tax benefit of a NOLC.⁴⁸ Ameren Illinois argues that these are standard unfavorable book/tax timing differences of the type specifically allowed by the Financial Accounting Standards Board and by the Commission.⁴⁹ Ameren Illinois states that Challenging Parties misunderstand

⁴³ Ameren Illinois' Answer to Challenging Parties' Answer at 17.

⁴⁴ Formal Challenge at 11-13. For a complete list of the accounts challenged, see Formal Challenge Exhibit No. 1.

⁴⁵ Ameren Illinois' Answer to the Formal Challenge at 18.

⁴⁶ *Id.* at 18-19.

⁴⁷ *Id.* at 19. Ameren Illinois states that six of the items Challenging Parties dispute are of this first type: Over/Under Accrual of State Income Tax, Pensions Expenses Allowed/Disallowed, Increase/Decrease Injuries & Damage Reserve, Increase/Decrease Legal Expense Reserve, Deferred Compensation, and Employee Bonus Accrual.

⁴⁸ *Id.*

⁴⁹ *Id.* at 20-21 (citing Accounting Standards Codification 740-10-25-29 (providing that "an entity shall recognize a deferred tax liability or asset for all temporary differences and operating loss and tax credit carryforwards...") and *Kern River*, 117 FERC ¶ 61,077 at PP 228-229 (explaining that accelerated tax depreciation is reflected as a regulatory asset in Account 190)).

the nature of the account for Pension Expense Allowed/Disallowed when they argue that the I.R.S. has disallowed use of a pension-related amount as an income tax deduction; Ameren Illinois explains that this item relates to the timing difference between when a pension expense is recorded for accounting purpose as opposed to when a pension payment is made and the tax deduction is taken on the tax return.⁵⁰

32. Challenging Parties allege that the ratemaking treatment of the Unamortized Investment Tax Credit and the related deferred tax asset should be the same. Specifically, Challenging Parties recommend that either (1) the liability associated with the Unamortized Investment Tax Credit should be included as a rate base reduction by recording this amount to Account 283, Accumulated Deferred Income Taxes – Other, or (2) the Account 190 amount should not be added to rate base.⁵¹ Challenging Parties contend that Ameren Illinois should not be allowed to allocate only its income tax liability associated with the account to transmission customers. Ameren Illinois contends that it is simply reflecting the Unamortized Investment Tax Credit in rate making in accordance with the rate on file, and it is not permitted to do otherwise.⁵²

ii. Commission Determination

33. The formula rate requires that Account 190 be allocated to transmission via the Net Plant allocator. By challenging amounts in Account 190 solely on the basis that they are related to Ameren Illinois' generation or distribution functions, the Formal Challenge is asserting that costs should be functionalized on a direct assignment basis instead of on the basis of an allocation ratio. Because the formula rate calls for use of an allocation ratio for functionalization of Account 190, this amounts to a challenge of the formula rate itself. Section IV.J of the formula rate protocols prohibits challenges to the formula rate and requires parties seeking modifications to the formula rate to make an appropriate section 205 or 206 filing.⁵³ Therefore, we deny the Formal Challenge as it relates to Account 190 costs allegedly related to Ameren Illinois' generation or distribution functions, and find it to be outside the scope of the challenge procedures.

⁵⁰ *Id.* at 21-22.

⁵¹ Challenging Parties' Answer to Ameren Illinois' Answer at 10-11 (citing *Delmarva*, 145 FERC ¶ 61,055 at P 28).

⁵² Ameren Illinois' Answer to Challenging Parties' Answer at 17-18.

⁵³ MISO Tariff, Attachment O-AIC Protocols at section IV.J.

34. Where the Formal Challenge takes issue with Account 190 amounts that arise due to Ameren Illinois' over-collection of expenses from customers or amounts that it has collected from customers but not yet paid, Challenging Parties have asserted that Ameren Illinois must use an approach not required by the formula rate to account for certain expenses. We find this assertion to be an attack on the formula rate itself, and therefore deny it as outside the scope of the challenge procedures.

35. Similarly, we reject the Formal Challenge's assertions that certain Account 190 items are disallowed by either the Commission or the I.R.S. Ameren Illinois' Attachment O formula rate specifically requires that the average of the total FERC Form No. 1 reported beginning and ending balances for Account 190 are allocated to the transmission function using the Net Plant allocator. Thus, we deny the Formal Challenge as it relates to these items.

4. Account 282

a. Formal Challenge and Answers

36. Challenging Parties allege that Ameren Illinois is reducing its Account 282 balance by amounts related to Construction Work In Progress (CWIP), and alleges that Ameren Illinois has not included CWIP in rate base.⁵⁴ Challenging Parties also allege that certain Account 282 items are not related to transmission. Ameren Illinois contends that it adhered to Attachment O by properly including these amounts in its revenue requirement.⁵⁵ Challenging Parties again allege that Ameren Illinois does not include CWIP in rate base, and further allege that the Commission has not permitted Ameren Illinois to recover CWIP. Challenging Parties allege that, because Ameren Illinois is not permitted to include CWIP in rate base, the corresponding Account 282 income tax liability associated with "Mixed Service Costs" and "Temp. Difference CWIP" should also be excluded from rate base.⁵⁶

b. Commission Determination

37. We deny the Formal Challenge regarding items related to Account 282 as outside the scope of the challenge procedures. Regarding the contention that expenses should be excluded because they are "unrelated to transmission," we again note that a challenge on

⁵⁴ Formal Challenge at 15.

⁵⁵ Ameren Illinois' Answer to the Formal Challenge at 22. The CWIP-related items include: Mixed Service Costs; Book Capitalized Repairs; and Temp Difference CWIP.

⁵⁶ Challenging Parties' Answer to Ameren Illinois' Answer at 11-12.

these grounds is outside the scope of the challenge procedures.⁵⁷ Similar to our discussion in regards to Account 190 (above), Ameren Illinois' Attachment O formula rate specifically requires that the average of the total FERC Form No. 1 reported beginning and ending balances for Account 282 are allocated to the transmission function using the Net Plant allocator.

5. General and Intangible Plant

a. Formal Challenge and Answers

38. Challenging Parties contend that Ameren Illinois' General and Intangible Plant allocated to transmission increased from 20.3 million dollars in 2008 to 63.8 million dollars in 2016, and alleges that Ameren Illinois is including in General and Intangible Plant values that can be directly assigned to specific utility functions.⁵⁸ Specifically, Challenging Parties allege that certain facilities are related to retail distribution and customer services and should not be recorded as General and Intangible Plant.

39. Ameren Illinois argues that Challenging Parties have cherry-picked the time period of 2008 to 2016 to hide the fact that General and Intangible Plant values have fluctuated over time.⁵⁹ Ameren Illinois states that approximately 70 percent of the increase from 2008 to 2016 is related to an increase in the Wage and Salaries allocator (from 5.466 percent in 2007 to 9.285 percent in 2016). Ameren Illinois argues that the Commission recognizes that not all costs included in General and Intangible Plant are strictly transmission-related, and it deals with this by application of the Wage and Salaries allocator, which functions to allocate the appropriate share of the total General and Intangible Plant costs to the transmission function.⁶⁰

40. Ameren Illinois provides as an example a new transmission settlement system purchased in 2014 that is included in Intangible Plant, and is thus allocated using the Wages and Salaries allocator rather than allocated 100 percent to transmission, despite only being used for transmission settlements. Ameren Illinois notes that Challenging Parties argue that several facilities should not be recorded as General and Intangible Plant, but argues that proper accounting requires such recording, and further contends that it received informal guidance from Commission staff via the Commission's

⁵⁷ See *supra* P 33.

⁵⁸ Formal Challenge at 16-17.

⁵⁹ Ameren Illinois' Answer to the Formal Challenge at 24.

⁶⁰ *Id.* at 25.

Compliance Help Desk process that the amounts cited by Challenging Parties are properly recorded. Ameren Illinois also notes that Challenging Parties have not suggested an alternate plant account to which the costs should be recorded.⁶¹

41. Challenging Parties contend that Ameren's answer was not responsive to their challenge, and asserts that the settlement system cited by Ameren Illinois may not even relate to transmission service.⁶²

42. Ameren Illinois contends that Challenging Parties continue to attack the filed rate by seeking to directly functionalize items that are functionalized by allocation in the formula rate.⁶³ Further, Ameren Illinois asserts that the new transmission settlement system referenced in its answer is used for MISO settlements which pertain to transmission. Ameren Illinois claims it did not answer Challenging Parties' claims regarding specific items selected by Challenging Parties for exclusion because the formula rate uses an allocation factor rather than functionalization. Ameren Illinois asserts that the costs at issue are appropriately recorded, and that Challenging Parties' proposed changes be rejected.

b. Commission Determination

43. The Uniform System of Accounts⁶⁴ defines what costs are properly includable in the General Plant Accounts (Accounts 389 through 399.1) and the Intangible Plant Accounts (Accounts 301, 302 and 303). Based on a review of the specific items challenged, and Ameren Illinois' explanation, we find no reason to conclude that Ameren Illinois is not properly classifying the challenged items.

44. For example, some software costs are considered intangible plant and properly includable in Account 303, Miscellaneous Intangible Plant.⁶⁵ The instructions to Account 303 state: "[t]his account shall include the cost of patent rights, licenses, privileges, and other intangible property necessary or valuable in the conduct of utility operations and not specifically chargeable to any other account." Additionally, internally

⁶¹ *Id.* at 25-26.

⁶² Challenging Parties' Answer to Ameren Illinois' Answer at 12-13.

⁶³ Ameren Illinois' Answer to Challenging Parties' Answer at 18-20.

⁶⁴ 18 C.F.R. § 101 (2016).

⁶⁵ *See Boston Edison Co.*, 109 FERC ¶ 61,300, at P 40 (2004).

developed software costs are properly recorded in Account 303.⁶⁶ Based on the information provided in the record, it appears that Ameren Illinois is properly recording its costs related to General and Intangible Plant.

45. Ameren Illinois' Attachment O formula rate specifically requires that the total FERC Form No. 1 reported amounts related to General and Intangible Plant in Service are allocated to the transmission function using the Wages and Salaries allocator.⁶⁷ Given that the accounting for the general and intangible costs inputs appears correct, we conclude that Ameren Illinois has properly implemented its formula rate with respect to the specific General and Intangible Plant items raised in the Formal Challenge. Therefore, we deny the Formal Challenge as it relates to the recording of General and Intangible Plant. Lastly, in regards to Ameren Illinois' representation that it received staff guidance regarding the accounting for General and Intangible Plant from the Compliance Help Desk process, we remind Ameren Illinois that informal advice given by staff in response to a compliance help desk inquiry is not binding on the Commission and only represents the view of individual staff members.⁶⁸ Compliance inquiries do not constitute filings with the Commission, and the accounting guidance given is based on Company representations and not intended to influence the outcome of any proceeding before the Commission.

6. Franchise Fees

a. Formal Challenge and Answers

46. Challenging Parties state that, in response to its informal challenge, Ameren Illinois stated that “[a] franchise fee provides a utility with the right to serve customers and the right to build the necessary transmission and distribution facilities to do so. As such, [franchise fees] should be included in [Ameren Illinois’] annual transmission revenue requirement.”⁶⁹ Challenging Parties dispute this description and contend that instead, franchise fees are paid to municipalities and local governments in order to secure

⁶⁶ See *Central Power and Light Co.*, 48 FERC ¶ 62,144 (1989).

⁶⁷ MISO Tariff, Attachment O-AIC, page 2, lines 4, 10, and 16.

⁶⁸ See 18 C.F.R. § 388.104(a) (2016) (when Commission staff renders informal advice and assistance to the general public, “[o]pinions expressed by the staff do not represent the official views of the Commission, but are designed to aid the public and facilitate the accomplishment of the Commission’s functions.”).

⁶⁹ Formal Challenge at 21-22 (citing Ameren Illinois’ Response to the Informal Challenge at 5-6).

the right to serve an exclusive franchised retail service territory. Challenging Parties state that they have not been able to determine whether Ameren Illinois is recovering franchise fees, but contend that such fees should not be allocated to Commission jurisdictional customers.

47. Ameren Illinois contends that Challenging Parties' claims concerning franchise fees are incorrect.⁷⁰ Although Ameren Illinois concedes that franchise agreements are entered into when a utility provides service to end-user customers in a community, it states that end-users in Illinois take transmission service under the MISO Tariff and are allocated costs under Attachment O-AIC, and that Ameren Illinois' franchise agreements allow it to construct transmission facilities as needed to provide service. Ameren Illinois contends that its standard franchise agreements explicitly provide Ameren Illinois the right to construct transmission and distribution facilities as needed to provide service.⁷¹ Thus, Ameren Illinois asserts that franchise fees are appropriately included in transmission rates.

48. Challenging Parties assert that review of the six franchise agreements shows that franchise fees are paid to the entities where Ameren Illinois has franchises to provide retail service. Challenging Parties allege that Ameren Illinois has negotiated the franchise agreements with the contemplation of providing retail service, not of building new transmission plant. Further, Challenging Parties note that additional regulatory approvals would be required for Ameren Illinois to pursue a transmission project. Finally, Challenging Parties assert that Ameren Illinois has transmission facilities in areas other than where it has franchises to serve retail customers, and does not pay any franchise fee for these areas. Thus, Challenging Parties allege, the payment of franchise fees is not a condition precedent to Ameren Illinois' construction of transmission facilities, and the fees related to providing retail electric service should not be allocated to transmission.⁷²

49. Ameren Illinois responds that some parts of its integrated transmission and distribution system require these payments in order to build facilities, while others do not. Ameren Illinois asserts that payment of franchise fees is required for the entire system to be built, owned, operated and maintained; i.e., it is a cost of doing business as an integrated transmission and distribution utility. Ameren Illinois notes that Challenging

⁷⁰ Ameren Illinois' Answer to the Formal Challenge at 34.

⁷¹ *Id.* at 34-35. Ameren Illinois provides six franchise agreements as evidence. See Exhibits A1-A-6.

⁷² Challenging Parties' Answer to Ameren Illinois' Answer at 14-15.

Parties do not allege that the franchise fees are improperly recorded or calculated, and contends the Commission must reject the formal challenge as a collateral attack on the filed rate.⁷³

b. Commission Determination

50. Challenging Parties do not contend that the costs were improperly recorded, but instead only allege that franchise fees are not allowed in transmission rates and that the franchise agreements were negotiated to provide retail, not transmission, service. However, Attachment O-AIC allows for the recovery of Account 927, Franchise Requirements, as part of Administrative and General expenses, and allocates these amounts with the Wages and Salaries allocator.⁷⁴ Therefore, we deny this aspect of the Formal Challenge, as we find that it amounts to a collateral attack on the filed rate.

7. Wages and Salaries Allocator

a. Formal Challenge and Answers

51. Challenging Parties contend that the Wages and Salaries allocator increased from 4.28 percent in 2008 to 9.28 percent in 2016, a 116.8 percent increase.⁷⁵ Challenging Parties contend that, in the informal challenge process, Ameren Illinois explained that it experiences variations in its labor expenses from year to year, and that it has experienced an increase in transmission activity in the last decade. Specifically, Challenging Parties note that Ameren Illinois pointed to an increased emphasis on tree trimming and compliance with new regulations and standards, but Challenging Parties allege that these regulations and standards apply to distribution lines also, and that Ameren Illinois' increased Wages and Salaries allocator and its explanation defy logic.⁷⁶ Challenging Parties specifically note that, between 2008 and 2016, Ameren Illinois added 1.35 billion dollars of distribution plant while adding only 1.04 billion dollars of transmission plant, and contend that distribution is an even more labor intensive enterprise. Challenging Parties assert the Commission should investigate the increase in the Wages and Salaries

⁷³ Ameren Illinois' Answer to Challenging Parties' Answer at 24-25.

⁷⁴ MISO Tariff Attachment O-AIC, page 3, line 4, [Administrative & General] cites to page 323, line 197, column b of the FERC Form No. 1, a total which includes, among other things, Account 927, Franchise Requirements.

⁷⁵ Formal Challenge at 22.

⁷⁶ *Id.* at 23.

allocator. Challenging Parties also recommend that Ameren Illinois use the average Wages and Salaries allocator of 7.04 percent for all years between 2008 and 2016.⁷⁷

52. Ameren Illinois contends that the Commission should reject Challenging Parties' arguments pertaining to the Wages and Salaries allocator.⁷⁸ Ameren Illinois contends that Challenging Parties selected 2008 as a starting point because 2008 had the lowest Wages and Salaries allocator. However, Ameren Illinois notes that its Wages and Salaries allocator was 5.03 percent in 2006 and 5.47 percent in 2007, before dropping to 4.28 percent in 2008. Ameren Illinois contends that there has been no inappropriate shift in labor dollars from distribution to transmission through the Wages and Salaries allocator. Ameren Illinois contends that distribution labor costs have increased by an annual average of seven percent since 2006, from 73.8 million dollars to 134.3 million dollars, while transmission labor costs have increased by an annual average of 13 percent, from 3.7 million dollars to 12.5 million dollars. Similarly, with regard to increasing plant values, from December 2006 to December 2015, distribution gross plant increased by 1.748 billion dollars, from 3.865 billion dollars to 5.614 billion dollars, or an average annual increase of four percent. Over the same time period, transmission gross plant increased by 1.03 billion dollars, from 735.8 million dollars to 1.766 billion dollars, or an average annual increase of 10 percent. Ameren Illinois contends that, while the dollar increases in distribution expenses and plant are greater on an absolute basis, the percentage increase in transmission expenses and plant are higher as function of the relevant amounts at issue. Further, Ameren Illinois contends that in 2007, transmission investment was less than 10 percent of total electric distribution and transmission additions, while in the last three years investment in transmission has made up nearly 50 percent of all additions.

53. Ameren Illinois argues that the Commission should reject Challenging Parties' claims concerning the Wages and Salaries allocator. First, Ameren Illinois states that the Wages and Salaries allocator varies from year to year, and Challenging Parties have cherry-picked the 2008 value for its cost comparison because 2008 had the smallest Wages and Salaries allocator ever for Ameren Illinois.⁷⁹ Ameren Illinois agrees that its transmission staff has increased at a faster rate than its distribution staff, but contends that the percentage increase in transmission labor costs from 2008 to 2016 is not unusually large, and that there is no inappropriate shift in labor dollars from distribution to transmission through the Wages and Salaries allocator because the allocator relies on

⁷⁷ *Id.* at 23-24.

⁷⁸ Ameren Illinois' Answer to the Formal Challenge at 35-38.

⁷⁹ *Id.* at 35.

actual labor costs.⁸⁰ Ameren Illinois rebuts Challenging Parties' assertion that the distribution Wages and Salaries allocator should increase just because distribution plant has increased by a larger dollar amount than transmission plant – Ameren Illinois states the dollar increase in distribution plant is greater on an absolute basis, but the percentage increase in transmission plant is higher as a function of the relevant amounts at issue.⁸¹ Finally, Ameren Illinois states that Challenging Parties made a typographical error in recommending that the Commission use the eight-year average allocator of 7.04 percent – it states that the correct eight-year average is 7.29 percent.⁸²

54. Challenging Parties assert that, in 2006, transmission labor was 3.7 million dollars while transmission plant was 735.8 million dollars, making transmission labor equal to 0.502 percent of transmission plant. However, Challenging Parties assert that in 2015, transmission labor had increased to 12.5 million dollars while transmission plant had grown to 1.766 billion dollars, resulting in transmission labor being 0.708 percent of transmission plant. By these percentage values, Challenging Parties allege that the ratio of labor to plant increased by 41 percent, while this same ratio for distribution only increased by 26 percent. Challenging Parties allege that there is no sound reason for this disparity, and that this disparity demonstrates the need for a detailed investigation into the Wages and Salaries allocator.⁸³

55. Ameren Illinois contends that the disparity in the ratios shown by Challenging Parties is hardly dramatic. Ameren Illinois notes that Challenging Parties have not alleged that there is an error in the computation of the Wages and Salaries allocator or that it has been misapplied. Ameren Illinois contends that Challenging Parties' contention is that things should not change over time, which Ameren Illinois asserts is unrealistic.⁸⁴

⁸⁰ *Id.* at 36.

⁸¹ *Id.* at 37. Ameren Illinois states that, since 2006, distribution plant has increased by four percent annually on average, while transmission plant has increased by 10 percent annually on average.

⁸² *Id.* at 38.

⁸³ Challenging Parties' Answer to Ameren Illinois' Answer at 15-16.

⁸⁴ Ameren Illinois' Answer to Challenging Parties' Answer at 25.

b. Commission Determination

56. We are persuaded by Ameren Illinois' explanation for the volatility in its Wages and Salaries allocator, and therefore deny the Formal Challenge as it relates to this issue. Despite the assertions of Challenging Parties, Ameren Illinois' increase in its Wages and Salaries allocator is reasonable in light of the fact that its transmission labor costs have been growing faster in percentage terms, not absolute terms, than distribution labor costs. Because the Wages and Salaries allocator is calculated as a ratio of transmission labor costs versus all other labor costs, if transmission labor costs grow faster percentage wise than all labor costs, the Wages and Salaries allocator will increase even if that growth was smaller in absolute terms than the growth in other cost categories.

8. Treatment of Contributions in Aid of Construction (CIAC)

a. Formal Challenge and Answers

57. Challenging Parties allege that Ameren Illinois is failing to appropriately reflect revenues it receives that are associated with construction agreements on file with the Commission.⁸⁵ Challenging Parties assert that these agreements include a gross-up for income taxes that should be treated as CIAC. Challenging Parties allege that Ameren records these CIAC-related income tax amounts to Account 417, Revenues from Non-Utility Operations, and that this treatment is inappropriate because these revenues are utility related and because they are recovered from transmission customers directly, separate from and in addition to the revenue requirement computed in Attachment O. Challenging Parties contend that Ameren Illinois should record these revenues to Account 456.1, which would provide a revenue credit to transmission customers.

58. Similarly, Challenging Parties allege that Ameren Illinois reduced its Account 282 balance by amounts that are either not related to transmission or associated with costs that are generally not allowed by the Commission, including amounts related to CIAC. Challenging Parties contend that the amount for 2016 is unknown, but that Ameren Illinois should at least exclude the ADIT CIAC amount for 2015.⁸⁶

59. Ameren Illinois rebuts Challenging Parties' contention that it should not record CIAC-related income tax amounts as Non-Utility Revenues in Account 417 because Ameren Illinois collects such income directly from the entity that is a party to the particular construction agreement, and should instead record these revenues in Account

⁸⁵ Formal Challenge at 24.

⁸⁶ *Id.* at 14-15. For a list of all Account 282 entries challenged, *see* Formal Challenge Attachment 4.

456.1 as a revenue credit to transmission.⁸⁷ Ameren Illinois states that a revenue credit would only be appropriate if transmissions customers were paying for the assets in transmission rates, and that they are not; rather, the facilities are placed in service at zero cost. However, Ameren Illinois states that it determined that there is a double-recovery associated with CIAC. Specifically, the tax gross-up is not a 100 percent gross-up for income taxes because Ameren Illinois will eventually receive a tax deduction in future years. Thus, Ameren Illinois states that the tax gross-up is calculated as the present value difference between the income taxes paid in the current year and tax deductions the company will receive in future years. Ameren Illinois explains that this tax difference creates a deferred income tax balance that is recorded in Account 282, which is currently reflected as a reduction to rate base, with a portion of the total being allocated to the net revenue requirement through the use of the net transmission plant allocator.⁸⁸ Ameren Illinois explains that the double recovery occurs because the timing difference is paid by both the CIAC customer and all transmissions customers via the inclusion of this amount in Account 282.

60. Ameren Illinois contends that the facilities at issue are not paid by other transmission customers via Attachment O, and thus neither the CIAC payment nor gross-up should be treated as a revenue credit in Attachment O. Ameren Illinois contends that double recovery occurs because the timing difference is paid by both the CIAC customer and all transmission customers via its inclusion in Account 282. To resolve the double recovery issue, Ameren Illinois states that it commits to treat the CIAC tax gross-up as a revenue credit in Attachment O-AIC as long as the CIAC balances remain in Account 282.⁸⁹

61. Challenging Parties contend that Ameren's commitment resolves this concern for now, but contends that CIAC-related ADIT should be excluded from Attachment O.⁹⁰

62. Ameren Illinois contends that, while the issue of the CIACs has been resolved, Challenging Parties' argument for exclusion of the CIAC-related deferred income tax balances from Account 282 would leave Ameren Illinois under-recovering. Ameren Illinois contends that if it provides a revenue credit, the deferred income tax balance in Account 282 is needed to keep Ameren Illinois whole for the income taxes it will have to pay up front on the CIAC amounts. Ameren Illinois contends that the whole purpose of

⁸⁷ Ameren Illinois' Answer to the Formal Challenge at 38-39.

⁸⁸ *Id.* at 39-40.

⁸⁹ *Id.* at 40-41.

⁹⁰ Challenging Parties' Answer to Ameren Illinois' Answer at 17-18.

the revenue credits is to offset the incremental return from the rest of Ameren Illinois' customers who would otherwise pay to carry the tax incurred on the receipt of the CIACs. Ameren Illinois contends it does not need a return from these customers, and thus the revenue credit neutralizes the ADIT impact of the CIACs. Ameren Illinois asserts that, if it eliminated the tax paid with respect to the CIACs from its ADIT computation, there would be no reason to make the revenue credit. Moreover, Ameren Illinois contends that Challenging Parties' proposal would violate the filed formula rate, which specifies the inclusion of all Account 190 costs.⁹¹

b. Commission Determination

63. We reject Challenging Parties' assertion that the CIAC tax gross-up received should provide a credit to transmission customers. In *Trailblazer Pipeline Company*, the Commission stated that "the contributor should bear the tax burden created as a result of its contribution. In other words, '[i]f a contributor is to make a CIAC in order to gain services by which he is to benefit, the contributor should pay the full cost of the contribution, including its tax effect.'"⁹² Therefore, it would be inappropriate for Ameren Illinois to include CIAC tax gross-up collections related to CIAC as a revenue credit in the transmission formula rate. Neither the ratepayer nor the shareholder should be affected by the taxes related to the collection of CIAC or related CAIC tax gross-up.

64. However, we find that Ameren Illinois' accounting for the CIAC tax gross-up by recording it in Account 417, Revenues from Nonutility Operations, is incorrect. The CIAC tax gross-up is appropriately recorded in Account 421, Miscellaneous Nonoperating Income, and the related taxes on the CIAC tax gross-up included in Account 421 should be recorded in Account 409.2, Income Taxes, Other Income and Deductions.⁹³ Therefore, we deny the Formal Challenge and instruct Ameren Illinois to properly record the CIAC tax gross-up amount.

⁹¹ Ameren Illinois' Answer to Challenging Parties' Answer at 26.

⁹² *Trailblazer Pipeline Co.*, 55 FERC ¶ 61,050, at 61,150 (1991) (*Trailblazer*) (citing *Transwestern Pipeline Co.*, 45 FERC ¶ 61,116, at 61,362 (1988)). See also *Tampa Elec. Co.*, 151 FERC ¶ 61,013, at n.115 (2015). In this regard, there is no issue of overcompensation raised because the contributor merely reimburses the pipeline for the full cost of construction of the facilities (including the tax effect of such construction).

⁹³ See *Southeast Supply Header, LLC*, 148 FERC ¶ 61,121, at P 24 (2014).

9. Administration and General Expenses for Intercompany Allocations

a. Formal Challenge and Answers

65. Challenging Parties allege that certain inter-company allocated Administration and General Expenses are either allocated based on improper allocation factors or should not be allocated to transmission at all.⁹⁴ Challenging Parties allege that certain Account 566, Miscellaneous Transmission Expenses; Account 568, Maintenance Supervision and Engineering; and Account 571, Maintenance of Overhead Lines, activities involve both transmission and distribution and yet are allocated 100 percent to transmission. Challenging Parties contend that these expenses should be allocated based on a ratio of transmission plant and distribution plant.⁹⁵ Ameren Illinois explains that Challenging Parties have objected to activity codes that contain both transmission and distribution in the account title based on the assumption that a portion of the costs should be allocated to distribution; however, Ameren Illinois states that the activity code is not an allocator, and the dollar amounts listed in the response excluded any distribution costs that use the same company activity codes.⁹⁶ Consequently, Ameren Illinois argues that any concern with intercompany cost allocation is based on the false premise that the expenses they have identified are being allocated entirely to transmission, instead of being split between distribution and transmission.⁹⁷

66. Challenging Parties allege that certain amounts are related to public relations and retail business that should be unrecoverable.⁹⁸ These amounts are included in Account 566 and include ABIL – ARES billing, CCCM – Contribution and Membership Admin, CCPR – Public Relations, and RGBD – Business Development. Challenging Parties allege that it may have found many more of these expenses objectionable if a more detailed explanation had been provided in the information exchange process. Challenging Parties also allege that there are a number of expenses that are regulatory expenses. These include Account 566 expenses described as MISO – RTO Activities and REPP – Regulatory Policy and Planning, among others. Challenging Parties contend, per the Commission’s findings in its audit report in Docket No. FA13-1, that Ameren Illinois

⁹⁴ Formal Challenge at 18-21.

⁹⁵ *Id.* at 20, Attachment 10.

⁹⁶ Ameren Illinois’ Answer to the Formal Challenge at 29-30.

⁹⁷ *Id.* at 30.

⁹⁸ Formal Challenge at 18-20.

should record all regulatory expenses to Account 928, Regulatory Commission Expenses. Challenging Parties do not propose excluding these costs at this time because it would have no net effect on transmission rates, but note that the formula rate template ensures that only the Account 928 expenses related to transmission are included in rates and contends that these costs should be recorded to Account 928 in the future.

67. Ameren Illinois states that Challenging Parties have confused Operations and Maintenance expenses with Administration and General expenses; specifically, although Challenging Parties express their concern with inter-company allocations, none of the specific items mentioned is actually an Administration and General expense allocated from Ameren Services Company to Ameren Illinois.⁹⁹ Ameren Illinois states that, in response to Challenging Parties' 2016 data request, it provided a list of all intercompany expenses included in the annual transmission revenue requirement (ATRR) with an Ameren Illinois activity code describing the activity associated with that cost, which demonstrated that 100 percent of transmission Operations and Maintenance accounts were included in the ATRR while only 9.28 percent of allowed Administration and General accounts were included.¹⁰⁰ Ameren Illinois states that Challenging Parties seem to have misinterpreted the response, which asked for intercompany expenses, not Administration and General expenses.¹⁰¹

68. Ameren Illinois takes issue with Challenging Parties' claim that it should not be able to recover several categories of costs. Ameren Illinois clarifies that the ABIL – ARES Billing description is used to track time for three employees that perform transmission billing for Ameren Illinois.¹⁰² With respect to the contested amounts included in Account 566, Ameren Illinois explains that all charges using the CCPR (Public Relations) activity code from 2014 through the first quarter of 2016 were to a firm that does quarterly newspaper notifications regarding vegetation trimming for transmission lines.¹⁰³ Ameren Illinois further explains that the charges associated with the CCCM (Contributions and Membership Admin) activity code during this same period include employee memberships for transmission engineers, MISO transmission owner membership, and payments to landowners for tree replacement, all of which are transmission-related expenses. With respect to costs budgeted to the activity code RGBD

⁹⁹ Ameren Illinois' Answer to the Formal Challenge at 26.

¹⁰⁰ *Id.* at 27-28.

¹⁰¹ *Id.* at 28.

¹⁰² *Id.* at 30.

¹⁰³ *Id.* at 31.

– Business Development, Ameren Illinois states that, although most of its transmission business development activities take place outside Ameren Illinois, it is justified in including a small amount of business development in its budget.¹⁰⁴ Ameren Illinois explains that it is possible that a competitive transmission project could be connected to Ameren Illinois transmission facilities, requiring Ameren Illinois to study the project and possibly find that it has a competitive advantage in bidding for such a project, thus incurring business development costs for a competitive transmission project in its pricing zone.¹⁰⁵ Next, Ameren Illinois states that Challenging Parties wrongly claim that any Regional Transmission Operator (RTO)-related activity should be categorized as a regulatory expense that is properly recorded to Account 928; it notes that transmission employees often participate in RTO meetings, and that transmission-related committees and working groups are regularly attended by employees.¹⁰⁶ Finally, Ameren Illinois contends that Challenging Parties mischaracterize the Ameren Illinois audit report in Docket No. FA13-1 as finding that all regulatory costs must be recorded to Account 928. Ameren Illinois argues that the report merely found that costs paid to an external consultant relating to Ameren Illinois’ state distribution rate cases should be recorded to Account 928, not that all internal RTO costs should be charged to that account. Similarly, Ameren Illinois states that the costs pertaining to REPP- Regulatory Policy and Planning are not outside regulatory costs, but correspond with the internal labor of transmission employees.¹⁰⁷

69. Challenging Parties answer that the costs in RGBD – Business Development relate to Ameren Illinois’ business activities and that Ameren Illinois’ explanation makes clear that the cost to be incurred in 2016 is for the explicit purpose of thwarting a potential competitor for a transmission project within the Ameren Illinois territory. Challenging Parties assert that recovery of this expense will encourage Ameren to spend more dollars stifling competition, contrary to the Commission’s policy of encouraging competition, and that such allowance is discriminatory since competitors are not similarly able to recover their business development expenses from captive customers.¹⁰⁸

¹⁰⁴ *Id.* at 31-32.

¹⁰⁵ *Id.* at 32. Ameren Illinois states that no such competitive project has been proposed and it has recorded no business development costs in 2016; to the extent this remains true, projected costs will be trued-up.

¹⁰⁶ *Id.* at 33.

¹⁰⁷ *Id.* at 33-34.

¹⁰⁸ Challenging Parties’ Answer to Ameren Illinois’ Answer at 13-14.

70. Ameren Illinois contends that it might incur RGBD-Business Development costs if a competitive project were to be located in Ameren Illinois' service territory and if Ameren Illinois were to have a competitive advantage such that its costs to build the project were lower than any other competitors. Ameren Illinois contends that, rather than stifling competition, it building such a project if it has such an advantage is the essence of competition, not a nefarious scheme.¹⁰⁹

b. Commission Determination

71. While the naming of certain accounts could be misleading, we are persuaded by Ameren Illinois' explanation that the expenses Challenging Parties allege are related to both transmission and distribution are in fact only related to transmission. Thus, we deny the Formal Challenge as it relates to these costs. Further, where Challenging Parties assert that these expenses should be allocated by a method different from that prescribed in the formula rate, this amounts to an attack on the formula rate and is thus outside the scope of the challenge procedures. Similarly, we deny the Formal Challenge as it relates to expenses that Challenging Parties allege are related to Ameren Illinois' retail business and public relations. We are persuaded by Ameren Illinois that these are items properly included in its rates consistent with its formula.

72. We also note that, contrary to the assertions of Challenging Parties, the audit report in Docket No. FA13-1 only required Ameren Illinois to move certain costs paid to an external consultant from Account 923, Outside Services Employed, to Account 928, Regulatory Commission Expenses.¹¹⁰ Here, we are persuaded by Ameren Illinois' explanation that, despite the allegations in the Formal Challenge that certain expenses are actually regulatory expenses that should be recorded in Account 928, these costs are instead RTO-related. Account 566, among other things, includes "other transmission expenses not provided for elsewhere."¹¹¹ Among the listed items are General Clerical and Miscellaneous Labor. Based on the information in the record, it appears that Ameren Illinois is properly recording costs to this account. Thus, we deny the Formal Challenge's assertion that these expenses should be booked to Account 928.

¹⁰⁹ Ameren Illinois' Answer to Challenging Parties' Answer at 23.

¹¹⁰ See Audit Report in Docket No. FA13-1-000, p. 27-28 (Apr. 14, 2015).

¹¹¹ 18 C.F.R. § 101 (2016).

The Commission orders:

The Formal Challenge is hereby denied, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.