NOTICE		NOTICE
Decision filed 03/14/16. The text of this decision may be changed or corrected prior to the filing of a Petition for Rehearing or the disposition of the same.	2016 IL App (5th) 140266-U NO. 5-14-0266 IN THE APPELLATE COURT OF ILLINOIS FIFTH DISTRICT	This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

AIR PRODUCTS AND CHEMICALS COMPANY; ARCHER-DANIELS-MIDLAND COMPANY; CATERPILLAR, INC.; ILLINOIS CEMENT COMPANY; KEYSTONE CONSOLIDATED INDUSTRIES, INC.; MARATHON PETROLEUM COMPANY, LP; OLIN CORPORATION; PHILLIPS 66; UNITED STATES STEEL-GRANITE CITY WORKS; VISCOFAN USA, INC.; WASHINGTON MILLS-HENNEPIN, INC.; and THE UNIVERSITY OF ILLINOIS,	)	Appeal from the Illinois Commerce Commission.
Petitioners,	)	
v.	)	No. 13-0476
THE ILLINOIS COMMERCE COMMISSION; AMEREN ILLINOIS COMPANY; THE PEOPLE OF THE STATE OF ILLINOIS, by Lisa Madigan, Attorney General; THE CITIZENS UTILITY BOARD; THE GRAIN AND FEED ASSOCIATION; and THE COMMERCIAL GROUP (consisting of J.C. Penney Corporation, Inc.; Sam's West, Inc.; and Wal-Mart Stores, Inc.),	)	
Respondents.	)	

PRESIDING JUSTICE SCHWARM delivered the judgment of the court.
Justices Welch and Goldenhersh concurred in the judgment.

ORDER

¶ 1 *Held*: Illinois Commerce Commission properly adopted approach for rate mitigation and properly rejected large energy consumers' proposal for utility to engage in workshop and allocate percentage adjustment regarding the segregation of costs into phase service components.

¶ 2 The petitioners, Air Products and Chemicals Company, Inc., Archer-Daniels-Midland Company, Caterpillar, Inc., Illinois Cement Company, Keystone Consolidated Industries, Inc., Marathon Petroleum Company, LP, Olin Corporation, Phillips 66, United States Steel-Granite City Works, Viscofan USA, Inc., Washington Mills-Hennepin, Inc., and the University of Illinois (collectively Illinois Industrial Energy Consumers or IIEC), are a diverse group of large electricity consumers served by the respondent, Ameren Illinois Company (Ameren), at locations throughout Ameren's Illinois service area. IIEC appeals directly from an order of the Illinois Commerce Commission (Commission), which modified and approved a performance-based formula rate that Ameren proposed to apply to its various customer classes. In seeking administrative review of the Commission's order, IIEC challenges: (1) the Commission's adoption of a modified three-tiered approach for rate mitigation to end the cross-subsidization of Ameren's largest customers by Ameren's other customer classes, (2) the Commission's rejection of IIEC's proposal that Ameren engage in workshops or in further investigations to develop a method to segregate costs of Ameren's primary distribution system into separate single-phase and three-phase service components, and (3) the Commission's rejection of a 10-20% adjustment related to IIEC's claim that a portion of Ameren's primary distribution

system should be allocated only to secondary customers. Ameren and the Commission also participate on appeal. We affirm the Commission's order.

¶ 3 I. BACKGROUND

¶ 4 Ameren is regulated by the Illinois Commerce Commission pursuant to the Illinois Public Utilities Act (220 ILCS 5/1-101 *et seq*. (West 2012)). Section 16-108.5(c) (the formula rate provision) of the Public Utilities Act is part of what is commonly referred to as the 2011 Energy Infrastructure Modernization Act (EIMA). 220 ILCS 5/16-108.5(c) (West 2012). EIMA requires the Commission to periodically consider revenue-neutral tariff changes related to the rate design of a participating utility's performance-based formula rate, which is used to set rates for delivery of the electricity it sells. 220 ILCS 5/16-108.5(b)-(d) (West 2012). The total rate, or total amount due to the utility from all of its customer classes, is evaluated annually through formula rate cases. 220 ILCS 5/16-108.5(d) (West 2012).

¶ 5 The rate design, which is at issue here, is evaluated once every three years in its own proceeding. 220 ILCS 5/16-108.5(e) (West 2012); *Coalition to Request Equitable Allocation of Costs Together (REACT) v. Illinois Commerce Comm'n*, 2015 IL App (2d) 140202, ¶ 3. Any changes in allocation are called "revenue neutral" because the total revenue requirement remains the same and only the allocations among the customer classes may change. *Id.* The goal is to satisfy Ameren's revenue requirement in a manner that is fair to all of its customer classes, while allowing for full recovery of the Commission-approved revenues. *Id.*

¶ 6 Ameren's previously approved cost of service methodology, breaking down costs into categories and apportioning each cost category among the diverse users of the utility system, was derived in 2010. *Central Illinois Light Co. d/b/a AmerenCILCO, et al.*, Ill. Comm. Comm'n Nos. 09-0306 through 09-0311 (cons.) (Apr. 29, 2010) (*aff'd* 2012 IL App (4th) 100962, ¶ 141). In that docket, Ameren proposed changes to its cost of service study related to the allocation of the Electric Distribution Tax (EDT), also referred to as the EDT Cost Recovery charge (EDT) (see Public Utilities Revenue Act, 35 ILCS 620/2a.1 (West 2012)), which is a tax on electric utilities based on the total amount of energy delivered in a year. The Commission found that "[i]t is a widely held ratemaking policy that rates should be designed to reflect cost causation, maintain gradualism, and avoid rate shock." *Central Illinois Light Co. d/b/a AmerenCILCO, et al.*, Ill. Comm. Comm'n Nos. 09-0306 to 09-0311 (cons.) (Apr. 29, 2010) (*aff'd* 2012 IL App (4th) 100962, ¶ 141). The Commission concluded that an appropriate and reasonable allocation included a moderation of rates that ensured no rate class would receive more than 150% of the system average increase in the Ameren territories. *Id.* The Commission also concluded, however, that "[c]ontinued movement toward cost-based rates and the elimination of inter- and intra-class subsidies should be considered a priority in [Ameren's] next rate filing." *Id.*

¶ 7 Ameren's rates thereby distinguished charges based on customer voltage levels, and its cost of service study segregated and assigned costs to its rate classes and subclasses based on voltage levels. Ameren's rate classification included DS-1 as Residential Delivery Service, DS-2 as Small General Delivery Service, DS-3 as General

Delivery Service, DS-4 as Large General Delivery Service, DS-5 as Lighting Service, and DS-6 as Temperature Sensitive Delivery Service. DS-3 and DS-4 are further split into three subclasses, differentiated by supply voltage: +100 kV, high voltage, and primary. Ameren's cost of service study apportioned the aggregate costs of single-, dual-, and three-phase assets, collectively, across the customer classes based on the peak demand of each class; there were not separate class demands for each phase of service.

¶ 8 Primary distribution lines, also known as shared distribution lines, feeders, or circuits, leave their source substation via three-phase high-capacity main-stem electrical conductors. See *REACT*, 2015 IL App (2d) 140202, ¶ 20. As the lines progress out into the territory, the high-capacity portions of the lines may connect to lower-capacity wires that serve small loads. *Id.* The lower-capacity connections might be either single, dual, or three phase. *Id.* A location with three single-phase transformers connected together may be considered a three-phase location or load source. *Id.*

¶ 9 In electrical distribution systems, the term "phase" refers to an energized conductor. Single-phase primary distribution circuits are composed for a single conductor energized to a primary-voltage level and a ground or neutral conductor. Three-phase primary distribution circuits are composed of three energized conductors and a ground or neutral conductor. See *REACT*, 2015 IL App (2d) 140202, ¶ 14. IIEC generally requires three-phase service, because single- or dual-phase service is not strong enough.

¶ 10 A. EDT/Rate Moderation Plan

¶ 11 The instant case arises out of a 2013 rate design proceeding before the Commission, wherein Ameren proposed certain modifications to its embedded cost of service study methodology as well as modifications to financial allocators required to separate Ameren costs into costs attributed to each rate zone. The Commission thus evaluated the performance-based formula rate that Ameren proposed to apply to its various customer classes pursuant to section 16-108.5(e) of the Public Utilities Act (220 ILCS 5/16-108.5(e) (West 2012)). IIEC, the staff of the Commission, the People of the State of Illinois, through the Attorney General, and the Grain and Feed Association of Illinois participated in the proceedings below.

¶ 12 Ameren presented the testimony of Leonard M. Jones, its director of rates and analysis. Jones testified that although the principal pricing objective used to guide the development of tariffs is considering and designing rates that are cost-based, *i.e.*, the cost-causers should be the cost-payers, Ameren also considers bill impact to customer classes, rate continuity and stabilization, and customer understandability. Jones explained that in docket numbers 09-0306 *et al.*, the Commission chose to limit the effect of the EDT increase to the DS-4 customers to no more than 1.5 times the overall average system increase. Jones testified, however, that the previous revenue allocation methodology was inadequate to address situations where:

> "1) Some rate classes pay such a nominal amount of Delivery Service and Distribution Tax charges that even a relatively small ¢/kWh movement could result in levels that exceed the percentage thresholds–thwarting movement toward

cost based rates–even though greater movement would result in relatively immaterial bill impacts;

2) In the event of an overall system rate decrease, all rate classes still receive a decrease even though modest rate increases to some classes would permit movement toward cost based rates with tolerable bill impacts; and,

3) In the event of material [r]ate [z]one average increases, the constraint multiplier of 1.5 times system average may result in an increase to a class that is too great, resulting in undue bill impacts."

¶ 13 Jones stated that the DS-4 class was recovering revenue levels below their stated cost of service. Jones explained that the smaller customer classes (those excluding DS-4) contributed 90%, or $37.8 million of the total EDT revenue and that the DS-4 contributed 10%, or $4.2 million of EDT revenue, even though the kWh sales from DS-4 represented 41.7% of total sales. Jones testified that the DS-4 class should pay 41.7%, or $17.5 million, of the total EDT of $41.9 million. Jones stated:

"The disparity is even wider when one views the relative contributions within the DS-4 class. DS-4 customers served from a [p]rimary, [h]igh [v]oltage, and +100 kV [s]upply [v]oltages represent 7.0%, 17.4%, and 17.3% of total sales, respectively, yet contribute only 2.8%, 5.7%, and 1.5% of [EDT] revenue. At proposed [EDT] rates, this produces shortfalls from present [EDT] rates of $1.8 million, $4.9 million, and $6.6 million for DS-4 customers served from [p]rimary, [h]igh [v]oltage, and +100 kV [s]upply [v]oltages, respectively."

¶ 14 Jones explained that the Commission had previously chosen to limit the effect of the EDT increase to the DS-4 customers to no more than 1.5 times the overall average system increase, when considering the Ameren average of DS-4 +100kV customers, it would take 13 iterations of 10% increases to the EDT to achieve uniform EDT values, assuming all of the rate change was applied to increasing the EDT price.

¶ 15 Jones explained that because EDT prices for DS-4 customers were well below the average cost-based price, other customer classes subsidized DS-4. Jones testified that the EDT subsidy was so great, and the incremental movements allowed under the revenue allocation methodology stemming from the previous docket so restrictive, achieving elimination of the subsidy would take over two dozen rate case iterations to accomplish.

¶ 16 Specifically, Jones proposed parameters to address needed improvements to the current methodology. Jones testified that the impact mitigation constraint should be changed to the greater of: (1) 0.05 ¢/KWh; (2) 10%; or (3) a constraint multiple of the system average increase based on a sliding scale starting at 1.5 times system increase for overall increases less than 10%, and reduced by 0.0125 for each percentage point of average system increase greater than 10%, but not less than a factor of 1.0. Jones opined that "[t]he limitation provision in the revenue allocation methodology of 0.05 ¢/kWh addresses general bill impact concerns expressed in [d]ocket [n]os. 09-0306 (cons.) while allowing movement toward cost based rates." Jones stated that Ameren's proposal takes a proactive approach to eliminating the inter- and intra-class subsidies for the EDT, which the Commission had noted as a priority, at quicker pace than applying a simple constraint multiple (*e.g.*, 1.5 times the system average increase). Jones testified that the subsidy

amount would be reduced from $14.4 million to $3.8 million and the subsidy would be reduced substantially, and possibly eliminated, in the next few formula rate update cases.

¶ 17 Jones testified that he incorporated the cost of service study prepared by Ryan K. Schonhoff, Ameren's regulatory consultant, to formulate his recommended revenue allocation and rate design. Jones testified that a 0.05 ¢/kWh limit translates to an approximate 1.25% total bill impact for a +100KV DS-4 customer, which is a relatively modest change balancing the desire to move toward cost of service without undue impact.

¶ 18 Jones testified that applying a uniform minimum, nominal ¢/kWh revenue allocation criterion, in conjunction with the percentage thresholds (greater of 10% or 1.5 times the system average increase) allows for gradual subsidy elimination of the EDT expense. Jones testified that "[a] relatively modest ¢/kWh increase proposed for a class that pays a very small ¢/kWh average price *** will become distorted if viewed in terms of percentage change." Jones testified that "[e]xpanding the percentage thresholds is not palatable because it exposes other classes to greater potential annual rate changes (contrary to the goals of maintaining gradualism and avoiding rate shock) just to address a problem concentrated within the DS-4 +100 kV supply subclass."

¶ 19 Jones explained as follows:

> "Each rate class, or in the case of DS-3 and DS-4, voltage subclasses, may pay a vastly different amount in total Delivery Services. For example, residential rate class DS-1 customers pay, on average, 3.96 ¢/kWh, while DS-4 customers served from +100 kV supply voltage pay, on average, 0.044 ¢/kWh (ranges from 0.021 ¢/kWh to RZ I to 0.119 ¢/kWh in RZ II). A 10% delivery services revenue

requirement increase to the residential class translates to 0.396 ¢/kWh increase, while an increase of the same magnitude to the +100 kV supply voltage DS-4 class yields an increase of only 0.04 ¢/kWh.

When coupled with the cost of power supply and transmission service of, say 4 ¢/kWh, the hypothetical 10% DS rate change for a residential customer translates to an overall bill increase of 5% (0.396 ¢/kWh / 7.962 ¢/kWh). For a +100 kV supply voltage DS-4 customer the hypothetical 10% DS increase translates to an overall bill increase of only 0.11% (0.004 ¢/kWh / 4.048 ¢/kWh). The overall impact to the DS-4 customer is relatively low and could be further adjusted, provided the adjustment is consistent with cost of service results. If an additional 0.05 ¢/kWh limit were instead applied, the +100 kV DS-4 customer's DS bill would increase from 0.044 to 0.094 ¢/kWh, a 114% increase, yet the total bill impact would only be about 1.25% (0.05 ¢/kWh / 4.094 ¢/kWh)."

¶ 20 IIEC presented evidence that the addition of the parameters would lead to extraordinary percentage increases for IIEC members. Specifically, Robert R. Stephens of Brubaker and Associates, a consultant of public utility regulation and an expert in the field of utility cost of service and regulation, suggested that the Commission reject Jones's first moderation constraint, namely the 0.05 ¢/kWh threshold. Stephens proposed increasing the second criterion to 20% and the third criterion to 1.75 times the system average increase.

¶ 21 Jones countered that such recommendations did not provide for meaningful movement towards cost-based rates. Jones testified that Stephens' approach would

require 10 annual iterations to equalize EDT charges for certain customers who are being subsidized in this regard.

¶ 22 The Attorney General presented testimony reiterating that DS-4 customers had been enjoying an unwarranted subsidy in relation to the EDT for over 15 years, and the time had passed to end it. The Attorney General presented evidence that under the previous rate design, DS-1 customers paid approximately 17 times more per kWh for the EDT charge than DS-4 +100 kV customers did (comparing $0.0017933 and $0.0001004). The Attorney General presented evidence that the proposed increase in per kWh EDT charges for DS-4 customers, while amounting to an increase of approximately $0.0009, or 9% of 1 cent, is a large increase in the existing DS-4 EDT charge, but it is not a crippling amount relative to a customer's total bill.

¶ 23 The Commission staff proposed that if the Commission were not inclined to accept IIEC's proposal, then, an alternative involved a proposal to change the 0.05 ¢/kWh criterion to 0.025 ¢/kWh, in order to avoid high rate impact for certain customers. Philip Rukosuev, a rate analyst in the rates department of the financial analysis division of the Commission, testified that, although rates should be designed to reflect cost causation, maintain gradualism, and avoid rate shock, the DS-4 class had not made significant movement towards cost-based rates in the last two cases, partially due to the conservative rate mitigation mechanisms put in place.

¶ 24 B. Segregating Primary Distribution Line Costs

¶ 25 IIEC proposed that Ameren's embedded cost of service study could be refined by further segregating primary and secondary voltage costs. IIEC argued that customers

who take service at higher voltage levels, such as the DS-4 customers represented by IIEC, referred to as primary-voltage customers, utilize three-phase assets nearly exclusively, not single-phase or dual-phase assets. IIEC argued that secondary voltage customers, such as DS-1 or DS-2 customers taking service at voltages below 600 volts, utilize single or dual-phase assets in addition to the "upstream" three-phase primary assets. IIEC thus argued that cost-causation principles, *i.e.*, charges that allocate delivery costs to the customers who cause the utility to incur them, suggest that primary-voltage customers generally should not be allocated single-phase primary system costs. IIEC argued that single-phase primary circuit costs should be reallocated to secondary users.

¶ 26 IIEC submitted the testimony of Stephens, who opined that Ameren's cost of service studies could be improved by further refinement of its segregation of primary versus secondary voltage costs because single-phase primary circuits are rarely used to service primary customers. Stephens explained that household appliances, for example, typically operate on single-phase service, while industrial applications, such as large motors, may operate on three-phase service. In Stephens' view, customers at higher voltages, such as transmission voltage or primary voltage, generally should not be allocated single-phase primary system costs serving customers who take service at secondary voltages.

¶ 27 Stephens stated that although Ameren did not make this distinction in its cost study, Ameren's data indicated that approximately 53.9%, or $1.3 billion, of the primary-voltage distribution system costs were for single-phase or dual-phase costs, which were utilized nearly exclusively by secondary DS-1 or DS-2 customers. Stephens thus

suggested that approximately 53.9% of the costs of the assets Ameren classified as primary costs should be collected from the secondary customers only.

¶ 28 Stephens cited as support for the reallocation page 97 of the "Electric Utility Cost Allocation Manual" of the National Association of Regulatory Utility Commissioners, which states:

> "Cost analysts developing the allocator for distribution of substations or primary demand facilities must ensure that only the loads of those customers who benefit from these facilities are included in the allocator. For example, loads of customers who take service at transmission level should not be reflected in the distribution substation or primary demand allocator. Similarly, when analysts develop the allocator for secondary demand facilities, the loads for customers served by the primary distribution system should not be included."

¶ 29 Stephens made a series of recommendations to effectuate the reallocation. Stephens recommended that the Commission direct Ameren to review the merit of segregating the primary delivery system costs into single-phase and three-phase components and assigning the single-phase costs exclusively to secondary customers. Stephens also recommended that the Commission take a step in refining Ameren's embedded cost of service studies by assigning 10% to 20% of the primary-voltage costs to secondary customers, in order to begin rectifying the allocation of approximately 53.9% of these costs.

¶ 30 Stephens testified that he would expect modest changes over time in Ameren's single-phase/three-phase distribution system. Stephens testified that the system was

relatively static, but not absolutely static. Stephens testified that the workshop process would outline the method and timing for consideration and may require that studies be conducted every three years. Stephens admitted that there was no way to know if that would be an expensive endeavor. Acknowledging Commission concerns that single-phase primary costs were not as cleanly and neatly segregable from the remaining primary costs, Stephens opined that further investigation of the issue may be warranted.

¶ 31 In response, Ameren presented the testimony of Ryan K. Schonhoff, Ameren's regulatory consultant. In recommending that the Commission reject Stephens' recommendation that Ameren assign 10-20% of the primary distribution system costs to the secondary function, Schonhoff stated that Stephens had failed to provide "estimates of the offsetting portion of three-phase primary distribution line costs that exclusively serves customers that take service at primary voltage." Schonhoff opined that "[w]ithout knowing the magnitude of all potentially offsetting adjustments to his proposal, it would not be appropriate [to] make any adjustment for the interim period before a final Commission decision is made on this issue."

¶ 32 Schonhoff explained as follows:

> "The primary distribution system is complex and deconstructing costs might not be practical. The unknown facts purportedly driving Mr. Stephens' proposal should cause the Commission to exercise caution in approving any immediate adjustment based on Mr. Stephens' recommendation in this proceeding. The record simply does not contain a factual basis for any specific percentages Mr. Stephens recommends."

¶ 33 Schonhoff further stated that Stephens' proposal failed to explain how class demand allocators should be modified from those existing in the proceeding. Schonhoff explained that Ameren did not currently have class demands segregated by single-phase and three-phase, as would be required for such an adjustment. Schonhoff stated that, as noted by Stephens, "DS-3 and DS-4 classes have little demand connected to single-phase circuits; however, the DS-2 class has both single and three[-]phase customers of unknown magnitudes." Schonhoff concluded therefore that "[i]n order to accurately allocate costs of single-phase and three-phase primary facilities as proposed by IIEC, additional analysis of class demands should [] be developed." Schonhoff explained that examples of these categories would be "DS-1 single[-]phase, DS-1 dual-phase, DS-1 three-phase, DS-2 single[-]phase, DS-2 dual-phase, DS-2 three-phase, etc." Schonhoff iterated that "[s]imply stating that these single[-]phase primary distribution line costs should be allocated to the 'secondary' customers isn't quite as simple or straightforward, as Mr. Stephens described." Schonhoff stated that "[w]hile Mr. Stephens' proposal presents interesting ideas, the proposal is still incomplete and could result in inaccurate allocations of costs amongst the DS-1 and DS-2 classes, even though the proposal would effectively remove costs from the DS-3 and DS-4 classes."

¶ 34 C. Commission Order

¶ 35 On March 19, 2014, after reviewing the evidence, the Commission approved Ameren's modified three-tier approach, replacing the 0.05 ¢/kWh restraint with a 0.025 ¢/kWh restraint, finding such an approach will end subsidies in the least period of time without causing rate shock. The Commission found that the magnitude of the rate

increases for IIEC were a direct result of the magnitude of the subsidies. The Commission noted Ameren's position that the current shortfall in electric revenues for the DS-4 class, based on the disparity in EDT prices, was $13 million. It noted that Ameren's position that DS-4 customers served from a primary, high voltage, and +100 kV supply voltages represent 7.0%, 17.4%, and 17.3% of total sales, yet contribute only 2.8%, 5.7%, and 1.5% of EDT revenue. The Commission also noted, however, that its staff had agreed that under Ameren's initial three-tier constrained class revenue allocation, the percentage impacts that would be experienced by the DS-4 subclasses (from 29% to 306%) would be too great.

¶ 36 With regard to the allocation of single-phase primary facility costs to secondary voltage customers, the Commission held that Ameren did not "currently have class demands segregated by single phase and three phase, as would be required to assign primary facility costs to secondary voltage customers." The Commission further found that the costs were not "neatly and fairly segregable." The Commission found that the "proposal to allocate facilities and costs by phase of service would require a complex examination of [Ameren] system assets." The Commission expressed concern "that deconstructing costs to allocate them may be impracticable, resulting in removal of costs from the DS-3 and DS-4 classes, but possibly inaccurate allocations of costs amongst the DS-1 and DS-2 classes." The Commission further held that the primary distribution system was complex and constantly changing. The Commission held that it was not clear that expending the resources to undertake workshops or further examination of the issue was warranted at the time. Therefore, the Commission declined to order workshops or to

assign a proportion of the single-phase primary facility costs exclusively to secondary voltage customers.

¶ 37 IIEC timely filed an application for rehearing (220 ILCS 5/10-113(a) (West 2012)), arguing that the Commission improperly rejected its recommendation to initiate an investigation or workshop, improperly rejected its proposed allocation of 10-20% of primary costs, and improperly adopted Ameren's modified phase-in approach to increasing rates for certain DS-4 customers. The Office of the Attorney General also filed a verified petition for rehearing.

¶ 38 The Administrative Law Judge recommended that the Commission deny IIEC's request for rehearing but grant in part and deny in part the AG's request for rehearing. Thus, although the Commission followed the ALJ's recommendation and there was a rehearing, the issues on review were not altered by the order of rehearing. IIEC timely filed its notice of appeal and petition for review with this court. Ill. S. Ct. Rule 335 (eff. Feb. 1, 1994).

¶ 39 II. ANALYSIS

¶ 40 A. Standard of Review

¶ 41 "Under well-settled legal principles, we are required to give substantial deference to the decisions of the Commission, in light of its expertise and experience in this area." *Commonwealth Edison Co. v. Illinois Commerce Comm'n*, 398 Ill. App. 3d 510, 514 (2009). "Accordingly, on appeal from an order of the Commission, its findings of fact are to be considered *prima facie* true; its orders are considered *prima facie* reasonable; and the burden of proof on all issues raised in an appeal is on the appellant." *Id.* (citing

United Cities Gas Co. v. Illinois Commerce Comm'n, 163 Ill. 2d 1, 11 (1994)); 220 ILCS 5/10-201(d) (West 2012) ("findings and conclusions of the Commission on questions of fact shall be held prima facie to be true and as found by the Commission; rules, regulations, orders or decisions of the Commission shall be held to be prima facie reasonable, and the burden of proof *** shall be upon" appellant).

¶ 42 "Though we are not bound by the Commission on questions of law [citation], we 'will give substantial weight and deference to an interpretation of an ambiguous statute by the agency charged with the administration and enforcement of the statute' (*Illinois Consolidated Telephone Co. v. Illinois Commerce Comm'n*, 95 Ill. 2d 142, 152 (1983)), which in this case is the Commission." *Commonwealth Edison Co.*, 398 Ill. App. 3d at 514. If the court determines that any claim raises a mixed question of fact and law, the appropriate standard for review is deferential, and the Commission is only to be reversed if the agency decision is clearly erroneous. *Murphy v. Board of Review of the Department of Employment Security*, 394 Ill. App. 3d 834, 836-37 (2009); *Chicago Messenger Service v. Jordan*, 356 Ill. App. 3d 101, 106-07 (2005). "Our review is limited to the following matters: (1) whether the Commission acted within its authority; (2) whether it made adequate findings to support its decision; (3) whether the decision was supported by substantial evidence; and (4) whether state or federal constitutional rights were infringed." *Commonwealth Edison Co.*, 398 Ill. App. 3d at 514; see also 220 ILCS 5/10-201(e)(iv) (West 2012); *Illinois Bell Telephone Co. v. Illinois Commerce Comm'n*, 55 Ill. 2d 461, 469 (1973).

¶ 43 " 'Substantial evidence' means more than a mere scintilla; however, it does not have to rise to the level of a preponderance of the evidence." *Commonwealth Edison Co.*, 398 Ill. App. 3d at 514. "It is evidence that a 'reasoning mind would accept as sufficient to support a particular conclusion.' " *Id.* (quoting *Citizens Utility Board v. Illinois Commerce Comm'n*, 291 Ill. App. 3d 300, 304 (1997)). "Our supreme court has held that deference to the Commission is 'especially appropriate in the area of fixing rates.' " *Id.* (quoting *Iowa–Illinois Gas & Electric Co. v. Illinois Commerce Comm'n*, 19 Ill. 2d 436, 442 (1960)). "On review, this court can neither reevaluate the credibility or weight of the evidence nor substitute its judgment for that of the Commission." *Id.*

¶ 44 Specifically, rate design, *i.e.*, adjusting a utility's various rates to meet the revenue requirement for the test year is a matter entrusted to the Commission's discretion. *Ameren Illinois Co. v. Illinois Commerce Comm'n*, 2012 IL App (4th) 100962, ¶ 147; *Governor's Office of Consumer Services v. Illinois Commerce Comm'n*, 220 Ill. App. 3d 68, 75-76 (1991). Similarly, the need to undertake further studies of a public utility is likewise committed to the Commission's discretion. *REACT*, 2015 IL App (2d) 140202, ¶ 79.

¶ 45 B. Prefatory Sections of the Public Utilities Act

¶ 46 As argued by Ameren, IIEC cites to sections 1-102(a)(v) and 1-102(d)(iii) of the Public Utilities Act (220 ILCS 5/1-102(a)(v), (d)(iii) (West 2012)), regarding the Commission's failure to properly allocate costs and set just and reasonable rates; however, these provisions constitute prefatory language supplying reasons and explanations for the legislative enactments and do not confer powers or determine rights.

Lieber v. Board of Trustees of Southern Illinois University, 176 Ill. 2d 401, 414 (1997) (declaration of policy or preamble has no substantive legal force).

> " 'Prefatory language *** generally is not regarded as being an operative part of statutory enactments. The function of the preamble of a statute is to supply reasons and explanations for the legislative enactments. The preamble does not confer powers or determine rights. [Citation.] A declaration of policy contained in a statute is, like a preamble, not a part of the substantive portions of the act. Such provisions are available for clarification of ambiguous substantive portions of the act, but may not be used to create ambiguity in other substantive provisions.' " Monarch Gas Co. v. Illinois Commerce Comm'n, 261 Ill. App. 3d 94, 99 (1994) (quoting Illinois Independent Telephone Ass'n v. Illinois Commerce Comm'n, 183 Ill. App. 3d 220, 236-37 (1988)).

¶ 47 Section 1-102 is entitled "Findings and Intent." 220 ILCS 5/1-102 (West 2012). "The section states the general reasons for enactment of the legislation and lists major goals and objectives of public utility regulation." *Governor's Office of Consumer Services v. Illinois Commerce Comm'n*, 220 Ill. App. 3d 68, 74 (1991) (section neither mandates adoption of particular type of cost study nor requires certain time period over which such costs are to be developed). Section 1-102(a)(v) provides that the goals and objectives of the legislation shall be to ensure efficiency, in that variation in costs by customer class and time of use is taken into consideration in authorizing rates for each class. 220 ILCS 5/1-102(a)(v) (West 2012). Section 1-102(d)(iii) provides that the goals and objectives of the regulation shall include equity, in that the cost of supplying public

utility services is allocated to those who cause the costs to be incurred. 220 ILCS 5/1-102(d)(iii) (West 2012).

¶ 48 We agree with Ameren that sections 1-102(a)(v) and 1-102(d)(iii) are prefatory and are of no substantive or positive legal force. See *Monarch Gas Co.*, 261 Ill. App. 3d at 99 (section 1-102 of the Public Utilities Act is prefatory and is of no substantive or positive legal force). Accordingly, they do not provide a basis for reversal of the Commission's order.

¶ 49 C. Application for Rehearing

¶ 50 Ameren further asserts that IIEC's application for rehearing did not cite as a basis for rehearing sections 16-108(c) and 16-108(d) (220 ILCS 5/16-108(c), (d) (West 2012)); section 1-102(a)(v) (220 ILCS 5/1-102(a)(v) (West 2012)); section 9-241 (220 ILCS 5/9-241 (West 2012)); or section 8-101 (220 ILCS 5/8-101 (West 2012)). Ameren thus argues that the Commission was not given the opportunity to interpret these provisions, and IIEC's arguments have been forfeited.

¶ 51 IIEC counters that its lack of explicit statutory citations does not result in forfeiture and that the citations are instead relevant and informative as to whether a rate is unjust and unreasonable under section 9-101 of the Public Utilities Act (220 ILCS 5/9-101 (West 2012)) and legislatively established policies and goals.

¶ 52 Pursuant to section 10-113(a) of the Public Utilities Act, "[n]o person or corporation in any appeal shall urge or rely upon any grounds not set forth in such application for rehearing." 220 ILCS 5/10-113(a) (West 2012). "Any manner of issues may be implied, but the statutory language specifically requires express mention of

grounds for review in the petition for rehearing." *Citizens Utility Board v. Illinois Commerce Comm'n*, 166 Ill. 2d 111, 136 (1995). Appellate review of an issue is forfeited if a party fails to strictly comply with this section. *People ex rel. Madigan v. Illinois Commerce Comm'n*, 2015 IL 116005, ¶ 46; *Citizens Utility Board v. Illinois Commerce Comm'n*, 2015 IL App (2d) 130817, ¶ 45 ("A general allegation about the proper standard of proof and a general allegation that the Commission was acting arbitrarily and capriciously were not sufficient to put the Commission on notice of the contention now raised on appeal–that it had applied an improper standard of proof in making its determination.").

¶ 53 In its application for rehearing, IIEC argued that the Commission erred in rejecting its recommendation to initiate a workshop process and its recommendation to re-allocate 10-20% of primary distribution system costs. IIEC further argued that the Commission erred in adopting Ameren's modified phase-in approach which increased rates for its members. We find that IIEC sufficiently presented the grounds for review in its application for rehearing. We therefore choose to address them in light of the pertinent portions of the Public Utilities Act.

¶ 54 D. EDT/Rate Moderation Plan

¶ 55 IIEC presented evidence that the rate moderation plan approved by the Commission will result in increases of 91% to 117% per annum over five years for certain Ameren rate class DS-4 customers. On appeal, IIEC argue that these annual rate increases are unjust and unreasonable in violation of sections 9-101, 1-102, and 16-108(d) of the Public Utilities Act (220 ILCS 5/9-101, 1-102, 16-108(d) (West 2012)) and

result in unlawful discrimination in violation of sections 9-241, 16-108(c), and 8-101 of the Public Utilities Act (220 ILCS 5/9-241, 16-108(c), 8-101 (West 2012)). IIEC argue that the Commission's order fails to account for customer impact and also violates principles of gradualism and avoidance of rate shock.

¶ 56 Ameren counters that what IIEC characterizes as a disproportionate rate increase is actually a correction intended to eliminate the other classes' existing subsidization of costs caused by the IIEC class. Ameren cites the Commission's conclusion that the magnitude of the increases to IIEC is a direct result of the size of the EDT subsidies that industrial customers have been enjoying for over 15 years.

¶ 57 Ameren further notes that IIEC's percentage increases are exaggerated and not based on the evidence. Ameren explains that the estimated increases in IIEC's proposed data were developed to assess only the impact in January 2015 and are silent on the estimated rate increases in subsequent years. Ameren notes that the model limits the annual movement to 0.025 ¢/kWh, which will produce smaller percentage changes each time that the constraint is applied, as DS-4 rates move close to cost-based.

¶ 58 i. Just and Reasonable Rates

¶ 59 Section 9-101 of the Public Utilities Act requires that "[a]ll rates or other charges *** shall be just and reasonable" and that "[e]very unjust or unreasonable charge *** is hereby prohibited and declared unlawful." 220 ILCS 5/9-101 (West 2012). Likewise, pursuant to section 16-108(d), the Commission has a duty to establish delivery service charges that are "just and reasonable" and to take into account customer impacts and voltage levels. 220 ILCS 5/16-108(d) (West 2012).

¶ 60 "[A] just and reasonable rate can never exceed–perhaps can rarely equal–the value of the service to the consumer, and on the other hand it can never be made by compulsion of public authority so low as to amount to confiscation." *Produce Terminal Corp. v. Illinois Commerce Comm'n ex rel. Peoples Gas Light & Coke Co.*, 414 Ill. 582, 590 (1953). A "just and reasonable rate" is necessarily a question of sound business judgment, rather than one of legal formula. *Id.*; *State Public Utilities Comm'n v. Springfield Gas & Electric Co.*, 291 Ill. 209, 218 (1919). "Like so many other questions in the law that involve reasonableness of conduct, it is a question of fact to be settled by the good sense of the tribunal it may come before." *Id.*

¶ 61 The record reveals that the DS-4 large general delivery service customer class, to which IIEC's members belong, had been paying a rate for the EDT well below their responsibility, since the basis for the tax had been changed in 1998. In the prior proceeding (docket No. 09-0306, *et al.*), the Commission had determined that the allocation of the EDT needed to be corrected and the subsidy eliminated, emphasizing that continued movement towards cost-based rates and elimination of inter- and intra-class subsidies should be a priority. However, the record reveals that delivery of electricity to the DS-4 class caused $17.5 million of the total EDT, but DS-4 class customers had paid only $4.2 million of the EDT.

¶ 62 The existing shortfall ($13 million) in electric revenues from the DS-4 class was significant. The duration of the subsidy (over 15 years) was significant. To eliminate that shortfall and subsidy, Ameren introduced the 0.05 ¢/kWh criterion to modify the existing rate mitigation. The 0.05 ¢/kWh constraint was intended to correct inadequacies

in the existing methodology–it would allow for meaningful movement away from subsidy towards cost-based rates with tolerable bill impacts. Thereafter, Ameren considered the suggestion to lower the 0.05 ¢/kWh criterion to 0.025 ¢/kWh, if the Commission chose a slightly longer phase-in period to cost-based rates, *i.e.*, a five-year transition to a uniform EDT rate. Under the modified proposal, only the +100kv subclass would see increases from 21-117% depending on the rate zone.

¶ 63 Further, Ameren presented evidence that the EDT recovery rates were so low for DS-4 customers in certain rate zones that a 114% increase in the rate yielded only 1.25% increase in the bill. Thus, the evidence revealed actual bill impacts on the DS-4 customers were minor, despite the size of the increase when shown as a percentage. Although IIEC presented testimony that it was highly inappropriate to include the cost of power supply or any other energy or commodity supply or transmission costs in a distribution delivery service rate case, the credibility of expert witnesses and the weight to be given their testimony are matters for the Commission as the finder of fact (*Commonwealth Edison Co. v. Illinois Commerce Comm'n*, 2014 IL App (1st) 132011, ¶ 54).

¶ 64 Here, the Commission stated that it remained firmly committed to the principles of gradualism and avoidance of rate shock but recognized that the magnitude of the rate increases for the DS-4 class was a direct result of the magnitude of the subsidies from the DS-1, DS-2, and DS-3 classes. The Commission found that the modified three-tier approach, replacing the first tier 0.05¢/kWh restraint with a 0.025¢/kWh restraint, to be

the rate moderation approach which would end the subsidies in the lesser period of time without causing rate shock.

¶ 65 The Commission determined that IIEC was receiving a rate subsidy that should be eliminated, but the subsidy was not being eliminated quickly enough. Based on the evidence presented, the Commission adopted a plan to more quickly eliminate the subsidy. The record reveals that the percentage rate increases simply reflected the great extent to which IIEC's members were underpaying their share of the EDT expense. In adopting the modified three-tiered approach, the Commission weighed the various mitigation proposals, exercised its expert judgment, and selected an approach to best balance the competing interests identified by the parties to end the subsidies in the least period of time without causing rate shock. Rate design is a matter entrusted to the Commission's discretion. See *Ameren Illinois Co.*, 2012 IL App (4th) 100962, ¶ 147; *Governor's Office of Consumer Services v. Illinois Commerce Comm'n*, 220 Ill. App. 3d 68, 75-76 (1991). The Commission's decision to adopt the just and reasonable rates is clearly supported by substantial evidence in the record. Allocating the actual impact to the customers who cause the subsidized EDT is not unreasonable. Accordingly, we find that the Commission's adoption and modification of Ameren's proposed rate mitigation methodology was appropriate.

¶ 66 ii. Alleged Unlawful Discrimination

¶ 67 IIEC also argues that the Commission's order is discriminatory because the Commission adopted a "substantially more protective rate moderation approach" for certain DS-3 and DS-4 customers engaged in grain drying activities.

¶ 68 Section 16-108(c) of the Public Utilities Act requires that charges for delivery service from Ameren's distribution system shall be "cost based" and "shall allow the electric utility to recover the costs of providing delivery services through its charges to its delivery service customers that use the facilities *** associated with such costs." 220 ILCS 5/16-108(c) (West 2012); see also *REACT*, 2015 IL App (2d) 10292, ¶¶ 48-51. Section 16-108(c) of the Public Utilities Act further requires that delivery services "shall be priced and made available to all retail customers *** in each such class on a nondiscriminatory basis." 220 ILCS 5/16-108(c) (West 2012). Likewise, section 8-101 of the Public Utilities Act provides that a public utility shall provide service in all respects adequate, efficient, just, and reasonable and shall furnish service "without discrimination." 220 ILCS 5/8-101 (West 2012). Further, section 9-241 of the Public Utilities Act provides:

> "No public utility shall, as to rates or other charges, services, facilities or in other respect, make or grant any preference or advantage to any corporation or person or subject any corporation or person to any prejudice or disadvantage. No public utility shall establish or maintain any unreasonable difference as to rates or other charges, services, facilities, or in any other respect, either as between localities or as between classes of service." 220 ILCS 5/9-241 (West 2012).

¶ 69 The Commission determined that rate increases of 50% to 100% would constitute rate shock for grain drying DS-4 customers and approved a mitigation plan that protected these customers from such increases over three years. The Commission approved a three-year phase-out of rate-limiter credits for DS-3 and DS-4 customers, which had been

implemented to prevent intermittent users (such as grain dryers, who consume service predominantly at harvest time) from facing disproportionately large increases in their bills due to their relatively low load factor. In adopting the negotiated proposal, the Commission noted that "if the rate limiter were totally eliminated" certain grain drying customers in the DS-3 and DS-4 rate classes "would receive [one-time] rate increases of 50% to over 100% and up to 158%"

¶ 70 IIEC contrasts these increases to its DS-4 subclass increases of 91% to 117% each year for the next four or five years. IIEC argues that there is no evidence to justify the substantial differences in applying principles of rate moderation and avoidance of rate shock to different customer groups within the same rate class. IIEC argues that the Commission's order is therefore not supported by substantial evidence (220 ILCS 5/10-201(e)(iv) (West 2012)) and is arbitrary, capricious, unjust, and unreasonable (220 ILCS 5/1-102, 9-101, 16-108(d) (West 2012)).

¶ 71 As noted by Ameren, however, the Public Utilities Act does not prohibit, *per se*, differences as to the rates that a utility charges its various customers classes. The Act only prohibits "unreasonable differences" in customer class rates. 220 ILCS 5/9-241 (West 2012); *REACT*, 2015 IL App (2d) 140202, ¶ 83; see also *Citizens Utilities Co. v. Illinois Commerce Comm'n*, 50 Ill. 2d 35, 46 (1971) (power to make rates, of necessity, requires the use of pragmatic adjustments required by the particular circumstances). IIEC did not present evidence that the three-year phase-out of rate-limiter credits for DS-3 and DS-4 grain drying customers amounted to an "unreasonable difference" in violation of the Public Utilities Act.

¶ 72 Instead, the differences between seasonal grain drying DS-4 customers and other DS-4 customers justify the Commission's disparate treatment of these two groups for rate mitigation purposes. Ameren agreed to the phase-out of the rate-limiter credits over a three-year period to allow DS-3 and DS-4 grain-drying customers more time to transition to a new rate structure that Ameren was proposing to the Commission in the same proceeding, the DS-6 temperature sensitive tariff. Schonhoff stated that "[b]y gradually phasing out the [r]ate [l]imiter provision, customers will be sent a meaningful price signal each year to reconsider the DS-6 rate." We find that the Commission's order is supported by substantial evidence (220 ILCS 5/10-201(e)(iv) (West 2012)) and is not arbitrary, capricious, unjust, or unreasonable (220 ILCS 5/1-102, 9-101, 16-108(d) (West 2012)).

¶ 73 IIEC further argues that the order is discriminatory because it inconsistently and arbitrarily utilized rate moderation and avoidance of rate shock principles to the advantage of other rate classes in past cases, while failing to provide similar protection for certain DS-4 subclasses in this case. The Commission, however, is squarely within its authority to make two different determinations in two separate cases that have different sets of facts. *Illinois-American Water Co. v. Illinois Commerce Comm'n*, 331 Ill. App. 3d 1030, 1037 (2002) (Illinois Commerce Commission orders have no *res judicata* effect). "The Commission is not a judicial body, but a regulatory body, and as such it must have the authority to address each matter before it freely." *Id.* at 1036. Thus, "[t]he concept of public regulation requires that the Commission have power to deal freely with each situation that comes before it, regardless of how it may have dealt with a similar or even

the same situation in a previous proceeding. *Mississippi River Fuel Corp. v. Illinois Commerce Comm'n*, 1 Ill. 2d 509, 513 (1953)." *Commonwealth Edison Co. v. Illinois Commerce Comm'n*, 405 Ill. App. 3d 389, 407-08 (2010).

¶ 74 E. Segregating Primary Distribution Line Costs

¶ 75 IIEC further appeals from the Commission's approval of the continued cost allocation of single-phase primary electric distribution lines and the Commission's refusal to require Ameren to study and provide a methodology to distinguish between single-phase and three-phase primary lines going forward. IIEC argues that the Commission erred by allowing Ameren to recover a share of approximately $1.3 billion of the costs of its primary-voltage distribution system from primary-voltage customers that do not utilize the facilities associated with such costs. IIEC argues that the Commission violated its duty to ensure that rates are just and reasonable contrary to section 9-101 of the Public Utilities Act (220 ILCS 5/9-101 (West 2012)) and violated cost causation principles and public policy (220 ILCS 5/16-108(c), (d) (West 2012); 220 ILCS 5/1-102(a)(v), (d)(iii) (West 2012)).

¶ 76 Ameren counters that the record does not confirm that $1.3 billion represents the total embedded cost of the primary-voltage distribution system that IIEC claims is misallocated. Ameren also counters that the record does not identify the rate base or revenue impact to the DS-4 class of that total embedded cost. The Commission further argues that IIEC witness conclusions regarding the misallocation of about 53.9% of primary distribution system costs are not supported by the record.

¶ 77 In the instant case, IIEC proposed that Ameren investigate the segregation of single- and dual-phase assets from the three-phase component in the calculation of primary-voltage distribution system costs and to assign the single- and dual-phase costs exclusively to secondary customers, in recognition that single-phase facilities are primarily used to serve secondary functions. IIEC proposed that if a more refined analysis of cost was necessary, an investigation would provide an appropriate forum to do so. IIEC proposed that pending such a review, the Commission should require the assignment of 10-20% of primary-voltage costs to secondary voltage customers.

¶ 78 IIEC's argument that Ameren has misallocated primary-voltage distribution system costs to primary-voltage customers that do not utilize the facilities associated with such costs is based on cost-causation principles as set forth in section 16-108(c) of the Public Utilities Act (220 ILCS 5/16-108(c) (West 2012)). Ameren notes initially that IIEC never argued in the underlying proceedings that the Commission's refusal to adopt its proposed allocation violated section 16-108(c).

¶ 79 i. Cost-Causation Principles

¶ 80 Section 16-108(c) of the Public Utilities Act requires that charges for delivery service from the distribution system shall be "cost based" and "shall allow the electric utility to recover the costs of providing delivery services through its charges to its delivery service customers that use the facilities and services associated with such costs." 220 ILCS 5/16-108(c) (West 2012). Section 16-108(c), however, does not require a precise and mechanical assignment of individual assets to individual customer classes to set cost-based rates. See *REACT*, 2015 IL App (2d) 140202, ¶ 59. Section 16-108(c)

"does not mandate that costs associated with a precise facility be recovered only from customers that *** use the facilities and services associated with the costs." (Emphasis omitted.) *REACT*, 2015 IL App (2d) 140202, ¶ 51. "[P]recision in itemizing must not be conflated with fairness in allocating." *Id.* ¶ 72; see also *Amax Zinc Co. v. Illinois Commerce Comm'n*, 124 Ill. App. 3d 4, 11 (1984) ("The ratemaking process is lacking in precision and is not an exact science.").

¶ 81 Accordingly, section 16-108(c) does not require the sort of precision that IIEC suggests a workshop or investigation would aim to provide. Indeed, the record revealed that it was not feasible to divide a distribution system by use of each customer's facilities so that each customer is only allocated costs for the portions of the facilities that the customer uses.

¶ 82 ii. Just and Reasonable Rates

¶ 83 Ameren counters that no law or regulation commands the Commission to schedule workshops or order investigations on request. Ameren further contends that the notion that the requirement for "just and reasonable" rates creates a freestanding duty to provide workshops or investigations on any party's demand is implausible. Ameren argues that IIEC conflates the Commission's general charge to approve a reasonable and fair allocation of costs with a nonexistent requirement to conduct a specific, overly granular, and thus impractical, itemization of costs with consumers.

¶ 84 Again, section 9-101 of the Public Utilities Act requires that "[a]ll rates or other charges *** shall be just and reasonable" and that "[e]very unjust or unreasonable charge *** is hereby prohibited and declared unlawful." 220 ILCS 5/9-101 (West 2012).

Likewise, pursuant to section 16-108(d), the Commission has a duty to establish delivery service charges that are "just and reasonable" and to take into account customer impacts and voltage levels. 220 ILCS 5/16-108(d) (West 2012). A "just and reasonable rate" is necessarily a question of sound business judgment, rather than one of legal formula. *Produce Terminal Corp.*, 414 Ill. at 590; *State Public Utilities Comm'n*, 291 Ill. at 218. "Like so many other questions in the law that involve reasonableness of conduct, it is a question of fact to be settled by the good sense of the tribunal it may come before." *Id.*

¶ 85 Ameren argues that IIEC did not perform the extremely complex analysis of class demands by phase of assets, which would require dividing each phase of service by each class of customers: they simply asked for a self-serving lessening of their own shares. Ameren further argues that IIEC failed to identify the percentage of three-phase costs that should be directly assigned to primary customers.

¶ 86 The record reveals that Ameren's cost of service study apportioned the aggregate costs of the single-, dual-, and three-phase assets, collectively, across the customer classes based on the peak demand of each class; there were not separate class demands for each phase of service. IIEC's proposal did not explain how class demand allocators should be modified from those existing in the proceeding. The record reveals that IIEC's proposal required that an extremely complex analysis of class demands by phase of assets be undertaken. IIEC's proposal would require breaking out each phase of service by each class of customers, *i.e.*, DS-1 single-phase, DS-1 dual-phase, DS-1 three-phase, DS-2 single-phase, etc. Schonhoff explained that the primary distribution system was complex and that deconstructing costs might not be practical.

¶ 87 As noted by the Commission on appeal, to understand the complexity of what IIEC is proposing, we should consider Ameren's presentation of the revenue-neutral tariff changes and the underlying modifications to Ameren's rate design and cost of service methodologies in this case. Specifically, certain modifications to the financial allocators used to allocate the overall Ameren revenue requirement to each of its three rates zones and to provide these rate zone-specific revenue requirements were presented to Ameren witness Ryan Schonhoff to be incorporated into his class cost of service studies and rate design presentations. Schonhoff performed a class cost of service study, the process by which each rate class was assigned costs, and presented various proposals to modify the rate design and cost allocation methodologies used by Ameren to determine performance-based formula rates under its Rate Modernization Action Plan–pricing tariff. Jones received class cost of service inputs from Schonhoff, compared the results against present rate levels, presented a revenue allocation and rate mitigation methodology to evaluate movement to cost of service and limit such movement if necessary, provided a process to determine if pricing for a class of customers similar among rate zones should be consolidated into single tariff pricing, and evaluated similarity of cost and prices among rate zones. Indeed, IIEC does not deny the complexity or the expense of what it is proposing.

¶ 88 We remain deferential to the Commission's decision and reliance on expert conclusions that the approved cost methodology does not violate the Public Utilities Act. Ameren does not currently have class demands segregated by phase of service. The Commission found that the costs were not neatly and fairly segregable by phase of

service, that an allocation of facilities and their costs by phase of service would be complex, that the exercise of deconstructing the distribution network would be impracticable, that the primary distribution system has complexities and is constantly changing, and that the end result faced the potential of inaccurate allocation of costs between customer classes. Stephens acknowledged that any investigation into the further segregation of single- and three-phase costs would not be static, but rather would require new and ongoing investigations in the future. The Commission reasonably decided to continue to permit all phased costs to be allocated across customer classes by class demand. See *Produce Terminal Corp.,* 414 Ill. at 593 (since interruptible and off-peak customers' participation benefits afforded by availability of gas service, they must bear with general customers reasonable share of the total costs of providing such service). The evidence substantiated the Commission's finding that a cost-based rate design did not require further segmenting the primary-voltage level of service by phase of service. See *REACT,* 2015 IL App (2d) 140202, ¶ 1. The Commission reasonably concluded that expending the resources to undertake workshops or further examination of the issue is not warranted at this time. The Commission reasonably found that the benefits of a further study on the question did not outweigh the costs. See *id.* ¶¶ 1, 73 (Commission reasonably found benefits of proposed study were not great, study was not necessary to bring cost of service study into compliance with section 16-108(c), study was not necessary to correct dramatically disproportionate rate increase or overbilling, and there was no guarantee that a study will lead to increased fairness in allocating costs).

¶ 89 Likewise, we reject IIEC's argument that the Commission erred in failing to allocate at least 10-20% of the costs of single-phase primary distribution facilities to secondary customers, pending the results of an investigation/workshop.

¶ 90 IIEC argues that the 10-20% increase and the workshop are necessary to prevent its members from being overbilled. However, as Ameren notes, a goal behind the increases for the customer class is to eliminate existing subsidies afforded to that class. Therefore, IIEC has not established a true imbalance. See *REACT*, 2015 IL App (2d) 140202, ¶ 70.

¶ 91 Further, although IIEC's proposed 10-20% adjustment would reduce large customers' rates, Ameren lacks class demand allocators to assign those removed costs to its customers. The Commission further found that the 10-20% adjustment lacked a relation to the IIEC-claimed 53.9% misallocation of Ameren's primary distribution line costs. Indeed, the record does not contain a factual basis for the specific percentages Stephens recommended. The Commission's decision to reject IIEC's proposal is not contrary to the substantial evidence.

¶ 92 IIEC argues that the Commission "should not be heard to invoke general and unsupported comments regarding the possible complexity of studies and speculation about possible impacts on others." IIEC argues that the 10-20% proposal was intended to be a conservative calculation pending an investigation, considering evidence that the misallocation exceeded 50%.

¶ 93 Schonhoff explained, however, that Stephens' testimony had failed to estimate the offsetting portion of three-phase primary distribution line costs that exclusively served

primary-voltage customers. Schonhoff opined that "[w]ithout knowing the magnitude of all potentially offsetting adjustments to his proposal, it would not be appropriate [to] make any adjustment for the interim period before a final Commission decision is made on this issue." Schonhoff stated that the unknown facts driving Stephens' proposal should cause the Commission to exercise caution in approving any immediate adjustment. Schonhoff further contended that the record did not contain a factual basis for the percentages Stephens recommended.

¶ 94 To support its argument, IIEC cites *Illinois Commerce Comm'n v. Federal Energy Regulatory Comm'n*, 756 F.3d 556, 558 (7th Cir. 2014) (*FERC*), which involved the review of an administrative decision apportioning the cost to develop new high-voltage network transmission lines. The federal court addressed the question regarding the extent to which western utilities could be required to contribute to the costs of newly built transmission lines primarily in the eastern region. *Id.* In its appellate order, the United States Court of Appeals for the Seventh Circuit noted that the Federal Energy Regulatory Commission was not authorized to approve a pricing scheme that required a group of utilities to pay for facilities from which its members derived little or no benefit in relation to the costs sought to be shifted to its members. *Id.* IIEC extrapolates this language to this case, arguing that the Illinois Commerce Commission is not authorized to approve a pricing scheme requiring certain classes of customers to pay for facilities they do not utilize and from which they derive no benefits.

¶ 95 The facts of *FERC* are distinguishable, however, in that it involved separating costs between different localities within the system. Here, IIEC seeks to separate existing

localities into separate phase of service systems in each of Ameren's three rate zones. Further, as noted by Ameren, unlike *FERC*, the issue here is not whether the Commission has properly adopted a new method for allocating the costs of new facilities: the issue is whether the existing status quo allocation of embedded costs of existing facilities should be revisited. The substantial evidence regarding the complexity of the distribution system, changes in the asset mix, and the expense associated with the study supports the status quo.

¶ 96 Although the parties do not dispute that IIEC's proposal has not been accepted in Illinois and that it is not the industry standard, IIEC also cites as support a case before the Wisconsin Public Service Commission, alleging that the Wisconsin case "acknowledged the merit of such a distinction as a refinement to its cost of service study." See *Wisconsin Public Service Corp.*, Pub. Service Comm'n of Wis., 6690-UR-122 (Dec. 18, 2013). In that case, the Wisconsin Public Service Commission acknowledged that cost of service study methods that allow for a more granular recognition of single-phase and three-phase primary-voltage distribution circuit costs "may be of some value when assigning revenue responsibility." *Id.* at 47. However, the Wisconsin Public Service Commission concluded that the proposed analysis of primary-voltage distribution system costs and cost causation was insufficient, and therefore, the proposed primary-voltage distribution allocation method did not merit adoption. *Id.* Further, the Wisconsin Public Service Commission found it unnecessary to order the utility to perform additional study. *Id.* at 47-48. Instead, it encouraged the industrial customers to work with the utility on the issue prior to the utility's next rate filing. *Id.* at 67-68.

¶ 97 IIEC further argues that the Commission erred when it noted that its current order was consistent with its previous order in *Commonwealth Edison Co.*, Illinois Commerce Commission, 13-0387 (aff'd *REACT*, 2015 IL App (2d) 140202) (workshop to study cost allocation by phase of service highly complex and not practicable, segmenting by phase of service may not be equitable or accurate, and allocating by phase of service not industry norm and can easily become an unsustainable process because the distribution system is constantly changing). IIEC argues that the Commission's decisions are not *res judicata* in later proceedings because it is a legislative and not a judicial body. However, we find no reversible error in the Commission's finding. As noted by Ameren, the Commission "did not unthinkingly rely on a prior order" but merely observed its consistency in addition to, and not in displacement of, its other factual findings.

¶ 98 Ameren presented evidence that IIEC's proposal failed to explain how class demand allocators should be modified considering that Ameren did not have class demands segregated by single-phase and three-phase, which would be required for the proposed adjustment. IIEC failed to provide the level of detail necessary to apportion the assets of the primary distribution network among Ameren's customer classes. Ameren presented evidence that additional analysis of class demands should be developed and that IIEC's proposal was incomplete and could result in inaccurate allocations of costs amongst the DS-1 and DS-2 classes, even though the proposal would effectively remove costs from the DS-3 and DS-4 classes. The Commission held that it was not clear that expending the resources to undertake workshops or further examination of the issue was warranted at the time. Therefore, the Commission declined to order workshops or to

assign a proportion of the single-phase primary facility costs to secondary voltage customers.

¶ 99 "It is the Commission's role to weigh the evidence." *REACT*, 2015 IL App (2d) 140202, ¶ 56. "In fulfilling this role, the Commission must resolve conflicting expert opinions on highly technical matters." *Id.* The Commission is not required to accept testimony at face value or to accept as true all evidence not rebutted. *City of Chicago v. Illinois Commerce Comm'n*, 15 Ill. 2d 11, 16 (1958). "Rate-design and cost-allocation issues, because of their complexity, are ' "uniquely a matter for the Commission's discretion." ' " *REACT*, 2015 IL App (2d) 140202, ¶ 56 (quoting *Ameren Illinois Co.*, 2012 IL App (4th) 100962, ¶ 147 (quoting *Central Illinois Public Service Co. v. Illinois Commerce Comm'n*, 243 Ill. App. 3d 421, 446 (1993))). The Commission's order is supported by substantial evidence in the administrative record, is supported by adequate findings, is not contrary to law, and is not an abuse of the Commission's discretion.

¶ 100 III. CONCLUSION

¶ 101 For the reasons stated, we affirm the Commission's decision.

¶ 102 Affirmed.