No. 5-24-0014

IN THE APPELLATE COURT OF ILLINOIS
FIFTH JUDICIAL DISTRICT

AMEREN ILLINOIS COMPANY d/b/a, AMEREN ILLINOIS
Petitioner-Appellant,

vs.

ILLINOIS COMMERCE COMMISSION, et al.
Respondents-Appellees.

Petition for Review of Orders of the Illinois Commerce Commission in its Docket 23-0067, *Ameren Illinois Company d/b/a Ameren Illinois*, "Proposed general increase in rates and revisions to other terms and conditions of service."

Administrative Law Judge Nicole Roth

BRIEF *AMICI CURIAE* OF COMMUNITY ORGANIZING AND FAMILY ISSUES AND LEGAL ACTION CHICAGO IN SUPPORT OF RESPONDENT-APPELLEE THE ILLINOIS COMMERCE COMMISSION

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BACKGROUND AND STATEMENT OF INTEREST

In 2022, the Illinois Commerce Commission issued a report to the General Assembly (hereafter "Discount Rate Report" or the "Report") on the concept of requiring Illinois public utilities to adopt a low-income discount rate, in response to a provision of the 2021 Climate and Equitable Jobs Act. The Report ordered Illinois utilities to propose low-income discount rates. It also included a series of five "tentative" recommendations for how such rates ought to be structured, in ordering the state's utilities—including its gas utilities—to propose discount rates.

Weeks later, all of Illinois' major gas utilities near-simultaneously initiated proceedings to increase their rates of service, including Ameren-Illinois Company ("AIC" or the "Company"). All of the gas utilities either included a discount rate proposal in their initial filing or, as in AIC's case, proposed one shortly thereafter. AIC's

proposal included a two-tiered flat discount to the Company's fixed customer charge[1]; Staff's also offered a flat discount, but was slightly more generous and included a third tier just above the income eligibility cutoff for the Low Income Home Emergency Assistance Program ("LIHEAP"). Conversely, a group of Public Interest Organizations ("PIO") and the Attorney General ("AG") proposed percentage discounts to customers entire bills. The four proposals were summarized in rebuttal expert testimony of the AG as follows:

Proposal Party	Discount Type	Eligibility Tiers	Discounts by Tier	Recovery Mechanism	Recovery Responsibility
Ameren	Fixed monthly credit	**Tier 2:** 0-100% FPL **Tier 1:** 100-200% FPL	**Tier 2:** $20/mo. **Tier 1:** $10/mo.	Low-income discount rider ($/month)	Residential & Non-Residential
Staff	Fixed monthly credit	**Tier 1:** 0-100% FPL **Tier 2:** 100-200% FPL **Tier 3:** 200-300% FPL	**Tier 1:** $30/mo. **Tier 2:** $20/mo. **Tier 3:** $10/mo.	Low-income discount rider ($/month)	Residential & Non-Residential
PIO	Total bill discount	**Tier 1:** 0-30% SMI **Tier 2:** 30-60% SMI	**Tier 1:** 60% of bill **Tier 2:** 20% of bill	Not specified	Residential & Non-Residential
AG Modification	Total bill discount	**Tier 1:** 0-50% FPL **Tier 2:** 50-100% FPL **Tier 3:** 100-150% FPL **Tier 4:** 150-200% FPL **Tier 5:** 200-300% FPL	**Tier 1:** 75% of bill **Tier 2:** 55% of bill **Tier 3:** 25% of bill **Tier 4:** 10% of bill **Tier 5:** 5% of bill	Low-income discount rider ($/therm)	Residential & Non-Residential

(C 13449-13673, AG Ex. 8.00 at 17, Table 3.)

After an evidentiary hearing in which the Commission reviewed proposals from AIC, Staff, PIO, and the AG, the Commission adopted the AG's proposal in its November 16, 2023 Final Order. There were several features that distinguished the AG's

[1] The customer charge or delivery charge refers to the portion of a natural gas utility bill that is fixed regardless of usage, as opposed to the portion of the bill that is based on a customer's actual gas usage.

proposal from the others, most notably (1) more generous discounts, (2) more targeted discounts based on a given customer's falling within one of five income brackets, and (3) a discount based on a customer's entire bill, instead of a discount on the fixed customer charge alone, as AIC and Staff proposed. This was consistent with the Commission's other orders that day, adopting virtually identical five-tier discount rates to the entire gas bill in the rate cases of Nicor Gas Company ("Nicor"), Peoples Gas Light & Coke Company ("Peoples") and North Shore Gas Company ("North Shore"). These proposals were put forth by the undersigned organizations.

AIC has now appealed the Commission's decision adopting the AG's proposal, raising arguments that (i) the Commission's approval of a low-income discount rate was unjust, unreasonable and discriminatory, and (ii) the Commission improperly set aside its own tentative conclusions in the Discount Rate Report without sufficient basis. The Court should reject AIC's effort to undo a landmark decision that will genuinely vault Illinois towards achieving energy affordability—a goal specifically contemplated by the General Assembly in its 2021 amendment of Section 9-241 of the Public Utilities Act ("the PUA" or "the Act"). The Company's arguments on appeal are misplaced and misconstrue both the Commission's Final Order, the Report, and the Commission's purpose in ordering a meaningfully effective discount rate program. In addition, AIC misstates applicable law relative to the Act's anti-discrimination provision, Section 9-241. 220 ILCS 5/9-241. Should the Court agree with AIC and overturn the Commission's decision adopting the AG's discount rate proposal, the legality of discount rates in place for Nicor, Peoples, and North Shore—which have not been appealed—may be called into question. Months of work spent preparing to implement them across most of the rest of the state (outside of

AIC's service territory), as well as in AIC's own service territory, will potentially go to waste, leaving low-income Illinois gas customers with burdensome and in many cases unaffordable gas heating bills.

As such, *amici* file this brief to strenuously object to AIC's appeal of this issue, to ask the Commission to reject AIC's argument, and to provide further context to the Commission's decision. *Amici* are as follows:

Community Organizing and Family Issues ("COFI") is a not-for-profit center and resource for family-focused organizing, leadership development and community building focused on the well-being of children, youth and families in low income and working families. COFI has offices in East St. Louis, Aurora, Chicago, and Elgin, Illinois. COFI's work embraces a mission to strengthen the power and voice of low-income and working families at all levels of civic life—from local institutions and communities to the city and state policy arenas. COFI organizes low-income parents of color who, in turn, have built local and statewide organizations that are fighting for change around issues affecting families, and attracting attention nationally to their innovative policy solutions and organizing steps.

Legal Action Chicago ("LAC," and together with COFI, "COFI-LAC") is a partner organization of Legal Aid Chicago, the Midwest's largest provider of free civil legal services to people who are living in poverty or otherwise vulnerable. Through class action litigation and policy advocacy, Legal Action Chicago improves policies and systems that affect large groups of low-income individuals and communities, with a focus on addressing racial inequity. Legal Action Chicago has a strong interest in ensuring that

low-income ratepayers are able to benefit from truly affordable utility service, including by advocating for the adoption of robust, targeted low-income discount rates.

COFI-LAC also have an interest in this appeal to the extent they continue to work in support of discounts rates the Commission approved in 2023 and stands to similarly approve for electric utilities in the coming months. Specifically, COFI-LAC proposed the discount rates that were approved by the ICC for Nicor, Peoples and North Shore, which are structured virtually identical to that approved for AIC, and are monitoring progress on these programs ahead of an anticipated October 1, 2024 rollout. In addition, COFI-LAC have worked with Commonwealth Edison Company ("ComEd") to develop its own discount rate proposal modelled on the gas companies', which it filed with the Commission in March 2024 in ICC Docket No. 24-0163. COFI-LAC have intervened in the ComEd docket and intend to promote a robust discount rate consistent with their missions and the discount rate programs they proposed, and that were approved, by the Commission for Nicor, Peoples, and North Shore.

STANDARD

It is the established intent of the Public Utilities Act to provide adequate, efficient, reliable, environmentally safe and least-cost public utility services in an equitable manner. 220 ILCS 5/1-102. The Act also states that this application must be based on "public understandability and acceptance of the rate;" with reasoning set forth for allocating costs and rates after considering relevant factors. 220 ILCS 5/1-102(d). Furthermore, the Act states that a court shall reverse a Commission order only if it finds that the findings of the Commission are not supported by substantial evidence, based on the entire record presented. 220 ILCS 5/10-201(iv). Substantial evidence is that which a

reasonable person would accept as sufficient to support a certain conclusion and it may be somewhat less than a preponderance. *Central Illinois Public Service Co. v. Illinois Commerce Comm'n*, 268 Ill. App. 3d 471, 644 N.E.2d 817 (1994).

The Commission has broad discretion in deciding what is reasonable, and Illinois courts typically avoid "interfer[ing] with the functions and authority of the Commission, so long as [its] order demonstrates a sound and lawful analysis of the problems encountered." *Camelot Utilities, Inc. v. Illinois Commerce Comm'n*, 51 Ill. App. 3d 5, 9-10, 365 N.E.2d 312, 315 (1977). On appeal, the court must assess whether the Commission's order does or does not "contain findings or analysis sufficient to allow an informed judicial review thereof[.]" 220 ILCS 5/10-201(e)(iii). It must defer to the Commission on findings of fact and only reverse where factual findings are against the manifest weight of the entire record evidence. *United Cities Gas Co. v. Ill. Commerce Comm'n*, 163 Ill. 2d 1, 12, 643 N.E.2d 719 (1994). In *Ameropan Oil Corp. v. Illinois Commerce Comm'n*, 298 Ill. App. 3d 341, 346, 698 N.E.2d 582 (1st Dist. 1998), the First District Appellate Court held that the Commission's findings and conclusions on questions of fact are to be held prima facie true and reasonable, stating that it must afford the Commission great deference because it is the "'judgment of a tribunal appointed by law and informed by experience,'" and its "decisions 'result from the deliberations of members who are better qualified to interpret evidence supplied by specialists and technicians.'" (internal quotations and citations omitted).

ARGUMENT

I. THE COMMISSION'S APPROVAL OF THE AG-PROPOSED DISCOUNT RATE WAS JUST, REASONABLE, AND NON-DISCRIMINATORY.

The Company argues that the Commission's adoption of the AG-proposed low-income discount rates violates sections 9-101, 9-241, 9-250, and 9-252 of the PUA, "because these discounts result in unreasonable and unjust charges for non-participating customers and in discriminatory credits for participating customers." (Appellant Br. at 46.) AIC also argues that the approved five-tier low-income discounts are unjust and unreasonable for several reasons. The Company complains that the approved discounts (1) are not fixed credits but rather a percentage discount; (2) are applied to the total bill rather than just the delivery service; and (3) that the eligible discount rate customer pool includes households with income levels higher than current LIHEAP eligibility requirements. (*Id*. at 47.) These factors, according to the Company, lead to larger LICA credits, and as a result, larger LICA charges for non-participants, making them unjust and unreasonable. (*Id.*) As discussed below, the Company's arguments are not supported by fact or law and should be rejected.

A. Section 9-241 of the Act Specifically Permits the Commission to Establish of Discount Rates.

AIC's claim that the Commission's adoption of the AG's proposed discount rate was unjust, unreasonable and discriminatory is belied by Section 9-241 of the Act itself, which specifically envisions Commission approval of low-income discount rates following the completion of a referenced study of the issue and report with recommendations to the General Assembly. *See* 220 ILCS 5/9-241. Amended in 2021 upon passage of the Climate and Equitable Jobs Act (Public Act 102-0662), Section 9-241 of the Act provides as follows:

> On or before January 1, 2023, the Commission shall conduct a comprehensive study to assess whether low-income discount rates for electric and natural gas residential customers are appropriate and the potential design and implementation of any such rates. The Commission shall include its findings, together with the appropriate recommendations, in a report to be provided to the General Assembly. Upon completion of the study, the Commission shall have the authority to permit or require electric and natural gas utilities to file a tariff establishing low-income discount rates.

220 ILCS 5/9-241. The Commission completed the required low-income discount study and submitted it to the General Assembly in December of 2022. As part of its study, the Commission concluded and ordered at its Open Meeting of December 15, 2022, that the state's largest gas utilities file proposals for low-income discount rates in their next rate design filings. *See Illinois Commerce Commission Low-Income Discount Rate Study Report to the Illinois General Assembly,* Cover Letter of December 15, 2022.

In accordance with that direction, AIC, Nicor, North Shore, and Peoples Gas filed proposals for discount rates in January 2023 as part of general rate increase filings. The state's largest electric utility, ComEd, filed its low-income rate design proposal in March of 2024, modeled largely after the gas utility low-income rates approved by the Commission in November of 2023. *See Commonwealth Edison Company, Verified Petition for Approval of Low-Income Discount Proposals Under Section 9-241 of the Public Utilities Act,* ICC Docket No. 24-0163, Ex. 1.0, at 1:12-14 (testimony of ComEd Vice President of Regulatory Policy & Strategy noting that ComEd's discount rate proposal only differs from "programs recently established for the State's large natural gas

utilities" in "relatively limited areas"); *see also id.* at 3:56-61, 14:232, 16:261-63, 17:286-88, 19:326-348.[2] AIC has yet to file its electric low-income discount rate proposal.

Sidestepping this specific statutory authorization for a low-income discount rate under Section 9-241 of the Act, the Company's "unreasonable and unjust" argument primarily relies on the fact that the Commission-approved low-income discount rate ("LIDR") is more robust than the flat-dollar discount AIC wanted. The Company complains that, unlike its proposal, the Commission-approved LIDR uses a percentage discount, applies to the whole bill, and expands eligibility for the discount beyond only those customers enrolled in the Low Income Home Energy Affordability Program ("LIHEAP"). AIC says that this makes the cost of the program and the resulting subsidies unjust and unreasonable. (Appellant Br. at 46-47.) Notably, AIC does not dispute that a low-income discount program is authorized by Section 9-241 of the Public Utilities Act.

Yet, AIC cites no case law that supports its claim that a more robust low-income discount inherently or actually results in unjust or unreasonable rates. It points to nothing in the Commission's 2022 Discount Rate Report that establishes a particular dollar figure as a reasonable discount rate expense or ceiling. Moreover, AIC fails to show that the Commission's adoption of the approved discount rate is not supported by record evidence or is somehow arbitrary and capricious.

The Company's argument that the LIDR approved by the Commission is somehow unjust or unreasonable is misplaced. In setting rates, a just and reasonable rate is one that accurately reflects the cost of service delivery and must allow the utility to

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[2] ICC Docket No. 24-0163 filings are available at https://www.icc.illinois.gov/docket/P2024-0163.

recover costs prudently and reasonably incurred. *Citizens Utility Board v. Illinois Commerce Comm'n,* 166 Ill.2d 111, 121, 651 N.E.2d 1089 (1995). The establishment of a low-income discount rate is a revenue neutral rate change, meaning the Company's total revenues collected as the result of the creation of a low-income discount rate are not increased or reduced. Rate-design and cost-allocation issues, because of their complexity, are "'uniquely a matter for the Commission's discretion.'" *Ameren Illinois Co. v. Illinois Commerce Comm'n*, 2012 IL App (4th) 100962, ¶ 147 (quoting *Central Illinois Public Service Co. v. Illinois Commerce Comm'n,* 243 Ill.App.3d 421, 446, 610 N.E.2d 1356 (1993)).

The crux of the Company's argument seems to be this: because its proposed discount rate—which the Commission concluded was inadequate for addressing the problem of unaffordability for low-income customers—would require less of a subsidy from all of the customer classes, it is the more just and reasonable LIDR. (Appellant Br. at 47.) Although the LIDR cost figures and ranges AIC references are mere forecasts subject to LIDR participation levels, the Company argues that the Commission-approved LIDR will cost non-participants more than AIC's proposed LIDR—particularly large commercial and industrial customers—and that these cost differentials make the approved LIDR unjust, unreasonable and presumably discriminatory. (*Id.*) The Company asserts, too, that the Commission disregarded this evidence. (*Id.*)

The record and the Commission's Order belie that argument. The Commission's conclusion and analysis specifically referenced its finding that the approved discount structure "is more expansive than both AIC's two-tiered system and Staff's three-tiered system and will provide more targeted relief to the lowest-income customers." C 18337,

18338. As such, the approved LIDR would help lower the energy burden of AIC's financially struggling customers, a specific purpose of the amended Section 9-241 language that required the Commission to "to assess whether low-income discount rates for electric and natural gas residential customers are appropriate and the potential design and implementation of any such rates." 220 ILCS 5/9-241; *see also* C 18337-38.

The Commission further noted that the record evidence on the total bill discount presented by the AG and PIO (Public Interest Organizations) swayed the Commission to alter the initial "tentative" conclusion that a discount should only be applied to delivery rates. (Final Order at 265; C 18507 (citing Discount Rate Report, https://icc.illinois.gov/downloads/public/icc-reports/low-income-discount-rate-study-report-2022-12-15.pdf).) Notwithstanding AIC's complaint that financially struggling customers whose income falls between 200% FPL (the LIHEAP eligibility ceiling in Illinois) and 300% FPL would also qualify for a small discount (5%), the Commission highlighted that fact as a benefit, in recognition that this eligibility category of customers also qualifies as low-income with financial struggles:

> The Commission finds that the AG's five-tiered system is more expansive than both AIC's two-tiered system and Staff's three-tiered system and will provide more targeted relief to the lowest-income customers. Significantly, the AG's proposal will benefit low-income customers who are not LIHEAP or PIPP eligible, while AIC's proposal will not. The AG's proposal also appropriately leverages the existing LIHEAP processes to determine eligibility for Rider LICA while allowing a fifth tier of customers to self-certify for eligibility. The Commission finds that this both reduces the administrative costs of the program and increases the program's effectiveness in delivering credits to eligible customers.

C 18337-38.

AIC's concern that "large industrial and commercial customers will start to see new, separate charges on their bills for hundreds to thousands of dollars a month" upon implementation of the new LIDR is not persuasive. (Appellant Br. at 48.) As was shown in the surrebuttal testimony of AIC's witness Victoria A. Kilhoffer, this group of customers uses an average of 1,488,862 therms per month in the Company's Rate Zones I and II, and an average of 2,121,104 therms per month in the Company's Rate Zone III, with average monthly bills under AIC's proposed rates (without including Rider LICA) of $1,789,714 in Rate Zones I and II and $2,557,587 in Rate Zone III. C 13950-143009, Ex. 43.0 at 17:342-43. Using the estimated $0.0258 per therm charge, Rate Zones I and II customers would pay $38,129 per month toward the low-income discount, while Zone III customers would pay $54,724 per month toward the low-income discount, both equaling approximately 2% of the customers' average monthly bill. *Id.* In response to a data request, AIC stated that only 20 customers fell into this category. C 14623-14748, AG Cross Ex. 2 (AIC Response to DR AG 14.01). That the Company's highest-use customers might be required to pay an additional 2% toward the program is not a tenable ground for the Court to reject the Commission's conclusion. In addition, the recovery of these costs from both residential and non-residential customers is critical to the viability of the program and is justified because commercial and industrial customers may have employees or customers who would be eligible for these discounts. Tellingly, the industrial intervenors in the case neither challenged the Commission's approval of the LIDR below, nor filed an appeal on the issue.

Moreover, the Company's complaint about the potential cost of the LIDR program ignores the significant benefit the Company's customers will derive from the

fact that the program provides a significantly greater benefit for customers with the lowest incomes and that nearly 16% more customers will be eligible for some level of low-income discount under the Commission-approved version, compared to AIC's minimalist approach to improving affordability for its financially struggling customers. C 13449-13673, AG Ex. 8.00 at 29.

For all of these reasons, the Company's claim that the Commission-approved LIDR is somehow "unjust" and "unreasonable" should be rejected.

B. Section 9-241 of the Act Does Not Preclude Reasonable Differences in Rates Between Rate Classes.

The anti-discrimination provision of the Act prohibits "rates or other charges, services, facilities or in other respect, [that] make or grant any preference or advantage to any corporation or person or subject any corporation or person to any prejudice or disadvantage." 220 ILCS 5/9-241. However, it is unclear from the Company's brief which of two strands of an anti-discrimination arguments it is pursuing. It may be arguing that the approved LIDR is discriminatory because only a subset of AIC customers will qualify for it, even though *all* customers will have to pay for it. It may be arguing that it may be unfair for the commercial and industrial classes to shoulder part of the LIDR subsidy since they cannot possibly qualify, whatever their incomes. Either way, Illinois case law supports the Court's rejection of the Company's vague arguments.

Illinois courts have made clear that Section 9-241 of the Act does not preclude rate differences between classes. Rather, Section 9-241 precludes only "unreasonable differences." *Coalition to Request Equitable Allocation of Costs Together v. Commonwealth Edison Co*., 2015 IL App (2d) 140202 ("REACT"); see also *Apple*

Canyon Lake Property Owners' Ass'n v. Illinois Commerce Comm'n, 2013 IL App (3d) 100832, ¶ 44 (the Commission may not take arbitrary or capricious action).

In the *REACT* case, the appellant REACT took issue with the Commission's approval of a rate design for ComEd related to two customer classes—the Extra Large Load ("ELL") class and the High Voltage ("HV") class. REACT claimed that the rate design and cost allocation for the ELL and HV rate classes were discriminatory because their rate increases were substantially larger (140% for ELL and 129% for HV) than proposed rate increase for other classes (ranging between 7.5% and 30%). REACT argued that because the ELL and HV classes did not use or barely used certain infrastructure, they should not be forced to bear any costs, or only a very small proportion of costs, associated with those facilities.[3] (*Id.* at ¶¶ 22-23.)

Evidence demonstrated, however, that what REACT viewed as a disproportionate rate increase was actually a correction. The proposed increase, according to ComEd, was an attempt to eliminate the other classes' existing subsidization of costs caused by the ELL and HV classes. *REACT,* 2015 IL App (2d) 14020228, ¶ 4. Witness testimony in the case also showed that evenly redistributing the $9 million in costs at issue that the ELL and HV classes are currently paying for associated with primary single-phase lines would result in a systemic imbalance. (*Id.*) In its Order, the Commission rejected REACT's arguments, finding that segmenting the cost allocation by phase of service was not practicable, equitable or accurate. The Court affirmed the Commission's conclusion that the allocation of costs was fair, noting that the evidence supported the Commission's

[3] Specifically, primary single- and two-phase electric lines serving lower, 4 kV needs.

specific finding that REACT's proposed solution was problematic, and that the Commission’s finding was supported by record evidence. (*Id.* at ¶ 62.)

The Commission did make one exception to the general practice against further segmenting the primary-service level, to which REACT further objected. As to ComEd’s railroad customer class alone, the Commission allowed for the exclusion of costs associated with 4 kV facilities. REACT challenged this exception as discriminatory under Section 9-241 of the Act. The Commission rejected REACT’s discrimination claim, citing to witness testimony that the railroad class was a “unique class.” In addition to providing a public service, it operated in an “extremely” limited geographic region and was comprised of only two customers, each of which took voltage at a uniform 12.5 kV. Therefore, further segmenting primary-service level costs for the railroad class did not present as many technical difficulties. *Id.* at ¶ 37.

Affirming the Commission’s conclusion, the Court rejected REACT’s discrimination claim, and held that Section 9-241 only precludes *unreasonable* differences in rates. The Court noted that the Commission “took care to explain its reasons for treating the railroad class differently.” (*Id.* at ¶ 21.) It held that the Commission’s policy of excluding 4 kV costs detailed “that the railroad was a ‘unique class,’ and it recognized ‘the economic, environmental and social benefits flowing from a reasonably priced public transportation system in a populous metropolitan area.’” (*Id.*) (internal citations omitted).

Just as the Court in the REACT acknowledged the social and financial benefits associated with the Commission’s decision to treat the railroad class differently than other classes in terms of cost allocation and rate impact, the Commission here took care

to highlight record evidence that supported and justified adoption of the Attorney General's proposed five-tier low-income discount rate. C 18337, 18338. Indeed, expansion of the eligibility pool for the LIDR beyond the LIHEAP ceiling is supported in the PUA, which defines low-income eligibility in several provisions as an income level that is nearly always more than 200% of FPL. *See, e.g.,* 220 ILCS 5/8-103B(c) (qualifying utility customers whose income falls at or below 80% of AMI as eligible for utility-sponsored low-income programs); 220 ILCS 5/8-201.7(b) (qualifying a household at or below 80% of the latest median household income as reported by the United States Census Bureau for the most applicable community or county for protection against security deposits); 220 ILCS 5/8-201.8(b) (qualifying a household at or below 80% of the latest median household income as reported by the United States Census Bureau for the most applicable community or county for protection against late fees). In short, there was nothing unjust about including households whose income falls above 200% of FPL in the discount rate program, particularly given the Act's references to an 80% of AMI eligibility standard. Certainly, nothing in the Commission's Discount Rate Study prohibited that expansion.

While the Commission acknowledged the fact that "applying the discount to the entire bill will increase the amount to be paid by non-eligible customers," its analysis highlighted the benefits of the more robust, AG-proposed discount rate structure, including that it "introduces potential utility system benefits and encourages the Company to prioritize energy efficiency programming to reduce bills overall." C 18337, Final Order at 265. These advantages, as highlighted in the Commission's directive that the Company track and report on any reduced credit and collections costs following the

implementation of the LIDR, included the likelihood that arrearages would decline and collection costs would decrease if the more robust, whole-bill discount was approved. C 18339.

In sum, the Commission reasonably rejected AIC's claim of excessive, unfair and unjust charges, and supported its approval of the LIDR in its Order, highlighting the General Assembly's interest in implementing discount rates and "the impact that a low-income discount rate would have on the affordability of delivery service to low-income customers and customers overall." 220 ILCS 5/9-241.

C. The Commission's Approval of a Whole Bill Discount Rate Is Not Discriminatory.

AIC next argues that "[b]ecause the AG percentage discounts will be applied to the total bill, participating customers with higher gas usage will see larger LIC credits," and is therefore discriminatory (Appellant Br. at 48.) The Company opines, "The AG and Final Order also fail to explain why an income-based assistance program should be designed to give larger credits to customers in the same income tier who have higher usage." (*Id.*) This claim of discrimination likewise misses the mark.

In fact, the percentage of the bill that is credited through the discount rate program is the same within an income tier, regardless of the usage level. While it is true that the dollar amount of the discount is larger if a bill is larger, that is precisely how a discount designed to lower a customer's energy burden is supposed to work. The Commission made clear in its Order that its goal was to reduce the energy burden of financially struggling customers, *i.e.,* the percentage of a household's income that goes toward paying an energy bill. C 18338 ("Accordingly, the Commission concludes the AG's proposal will provide the transformative support necessary for AIC's lowest-

income customers to achieve an affordable energy burden.”). Flat discounts applied to just the delivery portion of the bill, as AIC proposed and Staff proposed, are not effective at reducing energy burden as bills fluctuate due to normal seasonal variation and rates increase. C 18337-38 (“The Commission finds that the AG’s five-tiered system is more expansive than both AIC’s two-tiered system and Staff’s three-tiered system and will provide more targeted relief to the lowest-income customers.”)

Here, the Commission’s finding was supported by the record evidence, with a rationale provided that satisfies the Court’s definition of “reasonable” price differentials.

II. THE COMMISSION’S DECISION TO ADOPT THE AG’S DISCOUNT RATE PROPOSAL WAS SUPPORTED BY SUBSTANTIAL EVIDENCE AND CONSISTENT WITH THE DIRECTION OF THE GENERAL ASSEMBLY TO INVESTIGATE AND IMPLEMENT DISCOUNT RATES.

AIC argues that the Final Order improperly adopted the AG’s discount rate proposal because it did not adhere to some of the “tentative” recommendations offered in the Discount Rate Report for how to best structure such a rate, and also, because the Final Order did not provide a sufficient basis to deviate from the Report. (Appellant Br. at 49-51.) The Company is incorrect on both counts. The Commission considered a well-developed record regarding four competing low-income discount rate proposals—AIC’s, Staff’s, PIO’s, and the AG’s, *see* C 18322–C 18340. It then selected the AG’s proposal based on a reasonable view of the entire record. That same record warranted deviating from the Discount Rate Report’s tentative conclusions, as the Commission explained. And importantly, the Commission adopted this proposal after considering comparable proposals in the Nicor, Peoples, and North Shore rate cases, adopted on the same day.

A. The Evidence In The Record Was Substantial Enough To Override Previous Tentative Conclusions Recommended In The Low-Income Discount Rate Study Report.

AIC argues that the Commission had no basis to reject the tentative recommendations of the Discount Rate Report. (Appellant Br. at 50). AIC lists the three tentative recommendations that the Commission deviated from and claims that no legitimate basis for doing so was given. (*Id.*) Specifically, it faults the Commission for adopting a discount rate that (1) applied the discount to the entire bill and not simply the fixed customer charge, (2) does not support Illinois' clean energy goals, and (3) fails to leverage existing programs and processes for administrative efficiency. (*Id.*) These arguments are contradicted by substantial evidence in the record and should be rejected.

As the Study Report itself states, the Report's findings were "tentative," and the Commission was to address the tentative conclusions based on a full evidentiary record. C 18507 (citing Discount Rate Report, https://icc.illinois.gov/downloads/public/icc-reports/low-income-discount-rate-study-report-2022-12-15.pdf). The Commission, as the body with ultimate decision-making authority, would then consider recommendations from stakeholders and assess relevant factors when finalizing its orders and rulings. In this case, the Commission considered all of the evidence in the record before deciding to issue an order that was different from a tentative conclusion in the Report.

First, the Commission's Final Order stated that it believed it would be most consistent with the Report for it to adopt a discount rate that was "significant"—that is, meaningful to its customers. C 18337. The Final Order then explained that the AG's and PIO's evidence laid out the benefits of discounting customers' entire bill, rather than just the delivery charge, which "swayed it" to set aside the Report's recommendation of only

discounting the delivery charge. (*Id.*) The evidence that swayed the Commission is set forth in detail in the Final Order. It includes evidence that "energy insecure" AIC customers were those paying at least three percent of their household income on gas bills,[4] and that AIC has a high prevalence of energy insecure customers in its service territory. C 18332; C 18835. It also included evidence that a full-bill discount would benefit AIC's low-income customers rather than just "the subset of low-income, low-usage customers." C 18332; C 18835. It also included evidence that AIC customers would require a more robust discount than the Company or Staff proposed to actually be effective, given the rate increases the Company was asking for. C 18835. In fact, AIC's and Staff's proposals—which only applied the discount to the customer charge—would "leave the lowest income customers with gas burdens of 7.1% [AIC] and 8.3% [Staff]," which would also limit the discount's follow-on benefits of reduced disconnections and arrearages. C 18835-18836.

AIC fails to comprehend the purpose of the discount program when it mistakenly states that the Commission thought any increase to a customer credit would be justified simply because it was larger. (Appellant Br. at 50-51). In fact, the record showed a full bill discount was needed and that implementing such a discount would reach (per AIC itself) approximately 37% residential homeowners, a higher percentage compared to those who would've been reached under the Company's proposal. *Compare* C 18323 (AIC proposal would reach 22% of customers) *with* 18334 (AG proposal would reach

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[4] Energy insecurity was defined via evidence presented the case below, as it is defined in energy policy circles nationwide, as a household that spends more than 6% of household income on combined gas and electricity costs (and thus, more than 3% on gas alone). *See* C 18335; 305 ILCS 20/18(c)(2).

37% of customers). This evidence supported a finding that, in order to provide an equitable program that would allow the Company's lowest income customers to be able to afford their bills, a full bill discount was necessary. C 18337-18338. Ultimately, the Commission reviewed this evidence and reasonably concluded that AIC's proposed program was simply not enough to alleviate customers' financial burdens; nor was PIO's; nor was Staff's. The AG's proposal was.

Next, AIC claims that the Commission's order improperly rejected the Report's conclusion that a discount rate should not be counterproductive to the state's clean energy goals, and should leverage existing programs and processes to streamline administrative processes and minimize costs. (Appellant Br. at 50.) While the report's conclusions were tentative and the Commission was not limited in what it could consider when ruling the final order, AIC's contentions about the effects of the AG's proposal are simply not true. By expanding the eligibility pool for the discount rate, the Commission expanded the number of struggling families that the LIDR will reach. There is no evidence to support that doing so is counterproductive to Illinois' clean energy goals as AIC states. It provides no evidence to support the notion that providing a bigger discount de-incentivizes participating customers to use less gas. On the contrary, expert testimony in the record explains that "low-income customers are more likely to be low-usage customers, largely because low-income customers are required to make hard choices on how to spend their limited funds. A total bill discount will alleviate some of this burden, but the Company has not—and cannot—provide any evidence that such a discount would lead to overconsumption of energy or otherwise impact the state's climate goals." C 13449–13673 (Rebuttal Testimony of the AG, Ex. 8.00, at 21:271-375.) In fact, the

Commission found that adopting the AG's whole-bill discount would "encourage [AIC] to prioritize energy efficiency programming[,]" an undeniable statement that the AG's proposal would help Illinois achieve its clean energy goals. C 18337.

AIC finally argues, in relation to the Report, that expanding the LIDR customer pool beyond LIHEAP eligible customers violates the Report's tentative recommendation that a discount rate should "leverage existing programs and processes to streamline eligibility requirements, verification mechanisms, and outreach/customer education procedures[.]" (Appellant Br. at 50.) A recommendation to "leverage" existing programs such as LIHEAP and PIPP is not a strict command to adopt these programs' income limits and verification requirements one-for-one. Merriam-Webster, "Leverage", https://www.merriam-webster.com/dictionary/leverage (last visited May 20, 2024) ("to use for gain: EXPLOIT"). For this reason alone the Commission did not disregard the Report at all.

Further, the AG's proposal *did* "leverage existing programs." The AG's proposal uses five income tiers: 0-50% FPL, 51-100% FPL, 101-150% FPL, 151-200% FPL, and 201-300% FPL. The first four of these tiers map precisely onto the income tiers used by the LIHEAP program to establish benefit levels, and the Commission's Final Order highlighted the efficiency gains that would come from using the same eligibility requirements and verification methods for these customers. C 18333 (AG argument, noted in final order, that AIC "would still be able to use LIHEAP and PIPP to verify the incomes of customers up to 200% FPL"); C 18338 (Commission holding "the AG's proposal also appropriately leverages the existing LIHEAP processes to determine

eligibility" for all but the top income tier).[5] While the inclusion of the 201-300% FPL encompasses customers who do not qualify for LIHEAP, that did not contradict the Report's tentative recommendation to "leverage" such programs.

AIC appears to see the expansion of LIDR eligibility as a liability, but the Commission saw the fact that customers whose income fell between 201% FPL and 300% FPL as a benefit, recognizing that this eligibility category of customers also qualifies as low-income with financial struggles:

> Significantly, the AG's proposal will benefit low-income customers who are not LIHEAP or PIPP eligible, while AIC's proposal will not. The AG's proposal also appropriately leverages the existing LIHEAP processes to determine eligibility for Rider LICA while allowing a fifth tier of customers to self-certify for eligibility. The Commission finds that this both reduces the administrative costs of the program and increases the program's effectiveness in delivering credits to eligible customers.

C 18338, Final Order at 266. Indeed, the PUA defines low-income eligibility in several provisions as more than 200% of FPL. *See, e.g.,* 220 ILCS 5/8-103B(c) (qualifying utility customers whose income falls at or below 80% of AMI as eligible for utility-sponsored low-income programs); 220 ILCS 5/8-201.7(b) (qualifying a household at or below 80% of the latest median household income as reported by the United States Census Bureau for the most applicable community or county for protection against security deposits); 220 ILCS 5/8-201.8(b) (qualifying a household at or below 80% of the latest median household income as reported by the United States Census Bureau for the most applicable community or county for protection against late fees). There was nothing

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[5] *See also* ICC Dkt. Nos. 23-0068 and 23-0069 (cons.), Rebuttal Test'y of COFI-LAC, Ex. 2.1 (Illinois Department of Commerce and Economic Opportunity's 2024 LIHEAP Matrix), *available at* https://www.icc.illinois.gov/docket/P2023-0069/documents/340065.

unjust or inconsistent with either the Commission's Discount Rate Study or the Act in the decision to include households whose income falls above 200% FPL in the discount rate program.

Further, the Commission did make an effort to make onboarding this top tier simpler, ordering a self-certification process for customers whose income is over 200% FPL. C 18338. This was an appropriate measure to help streamline administrative processes, while ensuring that a crucial slice of customers "who are not LIHEAP or PIPP eligible" were not completely excluded from the program and left energy burdened. C 18338.

Last, AIC denies that there is evidence showing potential utility system benefits of Rider LICA, as noted in the Final Order. (Appellant Br. at 50, C 18337.) This was not actually a conclusion of the Report at all, which should defuse AIC's argument on this point. However, the Commission did note system benefits as one reason supporting the AG's proposal over AIC's. (*Id.*) In this context, "utility system benefits" refers to the idea that reducing disconnections and uncollectible accounts should reduce AIC's bad debt and lower the costs of collecting on its accounts, which is critical given the degree of unaffordability in the Company's service territory. The Final Order noted, in its summary of the AG's testimony, that in March 2023, 1,995 residential AIC customers had payment agreements that failed (38% of all those who had deferred payment agreements), while only 639 customers completed their deferred payment agreements during that month. C 17214. In addition, a total of 86,165, or 12% of residential customers, were assessed late payment fees or charges in March 2023. (*Id.*)

The Commission expressly identified some of the system benefits AIC would obtain from the AG's proposal in the Final Order: "While the Commission expects the AG's proposal to increase affordability across eligible customers, the Commission anticipates the Company could realize system benefits associated with reduced collections and customer service-related costs. The LIDR could also reduce uncollectibles and related disconnections tied to arrearages." C 18339. Further, testimony submitted in support of the program explained the benefits of providing a uniform discount program that followed the model in recently decided utility cases, such as those in Nicor, North Shore, and People's Gas. C 13449–13673, AG Ex. 8.00 at 2:35-37; *id.* at 17:315-318 (In discussing a modified version of PIO proposal that would have been acceptable, AG expert witness states that "[m]y proposed modifications to the PIO proposal would also align it with the low-income discount program proposed by Legal Action Chicago [] witness Roger Colton in the ongoing Nicor base rate proceeding[.]"). Adopting similar programs that have aligned "eligibility criteria, discounts, and recovery methods" across utilities would "facilitate consumer communications, adoption, implementation, and Commission review," the AG's witness testified. (C 11412–11881, AG Ex. 4.00 at 18:314-318.). And, as evidence put forth by the PIO showed—and the Commission noted in its Final Order—a discount to the total bill and not just the customer charge would "substantially reduce disconnections," C 18335, which would save the utility time and money. (Especially because AIC is "among the most aggressive utilities in the country when it comes to disconnections," ranking fifth in 2022. C 18335-18336.)

B. Adopting the Company's Arguments About the LIDR Threatens Vital Progress on Promoting Energy Affordability in Illinois.

As the entity authorized to regulate utilities' rates and rate design, payment practices, and arrearages to account for affordability, the Commission based its order on the recommendations of expert testimony that explained why discounting the total bill would best serve customers struggling to afford gas bills—statewide. See C18322-C 18340. While unstated in the Final Order, the Court may take judicial notice of the fact that on the same day as the Final Order was issued in AIC's case, the Commission adopted identically-structured discount rates in cases initiated by Illinois' three other large gas utilities: Nicor, Peoples, and North Shore. In fact, it adopted these proposals after considering and rejecting flat-rate discount proposals to the customer charge proposed by these companies and Staff, holding that only COFI-LAC's five-tiered discount to the entire bill satisfied the Commission's Discount Rate Report goal of meaningfully improving energy affordability for low-income consumers. See ICC Docket No. 23-0066, Nicor, Final Order at 201-205 (Nov. 16, 2023); ICC Docket Nos. 23-0068 and 23-0069 (cons.), Peoples and North Shore, Final Order at 266-269 (Nov. 16, 2023). As noted above, COFI-LAC participated in these dockets and proposed these discount rates, which are to be made available to hundreds of thousands of low-income gas customers as of October 1, 2024.

In addition to the reasons noted below for the Commission to set aside some of the Report's tentative recommendations, COFI-LAC argue it was within the Commission's authority to take notice of its own decisions in substantially similar dockets and act to ensure consistency across Illinois utility service. *Cf. People ex rel. Raoul v. Illinois Commerce Comm'n*, 2021 IL App (1st) 200366 ¶ 65 ("The desire to

promote consistency" across administrative decisions was a "reasoned basis for the Commission's decision to stand by" a decision in a prior case). Promoting uniformity across utilities, where possible, is a key goal of state regulatory policy. In fact, the Company recognized this in its expert testimony below, stating that it did not object to the AG's recommendation that the "approved [discount rate] be similar across all utilities" in Illinois. C 12218–12475, AIC Ex. 27.0 at 27:534-53; C 13449–13673, AG Ex. 8.00 at 2:35-37 (AG witness reiterating recommendation that "Ameren and the other Illinois natural gas utility companies be required to adopt uniform discount programs that work the same across all companies.")

A decision by the Court holding that a total bill discount was improperly adopted because it contravened the recommendations of the Discount Rate Report risks undoing this project and throwing these existing efforts to promote energy affordability into disarray. Nicor, Peoples, and North Shore—*as well as AIC*—are now all in the process of implementing a discount rate. The Court may take judicial notice of the fact that these utilities have been submitting regular compliance filings stating that all three companies will be able to roll out the program to the public by the Commission's October 1, 2024 deadline. *See* ICC Docket No. 23-0066, Nicor, Low-Income Residential Customer Discount Mechanism Implementation Status Report (May. 16, 2024); ICC Docket Nos. 23-0068 and 23-0069 (cons.), Peoples and North Shore, Third Low Income Discount Program Compliance Report (May. 16, 2024); ICC Docket No. 23-0067, Ameren Services Company Implementation Status Report for Rider LICA (May 15, 2024). In addition, the Court may take notice that ComEd has proposed its own discount rate on electric service, one it expressly modeled off the Commission's orders in the 2023 gas

cases, including AIC's. *See* ICC Dkt. No. 24-0163, Verified Petition for Approval of Low-Income Discount Proposal, Ex. 1.0, at 15-16 (Mar. 11, 2024) (Noting that "ComEd's approach in designing its [discount rate] proposal" relied on "guiding principles," the first of which was "[a]cknowledge of precedents (in the general sense) set by previous Commission-approved low-income discount programs, especially the three recent natural gas utility" rate cases.) This uniformity is a positive development that could be undone if AIC's arguments in this appeal are accepted.

Fundamentally, the Commission made a decision across 2023's gas rate cases that, when evaluating low-income rate proposals, the focus should first be on the potential *effectiveness* of the program to improve affordability for low-income customers—not simply whether a proposal precisely followed the letter of the Report, without reference to later developments in the record and across Illinois. The Commission reviewed evidence that the Company's ratepayers are currently struggling to pay their bills, just as it did in the Nicor, Peoples, and North Shore cases. It adopted the AG's proposal accordingly.

CONCLUSION

The Commission reviewed the all of the record evidence, exercised its expert discretion, and issued a ruling based on substantial evidence that would support the intent and purpose of the low-income discount program. A reasonable person would agree that the expert testimony supports a larger discount to the total bill, an expansion of eligibility, and a cost recovery method that involves all customers. The Commission's order has surpassed a preponderance of the evidence and is well supported by substantial evidence in the record. AIC's appeal of this issue should be denied.

Dated: May 20, 2024

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rule 345. I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages or works contained in the Rule 341(d) cover, the Rule 341(h)(1) table of contents and statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a), is 28 pages or 7,664 words.

Dated: May 20, 2024 /s/ Daniel J. Schneider

CERTIFICATE OF SERVICE

I, Daniel J. Schneider, an attorney, certify that on May 20, 2024, I caused a true and accurate copy of the foregoing document to be submitted to the Clerk of the Appellate Court by filing said documents using the Odyssey eFileIL system.

I further certify that on May 20, 2024, I caused a true and accurate copy of the foregoing document to be served upon all counsel of record with email addresses on file via the filing manager, Odyssey EfileIL, and via electronic mail, including to the following individuals:

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Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct.

Dated: May 20, 2024 /s/ Daniel J. Schneider