STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

Illinois Commerce Commission	**:**	
On Its Own Motion	**:**	
-vs-	**:**	**20-0738**
Ameren Illinois Company	**:**	
d/b/a Ameren Illinois	**:**	

ORDER

December 2, 2020

Table of Contents

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By the Commission:

I. PROCEDURAL HISTORY

The Illinois Commerce Commission ("Commission") entered an Order on April 15, 2020 in Docket No. 20-0389 initiating an investigation into an annual process and formula for calculating the value of distributed generation rebates pursuant to the requirements of Section 16.107.6(e) of the Public Utilities Act ("Act"). 220 ILCS 5/16-107.6(e). This Section directs the Commission to conduct the investigation "[w]hen the total generating capacity of the electricity provider's net metering customers is equal to 3%" ("3% threshold"). *Id*.

On September 23, 2020, the Commission issued an Interim Order in Docket No. 20-0389 which determined that a separate tariff investigation, pursuant to Section 10-101 of the Act, should be conducted into whether Ameren Illinois Company d/b/a Ameren Illinois ("Ameren") correctly implemented Section 16-107.5(j) of the Act, 220 ILCS 5/16-107.5(j), in its Rider Net Metering ("Rider NM"). Section 16-107.5(j) of the Act requires that "[a]n electricity provider shall provide net metering to eligible customers until the load of its net metering customers equals 5% of the total peak demand supplied by that electricity provider during the previous year" ("5% threshold"). *Id*.

On October 8, 2020, the Commission entered an Initiating Order in this proceeding directing an investigation into Rider NM's calculation of the 5% threshold and further directing Ameren to show cause as to why the provisions of Rider NM that are implemented after the 5% threshold is reached should not be stayed. The Commission directed Ameren to make this showing within one week of the Order or by October 15, 2020. The Commission further directed that the Administrative Law Judge ("ALJ") assigned to the investigation should set a schedule that would enable the Commission to make a final decision by October 23, 2020, on whether the provisions of Ameren's Rider NM should be stayed. Commissioners Bocanegra and Oliva concurred.

The following Petitions to Intervene were granted by the ALJ: the Illinois Power Agency ("IPA"); the Citizens Utility Board ("CUB"); Environmental Law & Policy Center ("ELPC"), Vote Solar ("VS"), and the Natural Resources Defense Council ("NRDC"), (together the "Non-Governmental Organizations" or "Joint NGOs"); and the Solar Energy

Industries Association, the Coalition for Community Solar Access, and the Illinois Solar Energy Association (together "Joint Solar Parties" or "JSPs"). The Illinois Attorney General ("AG") filed an appearance as well.

Ameren filed a Response to the Show Cause Order on October 15, 2020. Responses to Ameren's October 15, 2020 filing were filed on October 16, 2020, by the Joint NGOs and the JSPs.

Also on October 15, 2020, Ameren filed a verified Petition for Special Permission to place into effect on less than 45 days' notice revisions to its Rider NM in Docket No. 20-0753.

Pursuant to notice given in accordance with the law and the rules and regulations of the Commission, a hearing was held via teleconference in front of the ALJ on October 19, 2020. At the hearing, Ameren, the Joint NGOs, and the Joint Solar Parties presented oral argument regarding the question of a stay of Rider NM. The AG and Staff of the Commission ("Staff") also appeared but did not participate.

On October 20, 2020, the ALJ issued a Proposed Interim Order. Briefs on Exceptions to the Proposed Interim Order were filed on October 21, 2020, by the Joint NGOs, the JSPs, Ameren, and Staff. On October 22, 2020, the Commission denied the stay of Rider NM.

On October 23, 2020, Ameren and the Joint NGOs filed direct testimony. On October 26, 2020, Ameren, the Joint NGOs, and Staff filed rebuttal testimony. An evidentiary hearing was held on October 28, 2020, at the end of which the record was marked "Heard and Taken."

Initial Briefs were filed on October 30, 2020, by Ameren, CUB, the Joint NGOs, the JSPs, the AG, and Staff. The same parties filed Reply Briefs on November 2, 2020.

Also on November 2, 2020, Ameren filed a Motion to Strike portions of the JSPs' and Joint NGOs' Initial Briefs. On November 4, 2020, the Joint NGOs and the JSPs filed responses to Ameren's Motion to Strike. On November 5, 2020, Staff filed a Response to the Motion to Strike. Also on November 5, 2020, Ameren filed a Reply in support of its Motion to Strike. The ALJ denied the Motion to Strike on November 10, 2020.

The ALJ issued a Proposed Order on November 5, 2020. Briefs on Exceptions were filed November 9, 2020 by the Joint NGOs, Ameren, the JSPs, Staff, and the AG. The AG requested oral argument in its Brief on Exceptions, which the Commission heard on November 20, 2020.

II. AMEREN'S POSITION

Ameren states that the Commission initiated this investigation to "determine whether Ameren's Rider NM correctly implements Section 16-107.5(j) of the Act." Initiating Order at 2. According to Ameren, the focus of the inquiry is whether Rider NM's 5% threshold calculation methodology, which marks the point when delivery service net metering of excess generation pushed to the grid for new residential and small commercial net metering customers (but not other forms of netting or incentives) transitions to location-based distributed generation rebates, is a reasonable interpretation of the statute and consistent with the law.

Ameren explains the Rider NM 5% threshold methodology is a ratio that has two components: a numerator – "the load of the electricity provider's net metering customers" – and a denominator – "the total peak demand supplied by that electricity provider during the previous year." 220 ILCS 5/16-107.6(a).

Ameren explains that Rider NM is an approved and effective tariff with the purpose "to establish an offering of net electricity metering service in the Company's service territory, in compliance with 220 ILCS 5/16-107.5 and 83 Ill. Adm. Code 465." Ill. C.C. No. 1, 5th Rev. Sheet No. 24. Ameren further explains that net electricity metering service is provided to owners of distributed generation facilities such as solar and wind. Ill. C.C. No. 1, 5th Rev. Sheet No. 24.002. Rider NM establishes the billing methodologies to be applied to net metering customers under the Act, including, relevant to this proceeding, changes to billing methodologies to be implemented after distributed generation reaches a certain market penetration level established in the Act. Ill. C.C. No. 1, 5th Rev. Sheet No. 24.004. Ameren notes that this level is known as the "5% threshold" or "threshold date," and marks the transition from delivery service net metering to an annual process for calculating distributed generation rebate values. *See* 220 ILCS 5/16-107.5(j). Ameren explains that Section 16-107.5(j)'s 5% threshold was a creation of the Future Energy Jobs Act, P.A. 99-0906 ("FEJA").

Ameren states that in accordance with the Act, Rider NM defines the 5% threshold as "when the aggregate generation nameplate capacity for Customers receiving service under this Rider equals or exceeds 5% of the total peak demand supplied by the Company during the previous year." Ill. C. C. No. 1, 6th Revised Sheet No. 24.003. Ameren maintains that it has used this same methodology for over a decade, as it was reflected in Annual Net Metering Reports provided to the Commission and made publicly available since 2009. Ameren further states that Rider NM in its current form was approved by the Commission in 2017 and has been in effect since then. As such, Ameren states, Rider NM contains the current, legally effective 5% threshold calculation methodology.

Ameren states that it has approximately 1.2 million electric customers. Of these, approximately 5,000 are net metering customers. Of these net metering customers, many will not be impacted at all by the billing changes that will occur once the 5% threshold is reached. For example, larger non-residential net metering customers are unaffected by the 5% threshold. Ameren contends that subscribers of community solar will also not be impacted, because these net metering customers do not currently receive delivery service netting. Ameren points out that larger nonresidential net metering and community solar subscribers will also remain eligible for $250/kW rebates. And existing residential and small commercial net metering customers - that is, those who began net metering service on or before October 1, 2020 - will also not be impacted by the 5% threshold transition away from delivery service netting, because the change applies prospectively from that date.

Ameren observes that the 5% threshold date actually impacts a relatively small subset of net metering customers (estimated to be approximately 200 new customers per month in total – mostly residential). Ameren asserts that the timing of the 5% threshold date, therefore, will only impact the billing methodology that applies for new residential (Rate DS-1) and small non-residential (Rate DS-2) net metering customers with on-site generation. Ameren states that these new customers will not receive the portion of

delivery service netting for excess generation pushed to the grid (which the customer did not consume). But, Ameren notes, these new residential and small commercial customers will continue to receive netting of energy supplied by their generation. In addition, in Docket No. 20-0389, Ameren proposed that residential customers who installed distributed generation after June 1, 2017 using a smart inverter, including those who installed distributed generation after the 5% threshold date, would be able to apply for and receive a rebate after new location-based rebate values are determined.

Ameren states that these new net metering customers will also qualify for several significant incentives besides net metering credits and rebates offered by Ameren. Ameren explains that, at the federal level, these include investment tax credits, which were set at 30% for projects energized prior to 2020, and are currently set at 26%, which effectively reduce the upfront capital cost of constructing renewable generation facilities. Ameren further explains that, at the state level, they include renewable energy credits ("RECs"), which compensate the owner/developer for benefits of renewable energy generation in the state. Based on the current IPA REC prices available to residential customers, a 7kW residential solar generator will receive $13,500 in REC compensation. Ameren states that delivery service netting represents just one incentive in a bundle for distributed generation, and that bundle is not even losing an inducement but rather transitioning to location-based rebates.

Ameren states that as part of the transition away from the delivery service subsidization of distributed generation and towards locational value rebates, Ameren notified the Commission it had reached the 3% threshold in April 2020, and the Commission initiated Docket No. 20-0389 to investigate an annual process and formula for calculating the value of locational distributed generation rebates. Ameren notes that in late April 2020, shortly after Docket No. 20-0389 was initiated, various intervenors moved to dismiss the proceeding on the grounds that Ameren's methodology for calculating the 3% (and thus 5%) threshold was flawed. Ameren contends that the ALJ appropriately denied those motions in a July 7, 2020 ruling (the "ALJ Ruling"), but in doing so also concluded that the 5% threshold methodology should be calculated differently from any party's proposed methodology. Ameren notes the ALJ Ruling determined that it was not appropriate for Ameren's threshold methodology to include customers that are not on Ameren supply (i.e., are retail electric supplier ("RES") supplied) in both the numerator and denominator, and the ALJ Ruling found that "[a]lthough no party disputes Ameren's inclusion of these [supply] customers in the numerator, it is clear that they should not be included in the numerator, just as the Company has appropriately not included them in the denominator."

Ameren argues that the ALJ Ruling created a conflict between its threshold methodology and Rider NM's methodology and opened the door to certain potential unintended consequences. For these reasons, Ameren notes that it moved for reconsideration of the ALJ Ruling. Ameren states that while its request for reconsideration was not granted, recognizing the conflict, the Commission ordered this investigation into Rider NM in its first Interim Order in Docket No. 20-0389. *Ill. Commerce Comm'n,* Docket No. 20-0389, Interim Order at 3 (Sept. 23, 2020).

Ameren states that it subsequently and voluntarily filed a notification letter on October 2, 2020 indicating that it had reached the 5% threshold and provided Staff with materials to audit the Company's calculation.

Ameren explains that the testimony in this docket focused on three different 5% threshold methodologies: the Commission-approved and currently used Rider NM methodology; the Joint NGOs' proposed methodology; and the methodology set forth in the ALJ Ruling in Docket No. 20-0389. Ameren explains the three calculations are as follows:

- Rider NM Calculation: NM % = all Rider NM net metering customers / peak demand supplied.
- Joint NGO Calculation: NM% = all on site net metering customers (excludes community solar) / total peak demand (incl. wholesale).
- ALJ Calculation: NM % = net metering customers supplied by the electricity provider / peak demand supplied.

Ameren explains that Rider NM defines the 5% threshold as "when the aggregate generation nameplate capacity for Customers receiving service under this Rider equals or exceeds 5% of the total peak demand supplied by the Company during the previous year." Ill. C. C. No. 1, 6th Revised Sheet No. 24.003. Customers receiving service under Rider NM are "net metering customers." And the Company is an "electricity provider" as defined in Section 16-107.5(b)(iii) as "an electric utility or alternative retail electric supplier[.]" 220 ILCS 5/16-107.5(b)(iii).

Ameren notes that the Rider NM Calculation matches closely to Section 16-107.5(j) of the Act's plain language, which states:

> An electricity provider shall provide net metering to eligible customers until the load of its net metering customers equals 5% of the total peak demand supplied by that electricity provider during the previous year. After such time as the load of the electricity provider's net metering customers equals 5% of the total peak demand supplied by that electricity provider during the previous year, eligible customers that begin taking net metering shall only be eligible for netting of energy.

220 ILCS 5/16-107.5(j). According to Ameren, the Rider NM Calculation also matches Section 16-107.6(a), which defines, among other things, the "threshold date" as follows:

> 'Threshold date' means the date on which the load of an electricity provider's net metering customers equals 5% of the total peak demand supplied by that electricity provider during the previous year, as specified under subsection (j) of Section 16-107.5 of this Act.

220 ILCS 5/16-107.6(a).

Ameren notes that the one term in Section 16-107.5(j) that does not appear in Rider NM is "load" – the Rider NM calculation methodology refers to "aggregate generation nameplate capacity" of customers, not load. Ill. C. C. No. 1, 6th Revised Sheet

No. 24.003. But, Ameren observes, the term "capacity" fits well within the framework of the concept of load. Moreover, the parties all agree that "aggregate generation nameplate capacity" should be used instead of load.

Ameren explains that under Rider NM, the numerator for these threshold calculations is the "aggregate generation nameplate capacity for all Customers receiving service under this Rider." Ill. C. C. No. 1, 6th Revised Sheet No. 24.003. Further, Ameren explains that "All Customers" include both Ameren-supplied customers and RES supplied customers: Rider NM "is available to Customers receiving power and energy from the Company or a Retail Electric Supplier (RES), that are considered an Eligible Customer [per Section 16-107.5(b)(ii)]…, or a Subscriber …." Ill. C.C. No. 1, 5th Rev. Sheet No. 24. Pursuant to the tariff language, Ameren provides net metering service for all eligible net metering customers, regardless of their supplier. Ameren notes that even larger net metering customers, and community solar facilities, regardless of supplier, receive billing of delivery service charges unique to customers served under Rider NM.

Ameren states that Rider NM also properly includes community solar customers in the numerator because they are "net metering customers." Section 16-107.5(j) states "[a]n electricity provider shall provide net metering to eligible customers until the load of its net metering customers equals 5% of the total peak demand supplied by that electricity provider during the previous year." Ameren notes that its net metering customers consist of all customers that receive service under Rider NM, including subscribers of community solar projects, who are regulated under the Commission-approved Rider NM tariff and considered net metering customers for such purposes.

Ameren contends the Act defines "net metering" to include the measurement "of the net amount of electricity … provided to the electricity provider by the … subscriber," 220 ILCS 5/16-105.5(b)(v), which confirms that subscribers of community solar projects are net metering customers. Ameren asserts that the concept of community solar was introduced in the FEJA legislation package, and if the legislature had wanted to limit the value of the numerator in the 5% threshold calculation to that of a subset of net metering customers, they would have so indicated this exclusion. Yet, Ameren notes, Section 16-107.5(j) does not contain such exclusions; accordingly, all capacity of net metering customers should be included in the numerator of the threshold calculation.

Ameren states that the statutory denominator is the "total peak demand supplied by that electricity provider during the previous year." Ameren notes that because the statute says "supplied," for the threshold calculation in Rider NM, Ameren includes in the denominator only the peak demand of customers it supplies. Ameren explains, it is the "electricity provider" and the customers Ameren "supplies" are the customers who have not elected a competitive supplier and for whom Ameren secures the supply of energy, as well as providing its delivery. *See* 220 ILCS 5/16-107.5(b). Ameren argues that "supply" is not the same a "delivery." Ameren states that the record makes clear that Ameren does not supply electricity for RES customers, so Ameren excluded those customers from the denominator.

Thus, Ameren argues that when Rider NM defines the denominator as "total peak demand supplied by the Company during the previous year" (Ill. C. C. No. 1, 6th Revised Sheet No. 24.003), this is consistent with the plain language of Section 16-107.5(j).

Ameren states that the ALJ Ruling aligns with and affirmed Ameren's definition of the denominator as the peak demand of those customers that are "supplied" by the "electricity provider." ALJ Ruling at 3.

With respect to the Joint NGOs' proposed methodology, Ameren notes that it directly conflicts with the language of Section 16-107.5(j) and is not correct under the law. Under the Joint NGOs' proposal, the methodology would: (i) include customers who are not supplied by Ameren when calculating the total peak demand in the denominator; and (ii) remove community solar projects when calculating the total generating capacity of its net metering customers in the numerator.

Ameren states that an electricity provider is defined as "an electric utility or a retail electric supplier." 220 ILCS 5/16-107.5(b). When coupled with the term "supplied" this means that the denominator represents the load supplied (not delivered) by the provider – here, the electric utility, Ameren. Ameren points out that Joint NGOs' interpretation would have the denominator based on load supplied by both Ameren and retail electric suppliers, which is not what the statute says. Ameren asserts that if the General Assembly meant to include the peak demand of all delivery service customers, it would not have included the term "supplied." Ameren notes that the legislature has used the term "supplied" elsewhere in Sections 16-107.6 and 16-107.5, indicating an understanding of the term. *Ill. Bell Tel. Co. v. Ill. Commerce Comm'n*, 362 Ill.App.3d 652, 661 (4th Dist. 2005) (finding significant the use of a term in one statutory section but not another and noting that "if the legislature uses certain words in one instance and different words in another, it intends different results"). Thus, Ameren concludes, the Joint NGOs' calculation does not reflect the language of the Act, and the Commission should not adopt it.

Ameren argues that the Joint NGOs' calculation also improperly includes wholesale demand in the denominator. Ameren contends that wholesale transactions are not Commission jurisdictional and not part of Ameren's retail distribution delivery service. Ameren notes that wholesale customers are neither Ameren's retail delivery service customers, nor are they eligible to be net metering customers of Ameren or RES.

Ameren states that the Commission must base its decision on record facts as applied to the law enacted by the General Assembly. *Hazelton v. Zoning Bd. of Appeals*, 48 Ill.App.3d 348, 351 (1st Dist. 1977) ("It is well settled in Illinois that an administrative agency cannot base its decision upon facts, data, and testimony which do not appear in the record."); *Liberty Trucking Co. v. Ill. Commerce Comm'n*, 81 Ill. App. 3d 466, 469, 401 N.E.2d 581, 583 (1980) ("Because the Commission is a creature of statute, it may only exercise power expressly delegated to it and any action by the Commission in excess of or unsupported by that authority is void.").

Ameren notes that in testimony, however, Joint NGO witness Kenworthy justifies the Joint NGO methodology as "represent[ing] the standard way of calculating distributed generation penetration in states and utility service territories across the country." Ameren asserts that the characterization of the Joint NGO method as "conventional" is not accurate. Ameren avers that the conventional methodology in Illinois is Ameren's Rider NM methodology. Ameren also states that the Commission applies Illinois law and cannot ignore Illinois law in favor of a policy approach taken by other states. 220 ILCS 5/4-201;

N. Shore Gas Co./Peoples Gas Light & Coke Co., Docket No. 07-0241, Order at 152 (Feb. 5, 2008); *see Downtown Disposal Services, Inc. v. City of Chicago*, 2012 IL 112040, *50 (2012) (internal citations omitted) ("…although decisions from other jurisdictions can provide guidance where precedent from Illinois is lacking, Illinois courts do not look to the law of other states when there is relevant Illinois case law available.").

Ameren contends that Joint NGOs' argument boils down to what it says is "logical," as opposed to what Illinois law actually says. But this supposed "logical reading" seeks something different from the actual statutory language, according to Ameren, which clearly includes "supply" in the denominator. Ameren maintains that this cannot be the basis for the Commission's decision here.

Ameren notes that the Joint NGOs cite *Nowak v. City of Country Club Hills* and *Solon v. Midwest Med. Records Ass'n, Inc.* in support of their ambiguity argument that the Commission should go beyond the plain language of Section 16-107.5 (j). Ameren points out that *Nowak*, however, confirms that "[t]he best indication of legislative intent is the statutory language, given its plain and ordinary meaning. [Ameren] states that where the language is clear and unambiguous, (the court) must apply the statute without resort to further aids of statutory construction." *Nowak v. City of Country Club Hills*, ¶ 13, 2011 IL 111838, 958 N.E.2d 1021, 1023; *Solon v. Midwest Med. Records Ass'n, Inc.*, 236 Ill. 2d 433, 440–41, 925 N.E.2d 1113, 1117–18 (2010).

Ameren also states that the Joint NGOs' assertion that the Commission should require Ameren to use its total system peak demand, including Ameren's delivery-only customers, to calculate the denominator ultimately suggests that the legislature did not understand the distinction between electric "supply" and "delivery." Ameren further explains that this violates principles of statutory construction. Ameren maintains that if the legislature meant to include the peak demand of all delivery service customers, it would not have included the term "supplied." *Ill. Bell Tel. Co. v. Ill. Commerce Comm'n*, 362 Ill.App.3d 652, 661 (4th Dist. 2005) (finding significant the use of a term in one statutory section but not another and noting that "if the legislature uses certain words in one instance and different words in another, it intends different results").

With respect to the ALJ Ruling, Ameren notes that the ALJ Ruling states that "Ameren does not supply electricity to RES customers; thus, it should not include net metering customers on RES supply in the numerator." ALJ Ruling at 3. Ameren argues that the ALJ Ruling thus changes the numerator so that: the net metering % = net metering customers supplied by the electricity provider / peak demand supplied. This has the effect of seeming to balance the calculation to be supply / supply. Ameren argues that while the calculation in the ALJ Ruling could be seen as taking an "apples to apples" approach, it does not actually reflect what the statute says, and fails to provide the necessary transition from delivery service net metering of excess generation pushed to the grid to locational rebates that the statutory scheme requires.

Ameren maintains that if the legislature meant to include only those net metering customers that are "supplied" by the "electricity provider" in the numerator, it would have included language making that distinction. Absence of the term "supplied" in the Section 16-107.6(e) and 16-107.5(j) definition of the threshold numerators is significant, and instructive to the legislature's intent, according to Ameren, because if the legislature uses

certain words in one instance and different words in another, it intends different results. *Ill. Bell Tel. Co*., 362 Ill.App.3d at 661. Ameren argues that the ALJ Ruling does not reflect the legislature's intent and the Commission should not adopt it for that reason alone.

Ameren points out that the ALJ Ruling, if implemented, would require that the utility and any RES be considered as separate "electricity providers," and their net metering customer bases must be evaluated separately. Ameren argues that this poses a number of practical and implementation concerns. Ameren states that based on this conclusion, the Commission would have to individually monitor and react to each certified electricity provider's 3% and 5% thresholds - including for each RES (though it is unclear if all suppliers currently submit the reporting necessary to do this as required under 83 Ill. Adm. Code 465.40).

Ameren also states that two possible consequences follow: (1) once a RES reached the 5% threshold, all new net metering customers throughout the state would stop receiving delivery service netting and only receive supply netting or (2) each individual RES's exceedance of the 5% threshold would trigger the end of delivery netting only for all eligible customers currently supplied by that RES. Depending on the net metering customers served by each individual electricity provider under the ALJ Ruling definition (utility or RES), some RES electricity providers may have already reached the 3% and 5% thresholds. Ameren states that each of these suppliers would need to notify Ameren when they reach the 5% threshold. Ameren then must adjust billing to stop the netting of delivery service charges and other taxes for the RES's customers which the Company serves under Rider NM.

Ameren states that limiting the numerator to only net metering customers supplied by the electricity provider also raises questions about the 3% threshold and related investigations into rebate values. Ameren explains that the Act only authorizes Ameren and Commonwealth Edison Company, as the only two utilities serving more than 200,000 customers, to file rebate tariffs. 220 ILCS 5/16-107.6(b). But while filing of separate rebate tariffs for each RES might not therefore be needed, the question of rebate values remains open. Section 16-107.6(e) requires an investigation into a process for "calculating the value of rebates for the retail customers described in subsections (b) and (f) of this Section that submit rebate applications…" 220 ILCS 5/16-107.6(e). Ameren asserts that this could mean that separate investigations into rebate values (to be administered through the utility's tariff) would be needed.

Moreover, Ameren argues, it is important to recognize that the issues with customer switching are more significant with respect to the numerator than the denominator: these monthly customer choice changes are muted under the Rider NM method. Ameren witness Schonhoff explained that Rider NM uses all net metering customers in the numerator (a more stable metric unaffected by customer choice) and the prior year peak demand of Ameren's supply in the denominator. Under the Rider NM method, the denominator changes only once per year. Ameren states that preliminary estimates of the peak demand supplied by the Company will remain stable for purposes of the Rider NM method calculations performed through 2021. Ameren explains that is because the 2020 (prior year) peak demand supplied by Ameren (which takes effect in the Rider NM method calculation beginning January 2021) only changed from 1,940 megawatts ("MW") to 1,815MW. To put this into perspective, this has the effect of

changing the result of the Rider NM method calculation for the October 1, 2020 reporting period from 5.32% to 5.68%, assuming no additional net metering capacity is added to the numerator.

Ameren emphasizes that it is also important to note that the actual date on which Ameren's 5% threshold would be met using the ALJ Ruling is uncertain. Ameren explains that, given the amount of aggregate generation nameplate capacity that is energized today, the potential amount that could be energized in the remainder of 2020 and 2021-2022, and the ability of existing RES-supplied net metering customers to switch to Ameren supply options, Ameren could theoretically reach the 5% threshold at any time in 2020, 2021, or 2022. Because it relies on only Ameren-supplied net metering customers in the numerator, theoretically, an influx of existing net metering customers switching to an Ameren supply option could increase the generation nameplate capacity in the numerator such that the percentage could abruptly exceed 5%. Thus, Ameren concludes, the ALJ Ruling could result in a similar situation where the 5% threshold is reached prior to the determination of location-based rebates in Docket No. 20-0389.

In reply to the JSPs' (and CUB's) support of the ALJ Ruling as "a reasonable interpretation of the statute and results in an "apples-to-apples" comparison in the numerator and denominator," the Company reiterates that this would require reading the term "supplied" into the numerator. As explained by Ameren, Sections 16-107.5(j) and 16-107.6(e) do not include the word "supplied" in the numerator definition.

Ameren also takes issue with CUB's attempts to look outside of the language of Section 16-107.5(j) to restrict the numerator to those customers "supplied" by Ameren, in contrast to the specific language of the Act, reasoning that "[a] thorough review of the language of Section 16-107.5 as a whole makes it clear that the Commission should order Ameren to amend Rider NM to exclude customers who do not take supply service from Ameren from the numerator, as it does for the denominator, in calculating these thresholds." CUB IB at 1. Ameren argues that intervenors would prefer some other language to appear in that Section or some other denominator to apply does not provide a valid basis under the law to depart from the Act.

With respect to the AG's arguments, Ameren contends that the AG's proposed definition of supply is unworkable. Ameren explains that the AG's attempt to redefine of the term supply from its specific use in Sections 16-107.5 and 16-107.6, to some general, common meaning, is inconsistent with the principles of statutory construction. Ameren notes that the cases relied upon by the Joint NGOs refute the AG's proposition. *See*, *e.g.*, *Solon v. Midwest Med. Records Ass'n, Inc.*, 236 Ill. 2d 433, 440–41, 925 N.E.2d 1113, 1117–18 (2010) ("In determining the plain meaning of the statute, we consider the statute it its entirety, the subject it addresses, and the apparent intent of the legislature in enacting it. When the statutory language is clear and unambiguous, it must be applied as written, without resort to extrinsic aids of statutory construction."); *Crossroads Ford Truck Sales, Inc. v. Sterling Truck Corp.*, 2011 IL 111611, ¶¶ 45-46, 959 N.E.2d 1133, 1145 ("Words and phrases must be interpreted in light of other relevant provisions of the statute and must not be construed in isolation."); *Nowak v. City of Country Club Hills,* 2011 IL 111838, ¶ 11, 958 N.E.2d 1021, 1023 ("The best indication of legislative intent is the statutory language, given its plain and ordinary meaning."). Moreover, AIC argues, should the Commission accept the AG's argument, it would lead to nonsensical results as making

the term supplied a synonym of delivered would call into question the entirety of the deregulated scheme, which separated supply services from delivery services. *See, e.g.,* 220 ILCS 5/16-107.5(e), (n).

Ameren states that the other parties also ask the Commission to ignore the language of the Act when they complain of a potential gap between the end of delivery service net metering and the new locational based rebate values for distributed generation. Ameren argues that the plain language of the statute shows there is no gap, and the legislature contemplated a situation where the 5% threshold was reached before rebates were calculated and addressed it in Section 16-107(e): "for those rebate applications filed after the threshold date but before the utility's tariff or tariffs filed pursuant to this subsection (e) take effect, the value of the rebate shall remain at the value established in subsection (c) of this Section until the tariff is approved." 220 ILCS 5/16-107.6(e).

Ameren notes that the JSPs also argue that the required net metering reports double count RES-supplied net metering customers, and that it "is not reasonable to conclude that the General Assembly intended competitively supplied net metering customers to be counted twice in the net metering reports filed with the Commission…" JSPs IB at 11. But, Ameren contends, that is exactly what the law requires – Section 16-107.5(k) requires "[e]ach electricity provider … report annually to the Commission the total number of net metering customers served by the provider…" 220 ILCS 5/16-107.5(k). All net metering customers, regardless of supply, are Ameren net metering customers. If one of those customers is supplied by a RES, that customer is a net metering customer served by the RES and would show up in both reports per the statutory reporting scheme.

In addition, Ameren argues that if the Commission were to change the Rider NM methodology such that the 5% threshold date is extended, consistent with the ALJ Ruling or the Joint NGO methodology, there would be an associated cost borne by all Ameren distribution delivery customers. Ameren recognizes that if the Rider NM methodology does not change, these new net metering customers would be eligible for a rebate after the 5% threshold is reached (and rebate values that are determined in Docket No. 20-0389). Ameren estimates that the cost associated with those incremental rebates would be less than the cost of extending delivery service netting. For example, the total cost associated with the continuation of delivery service netting for the additional 5,600 customers initiating net metering service between October 2, 2020 and January 2023, assuming a 22-year useful life of these 5,600 new facilities, is approximately $25 million. For comparison, Ameren notes that the value of rebates paid to those same 5,600 customers would equate to only $9.8 million, assuming a 7kW typical generation capacity per facility and, for the sake of illustration only, the current rebate value for nonresidential customers of $250/kW. Ameren points out that even accounting for the fact that Ameren recovers the rebate values in rates through a regulatory asset on which it earns a return, the revenue requirement impact would only be $15 million, $10 million less than the cost of extending delivery service netting. Ameren states that its studies proposed in Docket No. 20-0389 suggest the appropriate value of rebates for residential customers would be much lower than the current rebate value offered to nonresidential customers.

Ameren notes the Joint NGOs' citation to the legislature's findings in enacting FEJA and explains that the FEJA findings encourage "investment in renewable energy resources, …which should benefit all citizens of the State," which can be read to require consideration of the cost of extending delivery service net metering for excess energy pushed to the grid to all Ameren's 1.2 million electric customers. And presumably, Ameren states, the legislature implemented a 5% threshold to carefully balance the interests of those bearing the cost of the investment in renewable energy resources (which goes beyond just solar) and those receiving the benefits provided by such an investment.

Ameren highlights that Joint NGOs and others supporting a change to Rider NM (which include CUB and AG) do not consider the cost to customers. Ameren asserts that if the legislature wrote an "apples to oranges" approach into the statute, that is what the legislature intended, or at least there is the "possibility that the legislature may be agnostic as to when the 5% threshold would be reached, including the possibility that it would be reached within approximately 4 years of passage of FEJA." Ameren argues that if the parties disagree with the way the statute is written, that is something the legislature, not this Commission, must address.

Ameren states that the 5% methodology in Rider NM went into effect in 2017; however, no investigation or suspension of the tariff was sought then, and the methodology goes back further than that, having been used in Ameren's Net Metering Reports since 2009. Ameren points out that it is also the same methodology used in Commonwealth Edison Company's net metering reports.

Ameren argues that the Commission should not make a change to Rider NM now, when the Rider NM methodology has been relied upon for a decade, and when those parties could have raised challenges with the Commission regarding the threshold date methodology much earlier.

Ameren asserts that if the Commission finds Rider NM incorrectly implements the Act, then the Commission must determine what the correct methodology should be, and how it should be implemented through a revised Rider NM. As Ameren has noted repeatedly, there are numerous considerations that go into changing Rider NM. A thoughtful and deliberate process – which need not be a separate investigation as Joint NGO's claim, but should not be done in a mere few days – is required, in order to avoid unintended consequences or further litigation.

Ameren also states that its point that further process is needed is highlighted by the fact that the Joint NGOs and the JSPs have submitted proposed tariff revisions in briefs. Ameren notes that no witness testified that these changes are appropriate, there is no evidence in the record that supports them, Ameren's own witness has been deprived of the opportunity to analyze and comment on them, and Ameren has barely a business day to review them. Ameren explains that given these issues, it has moved to strike the portions of the briefs setting out the proposed changes and argues that inclusion of last-minute proposals for revised tariff language confirms that the Commission should not approve haphazard language thrown together and submitted at the last minute, but rather should provide adequate time to further investigate.

Ameren states, additionally, that the Joint NGOs propose a series of "notice" directives for the Commission to adopt. While Ameren generally agrees with the notion of keeping customers informed about changes to Rider NM, Ameren identified a number of concerns with the proposed notices in testimony. Ameren asserts that the proposed notice requirements are yet another reason why the Commission should take the time needed to ensure that whatever methodology the Commission determines should be used, clear notice to the appropriate customers can be accomplished.

Ameren also takes issue with the Joint NGOs' conclusory statement that "Ameren's Calculation… unreasonably inflates the numerator and squeezes the denominator, has already resulted in circumstances that are plainly out of step with the statutory scheme and [is] currently causing harm to both its customers and the solar industry in Illinois." Ameren explains that claims of "harm" to the solar industry are wholly speculative. Ameren notes that when it attempted to test these claims in discovery, the JSPs, who supplied the affidavits alleging harm in this docket, were unable (or unwilling) to provide any formal analysis in response. The Commission should not rely on these unsupported claims for any policy conclusions regarding a change to Rider NM.

In conclusion, Ameren maintains that Rider NM's 5% threshold methodology closely aligns with the terms of Section 16-017.5(j) of the Act. It has been in place since 2008 and used in annual reports since then, is used in ComEd's net metering reports, and was approved by the Commission in 2017 as the appropriate method for applying Section 16-107.5(j). AIC states that Rider NM correctly implements Section 16-107.5(j) and so should not be changed.

III. CUB'S POSITION

CUB frames the legal question raised by the issues in the record in this proceeding as whether Ameren's Rider NM formulas for calculating the 3% threshold (triggering an investigation into determining a distributed generation rebate to replace net metering for affected customers) and the 5% threshold (triggering the elimination of these net metering credits, to be replaced with the distributed generation rebate for new eligible customers) comport with Section 16-107.5 of the Act. CUB contends a thorough review of the language of Section 16-107.5 as a whole makes it clear that the Commission should order Ameren to amend Rider NM to exclude customers who do not take supply service from Ameren from the numerator, as it does for the denominator, in calculating these thresholds.

CUB poses the 3% and 5% thresholds trigger inherently sequential processes. The 3% threshold triggers the investigation to determine how the distributed generation rebate will be calculated and administered once implemented. 220 ILCS 5/16-107.6(e). The 5% threshold triggers the implementation of the rebate and the discontinuation of net metering. 220 ILCS 5/16-107.5(j). CUB posits that, logically, the rebate must be developed before it is administered, implying legislative intent for there to be enough time between the utility reaching the 3% and 5% thresholds for the distributed generation rebate investigation (i.e., this proceeding) to be completed. Moreover, CUB argues, delaying the implementation of the distributed generation rebate past the triggering of the 5% threshold contradicts legislative intent and would result in substantial hardship to

Ameren customers, as the existing compensation mechanism for affected customers, net metering under Rider NM, discontinues once the 5% threshold is met.

CUB refers to Ameren's calculation including RES customers in the numerator but not the denominator as inconsistent. Ameren and CUB do not dispute that the denominator only considers the load contributions of Ameren supply customers. CUB contends Ameren customers taking supply from a RES should likewise be excluded from the numerator for sake of consistency. CUB argues excluding customers not taking supply service from Ameren from the numerators of the threshold formulas is not only a matter of practical necessity, but also represents the most coherent and intuitive understanding of the plain language of the Act.

The "primary objective in construing the meaning of a statute is to ascertain and give effect to the intention of the legislature." *In re Detention of Lieberman*, 201 Ill. 2d 300, 307 (Ill. 2002). To determine legislative intent, one must examine "the language of the statute, which is the most reliable indicator of the legislature's objectives in enacting a particular law." *Id*. at 308. The language of the statute "must be given its plain and ordinary meaning." *Paris v. Feder*, 688 N.E.2d 137, 139 (Ill. 1997). "Statutes should be read as a whole with all relevant parts considered, and they should be construed, if possible, so that no term is rendered superfluous or meaningless." *In re Marriage of Kates*, 761 N.E.2d 153, 158 (Ill. 2001).

CUB contends that in urging the Commission to reject the ALJ Ruling and leave the 3% and 5% threshold calculation methodologies reflected in Rider NM unchanged, Ameren attempts to seize on the supposed ambiguity of a phrase that is, in fact, defined elsewhere in the same section of the Act. CUB asks the Commission to reject what CUB calls an attempt to read language out of the statute. CUB asserts that limiting the numerator in the threshold formulas to Ameren supply customers comports with the statute as a whole and provides for coherent administration.

As Section 16-107.6 of the Act states, the numerator of either threshold reflects "total generating capacity of the electricity provider's net metering customers." 220 ILCS 5/16-107.6(e). Thus, CUB argues, Rider NM contradicts clear language of the Act by including customers that do not take supply service from Ameren in this calculation.

This dispute centers on competing interpretations of the phrase "electricity provider's net metering customers" as used in Section 16-107.5. *See* 220 ILCS 5/16-107.5(j). CUB contends that to apply Ameren's interpretation, reflected in Rider NM, would require the Commission to ignore the definitions of "electricity provider" and "net metering" provided earlier in Section 16-107.5. *See* 220 ILCS 5/16-107.5(b)(iii). CUB suggests Rider NM treats Ameren as the electricity provider for all its customers, whether they take bundled (distribution and supply) service from Ameren or distribution service from Ameren and supply service from a RES. CUB maintains that Ameren's reading of Section 16-107.5(j) seems reasonable out of context, but the text of Section 16-107.5 as a whole reflects legislative intent to assign net metering customers to their electric supplier for the purposes of this calculation.

In determining the numerator used to calculate the 5% threshold, Section 16-107.5(j) refers to "net metering customers" of "an electricity provider." 220 ILCS 5/16-107.5(j). This language refers to a singular electricity provider per customer, not the

electricity providers of a customer. Section 16-107.5(b)(ii) defines "electricity provider" as "an electric utility or alternative retail electric supplier." 220 ILCS 5/16-107.5(b)(ii). Here, CUB argues, the Act is explicit that each customer's electricity provider can be a utility or a RES. CUB contends this distinction does not matter for customers who take bundled service from Ameren (their electricity provider is Ameren), but for Ameren distribution customers who take supply service from a RES, the determination of which is the customer's "electricity provider" dictates whether the capacity of the customer's generating facility counts toward Ameren's 3% and 5% threshold calculations. CUB asserts the most intuitive interpretation of "electricity provider" is the entity responsible for supplying electricity to the customer; that is, the customer's supplier. Moreover, CUB argues, Ameren's interpretation reads RES out of the definition of "electricity provider" entirely by treating the utility as the electricity provider of every net metering customer in its service territory.

CUB posits that the plain language of Section 16-107.5, read together, makes clear that a customer taking supply service from a RES is the net metering customer of the RES, not Ameren, for the purposes of Section 16-107.5(j). CUB reasons that Rider NM's calculation method thus overstates the utility's progress toward the 3% and 5% thresholds by including the generating capacity of net metering customers whose electricity provider (i.e., supplier) is not Ameren in the numerator, despite excluding those same customers' total generating capacity from the denominator. CUB requests the Commission amend Rider NM to reflect the language in Section 16-107.5 by using the aggregate generating capacity of the distributed generation facilities of Ameren net metering customers taking supply service from Ameren as the numerator to calculate progress toward the 3% and 5% thresholds.

Ameren suggests that applying the 3% and 5% threshold calculation to each electricity provider, including RESs, in Illinois would be unreasonable because each RES in the Ameren service territory would have to monitor and comply with the 3% and 5% threshold requirements individually. Ameren Ex. 1.0 at 10-13. Ameren notes that there are more than 30 suppliers registered to serve residential customers in Ameren's service territory. *Id*. at 11. Ameren also offers that eleven of these RESs serve less than 100 customers in Ameren's service territory and five serve ten or fewer. *Id*. at 13. However, CUB contends, the plain language of the Act applies these thresholds to each supplier individually. CUB asserts that if the authors intended to apply the net metering threshold values only to electric utilities, it would have referred to "electric utilities" instead of the broader category "electricity providers," which expressly includes RESs.

CUB offers that the resulting investigations would be far less burdensome on the Commission than Ameren suggests. The Act requires each electricity provider, including RESs, to file an annual report with the Commission that includes the total number of net metering customers it serves and the capacity of these customers' generating systems. 220 ILCS 5/16-107.5(k). The Commission's Part 451 rules require RESs to report the total kilowatt-hours delivered and sold to retail customers throughout Illinois and within each utility service territory. 83 Ill. Adm. Code 451.770. Thus, CUB notes, these provisions already require each RES to provide the Commission the information necessary to determine whether the 3% and 5% thresholds have been met or are about to be met, enabling the Commission to monitor each supplier's progress toward the

statutory thresholds. CUB acknowledges it is possible that multiple RESs could hit the 3% threshold around the same time, triggering overlapping investigation proceedings, but supposes these proceedings will not feature nearly as many contested issues as Docket No. 20-0389, which is the first of its kind. Legal, policy, and technical questions resolved in that proceeding will not have to be relitigated in future investigations, significantly streamlining those dockets.

Ameren suggests that implementation of the ALJ Ruling would entail practical and implementation concerns that, in fact, are either contrived or already accounted for by the existing regulatory framework. Ameren supposes that applying the ALJ Ruling would lead to one of two outcomes: (1) once a RES reached the 5% threshold, all new net metering customers throughout the state would stop receiving delivery service netting and only receive supply netting; or (2) each individual RES's exceedance of the 5% threshold would trigger the end of delivery netting only for all eligible customers currently supplied by that RES. This first contingency does not comport with the Act and should be disregarded outright. CUB explains that Section 16-107.5(j) states, "[a]n electricity provider shall provide net metering to eligible customers until the load of its net metering customers equals 5% of the total peak demand supplied by that electricity provider during the previous year. After such time as the load of the electricity provider's net metering customers equals 5% of the total peak demand supplied by that electricity provider during the previous year, eligible customers that begin taking net metering shall only be eligible for netting of energy." 220 ILCS 5/16-107.5(j). The first three words of this provision of the statute refer to a singular "[a]n electricity provider" as the entity that "shall provide net metering" until the 5% threshold is met. *Id*. Nothing in the text of the Act suggests legislative intent to replace net metering with netting of energy for the entire state based on the metrics achieved by one utility.

The second option, that each individual supplier reaching the 5% threshold ends delivery netting for all eligible customers that RES currently supplies, reflects the plain, intuitive meaning of Section 16-107.5(j). CUB explains that the supplier reaches the 5% threshold, and the supplier implements the required transition, applied to the supplier's eligible customers. CUB notes that Ameren raises several potentially complex implications for its billing practices that this correct interpretation of the Act would entail. First, Ameren theorizes that the Company would have to adjust billing to stop netting of delivery service charges and other taxes for all its Rider NM customers that take supply service from each RES that reaches the 5% threshold. Ameren does not present evidence that any RES has, in fact, already reached the 5% threshold, but the Company raises the hypothetical possibility that it would have to re-issue bills to "claw-back" previously netted charges and taxes. The Company also raises the possibility that migration between suppliers could lead to RES reaching the 5% threshold at an unexpected time. Here, Ameren provides examples of additional work its billing department would have to undertake and uncertainty in when exactly RES would reach the threshold, but Ameren does not provide any reason to doubt that it or any other regulated entity can handle these tasks.

CUB notes that Ameren echoes Staff in suggesting that triggering a separate investigation proceeding for each RES that reaches the 3% threshold and would produce an absurd result of duplicative investigations of the same rebate values. This result is not

absurd at all and is easily resolved. Staff refers to the proceedings as "duplicative" for the same reason they would be neither burdensome nor controversial. As Ameren recognizes, the distributed generation rebate amounts may vary by RES, but the same tariff applies across a utility's service territory. This reduces the administrative burden of the rebate investigation for each RES down to applying an already-determined calculation method to determine the rebate amount. Nothing in the record in this proceeding suggests that such determinations are too labor-intensive for the Commission, Staff, and regulated entities to be expected to apply the relevant tariffed calculation methods to each RES that reaches the 3% threshold.

CUB further notes that Ameren refers to the distributional impacts of net metering continuing as costs to distribution delivery customers and in doing so seemingly characterizes net metering itself as problematic. CUB argues that the Commission should disregard this argument, as there is a cost to customers whether the compensation comes in the form of netting or rebates, and the purpose of those payments is to represent the value to the grid of the distributed generation. CUB maintains that all customers benefit from the predictability, flexibility and reliability distributed generation can provide. *See* Joint NGO Ex. 1.0 at 20-21. The fact that net metering results in a different distribution of costs across the Company's ratepayers than a rebate is obviously what the legislature intended.

Staff maintains that despite the Act referring to "electricity provider" and "electricity supplier" as two distinct categories, the Commission should treat the terms as interchangeable for the purposes of the numerator term. Further, despite the denominator term including load only from Ameren supply customers, Staff argues the numerator should include non-Ameren supply customers as well, effectively dividing "apples by oranges." Staff's preferred calculation method, the Rider NM Calculation, when applied to Ameren, provided only six months for a highly technical contested proceeding that the development of Docket No. 20-0389 demonstrates requires significantly more time to administer appropriately and in accordance with due process. In defense of this counterintuitive and impractical interpretation of the Act, Staff offers merely that Sections 107.5 and 107.6 do not explicitly use the phrase supply customers or explicitly spell out that the customers in the numerator are specifically the regulated entity's supply customers.

CUB argues that Staff asks the Commission to ignore the statutory language when it baldly asserts that the numerator terms, by referring to net metering customers, must mean all net metering customers. Staff unreasonably supposes the mere fact that it was possible for the legislature to include more language making the distinction between the utility's supply and non-supply customers even more explicit somehow outweighs the statutory language clearly suggesting intent that the numerator and denominator be calculated in terms of the same customers' load. CUB concludes that the Commission should reject Staff's argument and order Ameren to revise Rider NM to comport with the ALJ Ruling.

IV. AG'S POSITION

The AG states that the Act assigns the Commission "the duty . . . to see that the provisions of the [Illinois State] Constitution and [Illinois] statutes . . . affecting public

utilities . . . are enforced and obeyed." 220 ILCS 5/4-201. "The Commission possesses plenary power under the Act with respect to the supervision of public utilities, including the power to establish rates and charges for service." *Abbott Labs., Inc. v. Ill. Commerce Comm'n*, 289 Ill. App. 3d 705, 711 (1st Dist. 1997). Because tariffs are the mechanism through which utilities implement the Act, the Commission has the power to "rescind, alter or amend" tariffs after notice and hearing. The AG cites Section 9-201(b), which states that tariffs the Commission has allowed to take effect after 45 days without a hearing remain "subject to the power of the Commission, after a hearing had on its own motion or upon complaint, as herein provided, to alter or modify the same." 220 ILCS 9-201(b). This gives the Commission the ability to amend its prior decision to approve Rider NM so long as Ameren receives sufficient notice and an opportunity to be heard. In addition, the AG cites Section 10-113(a) of the Act which states that "the Commission may at any time, upon notice to the public utility affected, and after opportunity to be heard as provided in the case of complaints, rescind, alter or amend any rule, regulation, order or decision made by it." 220 ILCS 10-113(a).

The AG further asserts that the Commission's authority and responsibility to correctly apply the Act is highlighted by the deference that courts apply when they review Commission interpretations of the law it is charged with enforcing. *Commonwealth Edison Co. v. Ill. Commerce Comm'n*, 16 N.E.3d 801, 813 (1st Dist. 2014); *see also Chevron, U.S.A., Inc. v. Nat. Res. Def. Council*, 467 U.S. 837, 844-845 (1984) (holding that an agency's interpretation of a statute that it is charged with administering is entitled to deference so long as the statutory language is ambiguous). The deference the courts afford Commission decisions imposes on it the responsibility to correct tariff terms and other practices that are inconsistent with the law or that would produce unreasonable or absurd results.

The AG explains that the constitutional requirements of procedural due process require that administrative agencies must provide respondents notice and an opportunity to be heard when changing tariffs or other rules, regulations, or practices. Procedural due process is a flexible construct where the agency need not provide "a proceeding in the nature of a judicial proceeding" and must supply only "such procedural protections as fundamental principles of justice and the particular situation demand." *Abrahamson v. Ill. Dep't of Prof'l Regulation*, 153 Ill. 2d 76, 92 (1992). "The [notice] in an administrative proceeding need only reasonably advise the respondent as to the charges so that he or she will intelligently be able to prepare a defense." *Id.* at 93. An entity provides sufficient opportunity to be heard where it allows the respondent "to present his or her objections, at a meaningful time and in a meaningful manner, in a hearing appropriate to the nature of the case." *Village of Vernon Hills v. Heelan*, 2015 IL 118170, ¶ 31 (2015).

The AG states that the Commission has provided Ameren sufficient process in this proceeding to modify Rider NM. The Initiating Order in this docket advised Ameren that the Commission would be investigating "the question of whether [Ameren]'s tariff correctly implements Section 16-107.5(j)." Order at 1-2 (Oct. 8, 2020). Ameren also knew from the various briefings in Docket No. 20-0389 that the investigation would consider whether Rider NM's interpretation of Section 16-107.5(j) violated the statute. The AG maintains that Ameren has had ample notice and opportunity to prepare and present a defense.

The AG asserts that at issue in this proceeding is whether the Commission should amend Rider NM to comport with Section 16-107.5(j) and ensure that the 3% and 5% thresholds for ending delivery net metering are calculated using consistent sets of customers. The AG asserts that the Commission must amend Rider NM such that the numerator and the denominator of the threshold percentage calculations match and determine the total generating capacity of distributed generation customers as a percentage of the utility's total peak demand during the previous year, consistent with its purpose. 220 ILCS 5/16-107.5(j). The AG explains that the 3% and 5% thresholds that end delivery service net metering are designed to limit the loss of delivery service revenue associated with net metering once the capacity of distributed generation customers on the utility's delivery system reaches the specified percentage of the utility's peak load. 220 ILCS 5/16-107.6(c). The shift to solar rebates eliminates delivery net metering and changes how utilities compensate DG customers for their contribution to the grid. 220 ILCS 5/16-107.6(c)(3). It has no effect on supply net metering.

The AG suggests that the Act allows for two plausible threshold percentage calculations. The first, and the one that the AG asserts the Commission should adopt, would consider generating capacity from all distributed generation customers in the numerator and divide that by the total peak demand or load delivered by the utility, without regard to who the electricity supplier is. This interpretation comports with the broader statutory scheme to shift to solar rebates when the distributed generation megawatts on the utility's system are 3% or 5% of the utility's prior year's peak demand, meaning its highest number of megawatts delivered. 220 ILCS 5/16-107.5(j). This effectuates the legislature's intent to provide delivery net metering to DG customers to encourage the development of distributed generation until the 5% trigger is reached.

The AG explains that distributed generation customers who receive both their delivery and supply service from Ameren net their excess generation against Ameren delivery and supply charges, thereby reducing both charges. However, distributed generation customers who receive their delivery service from Ameren and supply service from a RES get a delivery credit based on Ameren's delivery rates and a supply credit based on the RES rate. Both groups of customers receive delivery netting from Ameren.

The AG asserts that this background shows that the most reasonable and accurate way to interpret Section 16-107.5(j) is to include in the numerator all the generation capacity from distributed generation customers (RES and utility default) and to include the prior year's total peak demand delivered by the utility to all customers (RES and utility default) in the denominator. 220 ILCS 5/16-107.5(j). The plain language of the statute is that the numerator includes the total generating capacity of all DG customers receiving net metering service from the utility.

The AG addresses the description of total peak demand in Section 16-107.5(j) that uses the word "supplied" and recognizes that it injects ambiguity into the statute by potentially limiting "total peak demand" to only a partial peak demand. Limiting "total peak demand" to only the peak supplied by default utility supply service creates the "apples-to-oranges" comparison that led the ALJ to remove the generation of RES-supplied DG customers from the numerator. ALJ Ruling at 3. The AG maintains that this understanding of the law misapplies the word "supplied" and results in a distortion of the

relevant analysis, which is whether DG customers produce 5% of total peak demand on Ameren's system.

The AG asserts that the Commission should apply the rules of statutory construction when interpreting ambiguous language. *Bloom Twp. High School*, 309 Ill. App. 3d 163, 174 (1 Dist. 2001). Under the rules of statutory construction, the Commission should give effect to the drafters' intent, presuming the drafters "did not intend absurdity or injustice." *Adams v. N. Ill. Gas Co*., 211 Ill.2d 32, 64 (2004). A statute, rule, or tariff is ambiguous when it is subject to more than one reasonable interpretation. *E.g., Bloom Twp. High School*, 309 Ill.App.3d at 174.

The AG argues the issue here is that the word "supplied" in Section 16-107.5(j) is being misinterpreted to distort the percentage calculation. The AG explains that in the context of energy regulation, "energy supply" as a noun generally means the electricity delivered by the utility. However, the word supply as a verb has a broader meaning that is synonymous with "to deliver." For example, Merriam-Webster describes "supply" when a verb as "to make available for use" or provide, and "to satisfy the needs or wishes of." https://www.merriam-webster.com/dictionary/supply, accessed on October 30, 2020. Similarly, Dictionary.com defines supply when used as a verb as "to furnish or provide (a person, establishment, place, etc.) with what is lacking or requisite: to supply someone clothing; to supply a community with electricity." https://www.dictionary.com/browse/supply, accessed on October 30, 2020. In the context of Section 16-107.5(j), the AG suggests that the use of the verb "supplied" should be understood in its common meaning, which is that the denominator should include the total peak demand supplied or delivered by the electricity provider during the previous year. This understanding of Section 16-107.5(j) is consistent with the goal of the section, which is to end delivery net metering when the total distributed generation generating capacity of Ameren's customers is equal to 5% of Ameren 's "total peak demand."

The AG points out that Ameren's tariff is based on the position that "supplied" in Section 16-107.5(j) means that the denominator should only include in the "total peak demand" that is portion delivered by the utility to its default energy supply customers. The AG maintains that this limited denominator makes little sense when viewed against the rest of the statutory scheme. The AG explains that the Act compels utilities to provide delivery net metering to DG customers until a utility reaches the 5% of total peak demand threshold, but both Ameren and RESs will continue to be obligated to provide supply netting for distributed generation customers when Ameren reaches the 5% threshold.

The AG asserts that the Commission should apply the language of the statute so that it makes sense in the statutory scheme. When "determining legislative intent, courts should consider the entire statutory scheme *in pari materia* in a manner that renders the statute consistent, useful, and logical." *Royal Glen Condo. Ass'n v. S.T. Neswold & Assocs., Inc.*, 18 N.E.3d 137, 141 (2nd Dist. 2014). Because the 5% threshold triggers the loss of delivery netting, the denominator should use the total demand of delivery service customers. This results in the Commission reading Section 16-107.5(j) to understand the verb "supplied" in its common usage as a synonym of "delivered" and to recognize that in this context it includes all delivery services customers and demand. This understanding of the statute comports with the broader statutory scheme, considers the entire structure of the net metering statutes, and effectuates the goals of the legislature.

The AG points out that the legislature intended to encourage the development of distributed generation, *see* Pub. Act 99-0906 § 1(a)(1) (2016), and required delivery net metering to grow the industry. The legislature intended for the subsidy to expire when the industry matured, and distributed generation customer generation reached 5% of the total peak demand delivered by a utility during the previous year.

As an alternative, the AG maintains that the Commission should, at a minimum, conclude that the ALJ Ruling properly excluded the generation of RES supplied distributed generation customers in the numerator. If the word "supplied" in Section 16-107.5(j) is treated as if it is the noun electricity supply, this will match the numerator and denominator by excluding RES supplied customers from the total peak demand in the denominator. But if the numerator was simultaneously given its plain meaning, then the generation of both Ameren and RES supplied distributed generation customers would be included in the numerator.

In response to other parties, the AG recommends that the Commission adopt the Joint NGOs' methodology because its utilization prevents a series of possible implementation issues. The AG notes that Ameren raises a series of issues that may arise if the interpretation from the ALJ Ruling is adopted and the generation of distributed generation customers receiving supply from RESs is removed from the numerator. The Joint NGOs' methodology avoids these questions. By including the generation of both RES and utility default supply distributed generation customers in the numerator and including the total peak demand of both types of customers in the denominator, the Commission would eliminate any possible stray net metering customers. All individuals receiving delivery net metering service from Ameren would be considered net metering customers of Ameren. For the same reason, this interpretation also avoids the issue of RESs possibly having to notify the Commission pursuant to Section 16-107.6(e) when they hit the 3% threshold. The Commission should adopt the Joint NGOs' methodology interpretation because it comports with the statutory scheme, effectuates the legislature's intent, and prevents unintended consequences from arising.

The AG further notes that Ameren argues that the Commission should not amend Rider NM because parties in this case could have raised challenges with the Commission regarding the threshold date methodology much earlier. The parties' delay in challenging Rider NM has no effect on the validity of tariff. When "an administrative rule conflicts with the statute under which it was adopted, the rule is invalid." *Hadley v. Ill. Dep't of Corr*., 224 Ill. 2d 365, 385 (2007). If the Commission decides that the tariff violates Section 16-107.5(j), then no amount of delay would prevent the rule from being invalid.

Moreover, the AG argues that validity of Rider NM was not ripe for review until Ameren informed the Commission that it had reached the 3% threshold. The ripeness doctrine commands that courts "may rule only where an 'actual controversy' is presented" and must consider "the fitness of the issues for judicial decision and the hardship to the parties of withholding court consideration." *Big River Zinc Corp. v. Ill. Commerce Comm'n*, 597 N.E.2d 34, 38-39 (5th Dist. 1992).

The AG also notes that Ameren points out that there is a cost associated with delivery net metering and argues that ending it early under its interpretation of the law will save non-DG customers approximately $1.44 million over 22 months, compared to the

end date if the Joint NGOs' methodology is used. The AG says that, in context, a simple average of these costs indicates an annual cost of $785,454, compared to Ameren's delivery services revenue requirement of $1,009,912 for 2020. *Ameren Ill. Co. d/b/a Ameren Ill.*, Docket No. 19-0426, Order at App. A, Summary (Dec. 16, 2019). This represents 0.078% of Ameren's annual revenues, although the percentage will increase if Ameren's annual revenue requirement decreases. This small incremental cost is not a reason to prematurely end delivery service net metering.

Ameren also argues that it estimates that the cost of the solar rebate will be significantly lower than the delivery net metering cost over the next 25 years. While a savings for consumers is always welcome, the annual impact of this specific cost is small when compared to Ameren's overall revenue requirement. Further, the reduction in cost due to Ameren's anticipated rebate amount compared to delivery net metering means that consumers considering whether to invest in DG on their premises will have substantially less money available to make the project economically rational. The relatively small revenue effect of using the Joint NGOs' methodology on Ameren's revenues should not prevent the Commission from adopting a calculation that accurately represents the percentage of distributed generation that receives Ameren delivery netting and that is consistent with and furthers the statutory scheme.

V. STAFF'S POSITION

Staff observes that Section 16-107.6(e) of the Act directs the Commission to investigate and establish a process to set distributed generation rebates "[w]hen the total generating capacity of the electricity provider's net metering customers is equal to 3%[.]" 220 ILCS 5/16-107.6(e). Staff further notes that Section16-107.5(j) provides that "[a]n electricity provider shall provide net metering to eligible customers until the load of its net metering customers equals 5% of the total peak demand supplied by that electricity provider during the previous year[,]" at which point, "eligible customers that begin taking net metering shall only be eligible for netting of energy." 220 ILCS 5/16-107.5(j). Staff states that this proceeding, therefore, presents the Commission with the question of how to construe these provisions.

In Staff's view, this analysis is materially assisted by the fact that "electricity provider" is a term which the General Assembly has specifically defined to mean "an electric utility or alternative retail electric supplier." 220 ILCS 5/16-107.5(b)(iii). Staff further notes that "net metering" also is defined by statute, and "means the measurement, during the billing period applicable to an eligible customer, of the net amount of electricity supplied by an electricity provider to the customer's premises or provided to the electricity provider by the customer or subscriber[.]" 220 ILCS 5/16-107.5(b)(iii).

Staff observes that it is well settled that the interpretation or construction of statutes is a question of law, to be decided by the court or tribunal. *See, e.g., Matsuda v. Cook Cty. Employees and Officers Annuity and Benefit Fund*, 178 Ill. 2d 360, 364 (1997); *Bruso v. Alexian Bros. Hosp.*, 178 Ill. 2d 445, 452 (1997). Staff further notes that the primary rule of statutory construction is to give effect to the legislature's intent in enacting the statute. *Skaperdas v. Cty. Casualty Ins. Co*., 2015 IL 117021, ¶15 (2015); Bruso, 178 Ill. 2d at 451.

According to Staff, legislative intent should be sought primarily from the language of the statute, since the language of the statute is the best evidence of legislative intent, *Bruso*, 178 Ill. 2d at 451, and provides the best means of deciphering it. *Matsuda*, 178 Ill. 2d at 365. Staff points out that statutes must be construed as a whole, and the court or tribunal must consider each part or section in connection with the remainder of the statute. *Bruso,* 178 Ill. at 451-52.

Staff explains that the legislature's intent can be determined from the plain language of the statute, that intent must be given effect, without further resort to other aids to statutory construction, *Id.* at 452, and thus, the threshold task for a court or tribunal in construing a statute is to examine the terms of the statute. *Toys "R" Us v. Adelman*, 215 Ill. App. 3d 561, 568 (3rd Dist. 1991). Further, a court or tribunal may resort to so-called extrinsic aids to construction, such as legislative history, only if it determines that a statute is ambiguous. *Kozak v. Chicago Firemens' Ret. Bd.*, 95 Ill. 2d 211, 219 (1983).

Staff notes that in interpreting a statute, the statutory language must be given its plain and obvious meaning. *Hartney Fuel Oil Co. v. Hamer*, 2013 IL 115130 ¶25. Staff points to one significant exception to this general rule, which is that, where a statute defines specific terms, those terms must be used as defined in applying the statute. *Robbins v. Carbondale Police Pension Bd*., 177 Ill. 2d 533, 541 (1997). Where statutory language is unambiguous, Staff avers that courts may not read exceptions, limitations or conditions into it. *People v. Fort*, 2017 IL 118966, ¶20. Staff notes that the U.S. Supreme Court has stated that where the plain language of a statute is unambiguous, a court's inquiry begins with the text, and ends with it as well. *Nat'l Ass'n of Manufacturers v. Dept. of Defense, -- U.S. --,* 138 S. Ct. 617, 631 (2018).

Staff argues that the ALJ Ruling in Docket No. 20-0839 is inconsistent with these principles and should be rejected. In Staff's view, the central flaw in the ALJ Ruling is its finding that "[i]n order to be an 'electricity provider' for a customer, Ameren must actually be providing electricity to that customer[.]" ALJ Ruling at 3. In Staff's view, this is the finding from which the ALJ Ruling's other defects flow and it is readily demonstrated to be fundamentally wrong.

Staff first notes that the two statutory provisions in question make no reference – none – to an electric supplier's supply customers. Instead, each provision refers to "the electricity provider's net metering customers[,]" 220 ILCS 5/16-107.6(e), and to "[a]n electricity provider['s] ... net metering customers[.]" 220 ILCS 5/16-107.5(j). Staff argues that this refers not to supply customers but rather to net metering customers. In other words, this provision refers to customers that take net metering from that electricity provider, not those that take supply from that electricity provider. Accordingly, in Staff's view, to read the provision as the ALJ Ruling does would require the Commission read language into the statute that does not exist, in violation of the rule of statutory construction which states that a court or tribunal may not "rewrite a statute, and depart from its plain language, by reading into it exceptions, limitations or conditions not expressed by the legislature." *Ravenswood Disposal Services v. Workers' Compensation Comm'n*, 2019 IL App (1st) 181449WC, ¶22, quoting *People ex rel. Birkett v. Dockery*, 235 Ill. 2d 73 (2009). Staff argues that the statutory term "net metering customer" means 'net metering customer,' and nothing else.

Staff also argues, its interpretation resolves the problem without injecting unnecessary complexity into it. Staff notes that no entity in this scenario but Ameren actually provides net metering service. 220 ILCS 16-107.5(b). Staff further notes that such a conclusion also obviates any need to concern oneself with net metering investigations of RESs, which do not provision net metering. In Staff's view, adopting the calculation prescribed by the ALJ Ruling would require individual net metering capacity calculations for each electricity provider, including RESs. Staff Ex. 1.0 at 6. However, Staff considers that such a RES-by-RES calculations is not necessary when adopting Ameren's calculation. *Id*. In fact, notes Staff, Rider NM states that "when the aggregate generation nameplate capacity for all Customers receiving service under this Rider is less than 5% of the total peak demand supplied by the Company during the previous year […]," and that Rider NM "is available to Customers receiving power and energy from the Company or a Retail Electric Supplier (RES), that are considered an Eligible Customer as defined in Subsection 220 ILCS 5/16-107.5(b)(ii) of the Public Utilities Act (Act), or a Subscriber as defined in 20 ILCS 3855/1-10 of a project that falls within the parameters specified in Subsection 16-107.5(l) of the Act." *Id*. By rejecting the ALJ Ruling, Staff argues that the Commission can eliminate the need for this counter-statutory undertaking. If logic and consistency between statutory provisions is sought – as it must be, *Bruso*, 178 Ill. 2d at 451-452 – a reading consistent with Rider NM resolves several problems as well as construing the statute properly.

In Staff's view, the extent of retail switching is not a concern. Staff considers it fair to say that the denominator of those calculations is driven by Ameren supply customer's load. Staff Ex. 1.0 at 7. However, Staff notes that the calculation flowing from the ALJ Ruling is no less cumbersome than implementing the calculation currently found in Rider NM. *Id*. Staff observes that there are numerous challenges, difficulties and practical concerns associated with implementing the ALJ Ruling. *Id*. While Staff notes that the calculated net metering capacity percentage under Rider NM is affected by changes in the mix between RES-supplied customers and default supply customers, the complexities of establishing and calculating constantly-changing net metering capacity percentages for each RES with net metering customers that is implied by adopting the ALJ Ruling, appears to be a much larger concern. *Id*.

In the event the Commission does not concur in Staff's statutory interpretation, Staff urges the Commission to adopt the calculation proposed by Joint NGO witness Kenworthy, with one modification. *See* Staff Ex. 1.0 at 3; Joint NGO Ex. 1.0 at 15. Staff further notes that the Joint NGOs' methodology improperly excludes community solar customers from the calculation. Staff Ex. 1.0 at 3. Staff argues that community solar subscribers and projects must be included in the calculation, as community solar customers are net metering customers under the statute. Staff asserts that pursuant to Section 16-107.5, Ameren is required to provide net metering to "a[ny] community-owned solar project[,]" or indeed any community-owned wind, biomass or methane digester project, "[n]otwithstanding the definition of 'eligible customer'" provided for by statute. 220 ILCS 5/16-107.5(l)(1)(A). Likewise, Ameren is required to provide net metering to "subscriptions to community renewable generation projects[,] " again "[n]otwithstanding the definition of 'eligible customer[.]'" 220 ILCS 5/16-107.5(l)(1)(C).

In other words, according to Staff, community solar projects and subscribers are lawfully taking net metering service from Ameren and are "[Ameren's] net metering customers" for purposes of the 3% and 5% calculations. In Staff's view, excluding community solar projects from the calculation is contrary to the statute, and such projects must be included.

Staff contends there is little cause for concern that the Commission will be required to conduct a Section 16-107.6(e) investigation of individual RESs, as Ameren asserts. Staff notes that Section 16-107.6 of the Act requires electric utilities in Illinois that serve more than 200,000 customers to file petitions with the Commission requesting approval of the tariffs that provide a rebate to a retail customer who owns or operates distributed generation. 220 ILCS 5/16-107.6(b). Staff further notes that Section 16-107.6 provides that, when the total generating capacity of the electricity provider's net metering customers is equal to 3%, the Commission shall open an investigation into an annual process and formula for calculating the value of rebates for customers that submit rebate applications after the threshold date for an electric utility that elected to file a tariff pursuant to Section 16-107.6. 220 ILCS 5/16-107.6(e).

Staff is cognizant that a number of factors affect the economics of installing and operating distributed generation systems and does not doubt that there are some, or potentially even many, distributed generation projects that become economical only when they receive delivery service netting for excess generation pushed to the grid. Staff Ex. 1.0 at 7-8. In Staff's view, the availability of delivery service netting for excess generation alone may not be a material factor when estimating the economics of installing a distributed generation project, but it may well be an important factor in such a calculation. *Id*.

Staff notes that the AG argues that the Commission can require a utility to alter previously-approved tariffs after notice and hearing. The statute is clear. Section 9-201(b) of the Act provides that the Commission possesses "the power …, after a hearing had on its own motion or upon complaint, as herein provided, to alter or modify [a filed tariff]." 220 ILCS 5/9-201(b); *cf.* 220 ILCS 10-101 (Commission has the authority to convene hearings upon matters arising under the Act). Staff agrees that a hearing of some sort is required.

Staff also notes that Ameren asserts that Staff has confirmed in its Docket No. 20-0389 audit report that Ameren's calculation under Rider NM was correct. To be clear, Staff's audit did not address the question of whether Ameren's Rider NM correctly implements the statute. The Staff audit did three things: (1) reviewed the data upon which Ameren relied; (2) made certain that Ameren's methodology was as prescribed by the current Rider NM; and (3) made certain that Ameren's calculations were mathematically correct. Nothing beyond that should be concluded from Staff's audit.

VI. JNGOs' POSITION

The Joint NGOs assert that Rider NM is not reasonable and leads to results that directly conflict with the legislature's intent. The intent of FEJA, which amended Section 16-107.5 and added Section 16-107.6 to the Act, was clear: to expand and support the growth of renewable energy. Section 1(a)(i) of FEJA finds that:

> [T]he State should encourage: the adoption and deployment of cost-effective distributed energy resource technologies and devices, such as photovoltaics, which can encourage private investment in renewable energy resources, stimulate economic growth, enhance the continued diversification of Illinois' energy resource mix, and protect the Illinois environment; investment in renewable energy resources, including, but not limited to, photovoltaic distributed generation, which should benefit all citizens of the State, including low-income households.

Public Act 99-0906, Section 1(a)(1) ("Findings").

The Joint NGOs note that the overarching clean energy goal of FEJA—which expanded the Illinois Renewable Portfolio Standard, created a new Adjustable Block Program, a new Long-Term Renewable Resources Plan, a new community solar program, a new low-income solar program, new competitive procurement events for large quantities of utility-scale wind and solar projects, and a process for value-based compensation for distributed generation following the end of net metering—is evident from the entirety of the statute. *Commonwealth Edison Co. v. Ill. Commerce Comm'n*, 2019 IL App 2d 180504, ¶ 55. The Joint NGOs explain that Ameren's Rider NM - which has the potential to create absurd results such as a distributed generation penetration of greater than 100%; shrinks the Company's net metering program; and moves the Company from the 3% trigger to the 5% threshold in a matter of months - cannot reasonably be squared with the legislature's intent and is therefore itself unreasonable.

According to the Joint NGOs, the fundamental flaw in Ameren's calculation is that its numerator and denominator are mismatched. The numerator reflects Ameren's function as the distribution utility and therefore counts all distributed generation customers receiving delivery service netting from Ameren. The denominator, on the other hand, reflects only Ameren's function as the default supplier and therefore counts distributed generation customers receiving supply netting from Ameren, but excludes customers receiving supply from a RES. As a direct result of this mismatch, whereas any utility's distributed generation penetration should not and cannot logically exceed 100% (complete saturation of distributed generation on a distribution grid), Ameren's distributed generation penetration could in theory be greater than 100%. The Joint NGOs further explain that Ameren's calculation has the effect of "double-counting" RES-supplied customers, because those customers are counted in the numerator but the load associated with those same customers is not counted in the denominator.

The Joint NGOs note that Ameren claimed that it reached its 5% threshold when it reached only 101.3 MW of net metered capacity out of its overall delivery load of 7220 MW. In other words, even though only 1.4% of Ameren's delivery service load receives delivery service netting, Ameren asserts that it has surpassed the 5% threshold which cues the end of delivery service netting. The Joint NGOs argue that not only does this undermine Ameren's own net metering program, but by excluding RES-supplied customers from the denominator, Ameren artificially and prematurely cuts off the benefit of delivery service netting for its customers taking supply service from a RES.

The Joint NGOs explain further that the structural flaw inherent to Ameren's calculation becomes glaringly evident as more customers take service from RESs. Ameren reports a higher percentage of net metering customers as more of its default supply customers switch to RES supply, which means that Ameren's net metering percentage increases as its actual net metering supply customers decrease. According to the Joint NGOs, Ameren's calculation is therefore uniquely subject to the vicissitudes of the retail electric supply market in Illinois, and leads to volatile results that are subject to rapid change based on a market phenomenon (relative shares of Ameren customers taking supply from a RES) that has nothing to do with the impacts of increasing distributed generation on the distribution grid.

The Joint NGOs assert that this unstable result is at odds with FEJA, which aimed to create stability, and not volatility, in the distributed generation market. One of the major changes that FEJA made was to eliminate the Renewable Portfolio Standard budget and target uncertainty caused by retail switching. 20 ILCS 3855/1-75(c)(1)(B). The Joint NGOs claim that this indicates the legislature's intent to provide certainty and expand the amount of distributed generation, not remove certainty and shrink solar. *See also* 20 ILCS 3855/1-75(c)(1)(K) (indicating intent of the adjustable block program to "enable the photovoltaic market to scale up and for renewable energy credit prices to adjust at a predictable rate over time"). The Joint NGOs argue that the Commission should interpret Section 16-107.5 (j) in a manner that does not result in the very type of bad outcome the statute sought to remedy, and suggest that if Ameren included its total delivery service peak load in the denominator, it would largely remove both the uncertainty and the absurd results created by its current approach because the Company's distributed generation penetration would no longer be affected by its customers' decisions to switch to RES supply.

The Joint NGOs note that while Ameren ignores the absurd results associated with excluding RES-supplied customers from the denominator, it nevertheless deviates from a strict reading of Section 16-107.5 (j) in other instances to avoid absurd or inconvenient results. For instance, the Joint NGOs point out, Section 16-107.5 (j) describes the denominator as the total peak demand supplied by the electricity provider during the previous year. Ameren supplies not only its delivery service customers, but also supplies wholesale load—its "total peak demand" therefore includes both its delivery service peak load (supplied by Ameren and RESs) as well as its wholesale load. However, Ameren clarified that its wholesale load includes customers that are not the Company's retail delivery service customers, nor are they eligible to be net metering customers of either Ameren or any RES. Thus, Ameren explained that the inclusion of wholesale peak demand in the denominator "would not be inappropriate." The Joint NGOs agree that, based on the Company's clarification, reading "total peak demand supplied by [the] electricity provider during the previous year" to include wholesale demand would create an inappropriate result, and therefore, notwithstanding the statute's express call to use "total peak demand," the denominator of the distributed generation penetration calculation should include only delivery service load at system peak. Similarly, the Joint NGOs point out that Section 16-107.5 (j) describes the numerator of the 5% threshold calculation as the "load of the [electricity provider's] net metering customers." But the statute does not define "load." Joint NGO witness Kenworthy explains that "load" can generally mean one of two things: the quantity of energy (kWh) delivered to a customer over some interval of

time, or the demand (kW) of a customer. But, as Mr. Kenworthy further explains, it is not practical or logical to use either of those two common definitions of "load" in a distributed generation penetration calculation, because doing so would require assumptions regarding the capacity factor associated with distributed generation systems, utility metering of distributed generation systems, and/or a study of data from customer meters. As such, Joint NGO witness Kenworthy explains that it is much more practical to resolve the ambiguity in the statute by using "installed nameplate generating capacity" in the numerator, which refers to a readily determined physical characteristic of a distributed generation system. Even though "load" and "installed nameplate generating capacity" are distinct concepts and not even necessarily related, using "installed nameplate generating capacity" instead of load in the numerator avoids absurd and inconvenient results. According to the Joint NGOs, Ameren appears to agree that resolving the ambiguity in the term "load" by using "installed nameplate generating capacity" so as to avoid absurd results is "appropriate." Whereas Section 16-107.5 (j) expressly calls for "load" in the numerator of the 5% threshold, the Company agrees that it is appropriate to use nameplate generation capacity for the purposes of the numerator of the 5% threshold.

The Joint NGOs assert that in each of these instances, the Company departs from the express language of the statute to avoid inappropriate, absurd and inconvenient results. Yet, when it comes to the exclusion of RES-supplied customers from the denominator, the Company ignores the absurd consequences that result from its interpretation of the statute. Rider NM, therefore, does not reflect reasonable statutory construction - rather, it reflects cherry-picking. The Joint NGOs argue that the Commission should view this approach with skepticism and instead resolve the several ambiguities in both components of the statute (numerator and denominator) in a manner that makes sense, takes into account the consequences of construing the statute one way or the other, and avoids absurdity and inconvenience. *See People ex rel. Sherman v. Cryns*, 203 Ill. 2d 264, 280 (2003); *Nowak v. City of Country Club Hills*, 2011 IL 111838, ¶ 12-13.

In the numerator, the Joint NGOs point out that Ameren interprets Section 16-107.5 (j)'s reference to the electricity provider's "net metering customers" as including all customers taking service under Rider NM. That reading would include both RES-supplied distributed generation customers, as well as community solar project capacity in the numerator. According to the Joint NGOs, by including RES-supplied distributed generation customers in the numerator, but not in the denominator, Joint NGOs claim that Ameren creates an "apples-to-oranges" comparison, which results in structural defects. While the Joint NGOs' methodology does in fact include RES-supplied distributed generation customers in the numerator, it also includes the load associated with those customers in the denominator, allowing for an "apples-to-apples" ratio that Staff witness Clausen agrees "makes sense", and does not feature the structural instability inherent in Ameren's calculation. The Joint NGOs state that to the extent a distributed generation penetration calculation excludes any customer's load from the denominator, it should also exclude that customer's distributed generation capacity from the numerator in order to maintain structural stability and avoid absurd results (the Joint NGOs note that their proposal and the ALJ Ruling in fact achieve this outcome).

Second, whether or not the distributed generation penetration numerator includes RES-supplied customers, the Joint NGOs assert that it is not reasonable for the numerator to include community solar project subscribers among net metering customers. The mere fact that Ameren has chosen to serve its default-supply customers, RES-supplied customers, and community solar subscribers through Rider NM should not, according to the Joint NGOs, persuade this Commission that all of those disparate groups are in fact "net metering customers" under the Act, and it certainly does not mean that each of those groups of customers receives the same type of net metering service. In fact, the Joint NGOs note, the statute consistently and clearly distinguishes "net metering customers"—who have received retail net metering services since 2008—from community solar project "subscribers"—who have been eligible for "supply-netting" since 2016. Section 16-107.5(b)(v) of the statute for instance, defines "net metering" as follows: "the measurement, during the billing period applicable to an eligible customer, of the net amount of electricity supplied by an electricity provider to the customer's premises or provided to the electricity provider by the customer or subscriber." 220 ILCS 5/16-107.5(b)(v). The Joint NGOs argue that this definition clearly distinguishes between net metering customers and community solar subscribers, using both terms in the same sentence. Further emphasizing the difference between net metering customers and community solar subscribers, Section 16-107.5(b)(v) refers to electricity supplied to customer's premises, but makes no corresponding reference to subscribers' premises (which, according to the Joint NGOs, makes sense because community solar does not provide electricity directly to a subscriber's premises, whereas net metering customers receive electricity directly from solar panels). The statute makes other distinctions between net metering customers and community solar subscribers. For example, subsection 16-107.5 (n), which describes the loss of "net metering services" for traditional net metering customers, states:

> (n) At such time, if any, that the load of the electricity provider's net metering customers equals 5% of the total peak demand supplied by that electricity provider during the previous year, as specified in subsection (j) of this Section, the net metering services described in subsections (d), (d-5), (e), (e-5), and (f) of this Section shall no longer be offered ….

220 ILCS 5/16-107.5(n). Joint NGOs state that it is clear that the "net metering services" described in "subsections (d), (d-5), (e), (e-5), and (f)" apply only to traditional net metering customers that operate behind-the-meter distributed generation (i.e. "eligible customers" as defined in 220 ILCS 5/16-107.5 (b)(ii)) and not to community solar subscribers. Net metering for community solar subscribers is described in an entirely different statutory section - 220 ILCS 5/16-107.5 (l)(3)(A).

Furthermore, according to the Joint NGOs, community solar subscribers lose nothing when the 5% threshold is reached. They continue to receive the supply netting services described in subsection 16-107.5 (l)(3)(A) and are not affected by the loss of "net metering services described in subsections (d), (d-5), (e), (e-5), and (f)." They never had access to those services in the first place. Thus, the Joint NGOs argue that it makes little sense to interpret "net metering customers" as including community solar subscribers for the purposes of determining the threshold that will result in the loss of the "net metering

services" described in subsection (n), when those net metering services do not even apply to community solar subscribers. Joint NGOs state that Ameren's inclusion of subscribed community solar capacity in the numerator is therefore not only inconsistent with the statute when read as a whole, but also illogical.

The Joint NGOs note that Ameren suggests that the Commission should consider the cost associated with extending delivery service netting in reaching a decision here. Ameren speculates that the costs associated with incremental rebates would be lower than the costs associated with extending delivery service netting. While the answer to the legal question at issue in this investigation necessarily affects whether or not delivery service netting will be restored to Ameren's customers, the Commission is not faced with a policy question of whether to extend delivery service netting as Ameren suggests. Ameren is required, by law, to provide delivery service netting to its distributed generation customers until it reaches the 5% threshold (calculated in a lawful manner). 220 ILCS 5/16-107.5(j). In interpreting Section 16-107.5(j), the Joint NGOs state that it is inappropriate and unnecessary for this Commission to conduct the balancing that Ameren proposes and to compare the purported costs of extending delivery service netting to the purported costs of a successor rebate.

Further, even assuming arguendo that it is appropriate for the Commission to consider the cost impacts of its legal interpretation, and assuming arguendo that Ameren's math is accurate (which Joint NGOs do not concede), Ameren's analysis is incomplete and therefore misleading. Ameren compares the costs associated with delivery service netting to the costs associated with rebates, but entirely ignores the benefits that distributed generation customers provide to all Ameren delivery service customers. Joint NGO Ex. 2.0 at 2. A more appropriate balancing exercise would compare the value (benefits net of costs) of delivery service netting to the value of successor rebates. In fact, the statutory scheme anticipates the Commission addressing this important and highly complex question as a part of its investigation under Section 16-107.6 (e) of the Act. And the Commission is currently considering this very question in Docket No. 20-0389. It is entirely possible that in that docket, the Commission could determine that the benefits of delivery service netting outweigh its costs and that therefore delivery service netting undercompensates distributed generation customers. Joint NGO Ex. 2.0 at 2. In that scenario, the Commission would establish rebates that are more valuable than delivery service netting. Ameren's analysis is therefore not only irrelevant to the Commission's decision in this investigation, it also prematurely prejudges the Commission's separate investigation into rebate values. The Commission should reject Ameren's flawed analysis and should not consider the purported costs to customers in reaching a decision here.

The Joint NGOs remind the Commission that Rider NM has already resulted in circumstances that are out of step with the statutory scheme and currently causing harm to both Ameren customers and the solar industry in Illinois. The statutory scheme anticipates the Commission initiating an investigation into a methodology for calculating rebate values when a utility hits its 3% threshold and completing that investigation before the utility hits its 5% threshold, such that rebates are available to compensate distributed generation customers by the time delivery service netting is no longer available. By application of Rider NM, Ameren sped from the 3% trigger in April 2020 to the 5%

threshold in October 2020, leaving the Commission just six months to complete the investigation required by Section 16-107.6 (e) of the Act. But that investigation is a complex inquiry into a value-based rebate, which involves a lot of work—including assembling "diverse sets of stakeholders," evaluating "calculations for valuing distributed energy resource benefits to the grid based on best practices" and assessing "present and future technological capabilities of distributed energy resources." 220 ILCS 5/16-107.6(e). As such, while the Commission managed to convene a handful of workshops during the summer of 2020, and while parties filed direct testimony in October 2020, Ameren was still approximately a year away from making rebate values available to customers by the time it hit the 5% threshold (on October 2, 2020). This means that as a direct result of Rider NM, Ameren has allowed its residential customers to fall into a gap. Those customers would not have access to delivery service netting if they decided to install distributed generation, nor would they have ready access to a rebate intended to replace delivery service netting.

In direct contrast with Rider NM, the Joint NGOs argue that their proposal effectuates the legislature's intent. The Joint NGOs' methodology includes the installed nameplate generating capacity of all Ameren distributed generation customers receiving delivery service netting in the numerator, while excluding the capacity associated with community solar project subscribers (who do not receive delivery service netting). The Joint NGOs' methodology includes the load at system peak of all Ameren delivery service customers—including RES-supplied customers—in the denominator, which Staff witness Clausen agrees "makes sense." Taken as a whole, according to the Joint NGOs, their proposal resolves the several ambiguities in Section 16-107.5(j) in a way that is sensible and reasonable. Unlike Ameren's proposal, the Joint NGOs state that their proposal: 1) results in an "apples-to-apples" comparison that reflects Ameren's role as the distribution utility in both the numerator and denominator; 2) results in a meaningful output (distributed generation penetration) that cannot exceed 100%; 3) results in a stable output that is not subject to rapid changes based on a market phenomenon (retail switching) that has nothing to do with the impacts of distributed generation on the distribution grid; and 4) creates a window of 145 MW between Ameren's 3% trigger and the 5% threshold, which, all else equal, would give the Commission more than the mere six months available under Rider NM (which created a window of 39 MW) to carry out the investigation required by Section 16-107.6(e).

The Joint NGOs state that not only is their proposal a sensible way to effectuate the legislature's intent, but by including all delivery service customers in both the numerator and denominator, it would also avoid the several "practical concerns" that Ameren claims that the Commission must address if the Company and any RES were considered as separate "electricity providers." The Joint NGOs argue further that while the language of Section 16-107.5(j) is ambiguous and allows more than one interpretation, their interpretation resolves the ambiguity in the statute in a manner that is reasonable, logical, avoids absurd results, and is consistent with the goals embedded in FEJA. *See Crossroads Ford Truck Sales, Inc. v. Sterling Truck Corp*., 2011 IL 111611, ¶ 45 (to determine the legislature's intent, a court may properly consider the goals to be achieved).

The Joint NGOs note that Ameren asserts that adequate time should be allowed to further investigate and develop a revised tariff that can be implemented without undue burden on or adverse consequences for Ameren, its customers and the Commission. While the Joint NGOs share Ameren's desire for a tariff that does not cause undue burden or adverse consequences on the Company, its customers, or the Commission, Ameren's argument manufactures burden and adversity. As the Joint NGOs explain, their proposal entirely avoids the purported "practical concerns" associated with the ALJ Ruling. And even if the Commission were to adopt the ALJ Ruling, Ameren exaggerates the challenges associated with that calculation. While Ameren points to Joint NGO witness Kenworthy's testimony to support the proposition that the ALJ Ruling would be "subject to the vicissitudes of the retail electric supply market in Illinois" (Ameren Init. Br. at 30), Mr. Kenworthy's testimony makes clear that the ALJ Ruling would be affected by the rate and direction of retail switching "to a far less extent" than Ameren's calculation. Joint NGO Ex. 1.0 at 22. Further, as several parties have pointed out, the practical implications associated with several possible interpretations of Section 16-107.5(j) have now been thoroughly litigated, and those implications form the very subject of this investigation. Should the Commission determine that Rider NM does not comply with the law, therefore, the Commission should not expend any additional resources on any further investigation into a lawful calculation methodology.

VII. JSPs' POSITION

The JSPs support the calculation methodology determined by the ALJ in the ALJ Ruling in Docket No. 20-0389. The ALJ Ruling is a reasonable interpretation of the statute and results in an "apples-to-apples" comparison in the numerator and denominator.

The JSPs note that Ameren purports to implement Section 16-107.5(j) with the following language in Ameren's Rider NM:

> After the aggregate generation nameplate capacity for Customers receiving service under this Rider equals or exceeds 5% of the total peak demand supplied by the Company during the previous year,

Similar language describing this calculation appears in several places in Rider NM. As indicated by the phrase "aggregate generation nameplate capacity" in Rider NM, Ameren interprets the statute's reference to "the load of its net metering customers" to refer to the nameplate capacity of net metering customers' distributed generation systems. The JSPs agree that the numerator of the calculation should reflect the total nameplate capacity of net metering customers' distributed generation systems, and not customer load.

To determine the correct numerator then, the JSPs explain that Commission must determine which net metering customers should be counted under the statute. Because Section 16-107.5(j) applies to "an electricity provider," the ALJ Ruling reasoned, "In order to be an 'electricity provider' for a customer, Ameren must actually be providing electricity to that customer." ALJ Ruling at 3. Accordingly, the ALJ Ruling held that customers that are not on Ameren supply (i.e., competitively supplied customers) should be excluded from both the numerator and the denominator of the calculation.

The JSPs maintain that the ALJ Ruling results in an "apples-to-apples" comparison. That is, only Ameren supply customers with distributed generation are counted in the numerator and only Ameren supply customers are counted in the denominator. The ALJ methodology divides all customers that receive supply netting from Ameren in the numerator by all customers that are eligible to receive supply netting from Ameren in the denominator. According to the JSPs, the methodology is therefore internally consistent and reflects the net metering penetration level of Ameren's supply customers.

Though Ameren contends that "net metering customers" means all customers on Rider NM, the JSPs explain that competitively supplied customers receive a different type of service from Ameren supply customers under Rider NM. The difference in these types of service provided under Rider NM is based on the distinction between Ameren's functions as the local electric utility and its functions as an electricity provider – the same distinction on which the ALJ Ruling focused. Specifically, under Rider NM, the JSPs explain, Ameren nets energy supply credits only for Ameren supply customers, whereas each competitive supplier provides supply netting to its own customers. Rider NM describes this arrangement in several different places in the tariff, and in each case the tariff is clear that Ameren does not always function as the "electricity provider" that provides energy supply credits. For example, Rider NM states:

> If the amount of electricity produced by a Customer's [distributed generation facility] during the Billing Period exceeds the amount of electricity used by the Customer during the Billing Period, the Customer shall receive a kilowatt-hour credit from the EP [Electricity Provider] equal to the net amount of electricity supplied by the Customer during the Billing Period. The Customer shall receive a Delivery Service credit from the Company [Ameren] equal to the net amount of electricity supplied.

Ill. C. C. No. 1, 5th Rev. Sheet No. 24.006. According to the JSPs, Ameren only functions as an electricity provider when it provides energy supply credits to Ameren supply customers under the terms of Rider NM. The statutory definition of "net electricity metering" refers to the "net amount of electricity supplied by an electricity provider." Taking this definition and the tariff language together, the Commission should find that competitively supplied customers are not "net metering customers" for purposes of Section 16-107.6(e), regardless of the fact that Rider NM governs their terms of service. The JSPs recommend that the Commission reject Ameren's attempt to categorize all customers taking service under Rider NM as net metering customers.

Much has been said in this docket and in Docket No. 20-0389 regarding the implications for competitive suppliers of adopting the ALJ Ruling. For example, Ameren has argued that adopting the ALJ Ruling could create situations in which multiple competitive suppliers would trigger multiple investigations when they reach the 3% threshold and a single competitive supplier reaching 5% would trigger the end of delivery netting for Ameren's entire service territory, or potentially the entire state. The Commission should disregard Ameren's arguments, which are based on strained hypotheticals and the flawed assumption that the General Assembly could have intended

the complex implications that Ameren believes would result from adopting the ALJ Ruling – none of which are congruent with the broader statutory scheme. For example, as Staff witness Clausen points out, "the Commission cannot open an investigation into each RES distributed generation rebate tariff when each competitive supplier meets the 3% threshold because Ameren and ComEd are the only electric providers required to provide for such tariffs." It also makes little sense to think that a single competitive supplier reaching 5% would trigger the end of delivery netting for Ameren's entire service territory or even the entire state, as Ameren suggests. The JSPs recommend that the Commission should follow the Act and not be swayed to adopt Ameren's unreasonable methodology under the specter of the absurd results Ameren lists.

As discussed, the JSPs support the ALJ Ruling; however, the JSPs continue to believe that the methodology they recommended in their Motion to Dismiss in Docket No. 20-0389 is also reasonable and consistent with the Act.

The JSPs originally recommended that the 3% and 5% thresholds be calculated by dividing the total nameplate capacity of all net metering customers' distributed generation systems in the numerator (including both competitively supplied and bundled customers) by Ameren's total system peak demand (including both competitively supplied and bundled customers) in the denominator. Whereas the ALJ Ruling focuses only on supply customers, this methodology focuses on delivery customers. Specifically, this methodology divides all customers that receive delivery netting from Ameren in the numerator by all customers that are eligible to receive delivery netting from Ameren in the denominator.

The JSPs state that community solar subscribers do not receive delivery netting, so the capacity of community solar systems should be excluded from the numerator of this calculation to ensure it is an "apples-to-apples" comparison. Because they do not receive delivery netting, the JSPs state that the 5% threshold also has no implications for community solar subscribers, so it makes sense to exclude them from the calculation that determines when delivery netting will no longer be available. However, if the Commission adopts this methodology and includes the subscribed capacity of community solar systems in the numerator based on the statutory definition of "eligible customer" in Section 16-107.5(l)(1), the JSPs would not object.

The primary reason, according to the JSPs, that it makes sense to calculate net metering penetration based on Ameren's delivery customers is that the purpose of the 5% threshold calculation is to determine when delivery netting will no longer be available. The investigation that must commence when Ameren reaches the 3% threshold will determine the value that distributed generation provides "to the distribution system." Ameren's distribution system serves all delivery customers, not just Ameren supply customers, so it makes sense to account for all delivery customers in the denominator. Also, because all commercial delivery customers (competitively supplied and bundled) are eligible for the existing $250/kW distributed generation rebate, and all delivery customers (competitively supplied and bundled) will be eligible for the replacement rebate when it is determined pursuant to Section 16-107.6(e), it makes sense to count all delivery customers in both the numerator and the denominator.

Finally, adopting this methodology would also avoid the implications that Ameren argues will arise from adopting the ALJ Ruling. The JSPs recommend that the Commission disregard these arguments because the results Ameren points to are absurd and inconsistent with the overall statutory scheme. However, these arguments disappear entirely if the Commission calculates the 3% and 5% thresholds by dividing all distributed generation customers that receive delivery credits (i.e., customers with onsite distributed generation) in the numerator by all customers eligible to receive delivery credits (i.e., total system peak) in the denominator. Under this methodology, it is clear that there are no implications for competitive suppliers because competitive suppliers do not provide delivery service or delivery service netting. This conclusion also holds true if community solar customers are counted in the numerator.

The Rider NM methodology, which counts all net metering customers (both Ameren supply and competitively supplied) in the numerator but only counts Ameren supply customers in the denominator, the JSPs contend, is a classic "apples-to-oranges" comparison. Competitively supplied net metering customers, who only receive delivery netting from Ameren, bear no relationship whatsoever to Ameren's peak supply load. As a result, it is entirely unclear what the ratio produced by the Rider NM Methodology actually represents.

The ALJ Ruling reflects the proportion of Ameren's supply load that is now supplied by net metering systems (either from onsite distributed generation systems or community solar subscriptions). Similarly, the JSPs' original recommended methodology reflects the proportion of Ameren's distribution system peak load that is partially offset or avoided by net metering systems. By contrast, there is no intelligible way to describe the significance or meaning of the ratio produced by the Rider NM methodology, and Ameren has not attempted to do so. Dividing the aggregate net metering capacity of all delivery customers by Ameren's supply load (as Rider NM does) produces a ratio that is as meaningless as dividing aggregate net metering capacity by the peak demand of Ameren's gas distribution system – it simply does not make sense to compare these numbers. The Commission should find that the General Assembly could not have intended the end of delivery netting to be determined based on a ratio of two unrelated numbers.

Ameren and Staff recite many principles of statutory construction to support their arguments that "net metering customers" in Section 16-107.6(j) must mean all net metering customers (both Ameren supply and competitive supply) in the numerator but "supplied" must mean only Ameren supply customers in the denominator. Though the JSPs do not disagree with any of the authority Ameren and Staff cite, these arguments ring hollow. All parties agree that the term "load" in Section 16-107.6(j) actually means "nameplate generation capacity." Section 16-107.6 is therefore ambiguous. Additionally, as the People point out, the word "supplied … injects ambiguity into the statute by potentially limiting 'total peak demand' to only a partial peak demand." Peak supply demand (Rider NM's interpretation of the denominator) is not the same concept as "total peak demand," so the use of the word "supplied" in conjunction with "total peak demand" introduces more ambiguity.

Because Section 16-107.6 is ambiguous, the JSPs argue that the Commission must interpret it in a manner that gives effect to the legislature's intent, construes the statute as a whole, and considers each section in connection with every other section. It

makes little sense to supplant one ambiguous term in Section 16-107.6(j) but refuse to acknowledge any other potential ambiguity in that same subsection – especially when doing so results in a meaningless, "apples-to-oranges" comparison. Ameren's and Staff's analyses do not "consider[] each part or section in connection with every other part or section" when they insist that all net metering customers (Ameren supply and competitively supplied) must be counted in the numerator but only Ameren supply customers must be counted in the denominator.

The JSPs point out that Rider NM requires the term "electricity provider" to have two different meanings within the second sentence of Section 16-107.6. To adopt Ameren's and Staff's interpretation, the Commission would need to find that "electricity provider" in the first clause of the sentence refers to Ameren the electric utility (the numerator) but "electricity provider" in the second clause of the sentence refers to Ameren the default electric supplier (the denominator). This interpretation not only fails to "evaluate the language of the statute as a whole," it fails to preserve consistency of meaning within a single sentence. Again, there is no logical relationship between the number of net metering customers served by Ameren the electric utility and the total number of supply customers served by Ameren the default electric supplier. The ratio produced by dividing one number by the other has no discernible meaning or significance. It is absurd to conclude that the General Assembly intended the ratio of these unrelated numbers to determine when delivery netting will end in Ameren's service territory.

Ameren makes much of the fact that it has used the Rider NM Methodology in its net metering reports since 2009. However, the JSPs argue that Ameren's past practices are irrelevant to the meaning of the statute. Further, because each competitive supplier is also required to file a net metering report with the Commission, it is now evident that many customers have been double counted in these reports. That is, each competitive supplier must report each of its net metered customers in its net metering report, but Ameren also includes these same competitively supplied customers in the numerator (but not the denominator) of its own net metering report. Staff witness Clausen confirmed at hearing that competitively supplied net metering customers would be counted in both the competitive supplier's net metering report and in Ameren's net metering report. It is not reasonable to conclude that the General Assembly intended competitively supplied net metering customers to be counted twice in the net metering reports filed with the Commission, especially given the fact that Ameren is not including competitively supplied customers in its denominator.

At hearing, Ameren witness Schonhoff made the troubling suggestion that, if the Commission determines that Rider NM does not comport with Section 16-107.5, there would need to be additional processes to determine what revisions are necessary to make Rider NM compliant. The Commission should find that additional process is unnecessary. When complete, the record of this investigation will include two rounds of testimony, an evidentiary hearing, two rounds of briefing, a proposed order, and one round of exceptions. The record will be sufficiently robust for the Commission to evaluate the proposed revisions to Rider NM that the JSPs recommend and any other revisions proposed by other parties. The JSPs assert that this proceeding has provided due process on this narrow legal issue in abundance.

Given that delivery service netting is currently unavailable to new net metering customers in Ameren's service territory, it is all the more important to implement any revisions to Rider NM as soon as practical. To that end, the JSPs recommend that the Commission direct Ameren to file a Special Permission tariff revision to Rider NM within five business days of its Order, and that such revisions be effective as soon as the Commission verifies that the revised tariff complies with its Order.

The Commission should find that the implementation issues raised by Ameren are outside the scope of this investigation and therefore do not need to be addressed before revising Rider NM. Alternatively, if the Commission finds that they are relevant, it should find that they have been adequately addressed such that the Commission can adopt a methodology and order Ameren to revise Rider NM to reflect that methodology in this proceeding.

Finally, if the Commission orders Ameren to revise Rider NM, which it should do, the Commission should also order Ameren to compensate any customers that became net metering customers between October 2, 2020 and the date any revisions to Rider NM become effective for the value of the delivery credits these customers have provided to Ameren during this time. The Special Permission tariff the Commission approved in Docket No. 20-0753 provides the mechanism for the Commission to direct Ameren to provide such compensation.

VIII. COMMISSION ANALYSIS AND CONCLUSION

Pursuant to the Commission's Initiating Order in this proceeding, this proceeding concerns the determination of the narrow legal question of whether Ameren's Rider NM should be amended to correctly implement Section 16-107.5(j) of the Act, which states that:

> An electricity provider shall provide net metering to eligible customers until the load of its net metering customers equals 5% of the total peak demand supplied by that electricity provider during the previous year. After such time as the load of the electricity provider's net metering customers equals 5% of the total peak demand supplied by that electricity provider during the previous year, eligible customers that begin taking net metering shall only be eligible for netting of energy.

220 ILCS 5/16-107.5(j). This Section is consistent with the definition of the threshold date contained in Section 16-107.6(a) of the Act, which states that:

> "Threshold date" means the date on which the load of an electricity provider's net metering customers equals 5% of the total peak demand supplied by that electricity provider during the previous year, as specified under subsection (j) of Section 16-107.5 of this Act.

220 ILCS 5/16-107.6(a).

The Commission finds that the numerator in the 5% threshold calculation as defined in the statute is unclear. Indeed, all parties agree that to base the numerator on the load of customers, as required by the Act, would not be reasonable because it refers

to customer demand, or megawatt-hour usage, which is not logical when considering the development of net metering. All parties agree that the numerator should be based on generating capacity (megawatts). What is disputed is which customers' generating capacity should be considered in the numerator.

The denominator used in the threshold calculations is also unclear, ambiguous, and subject to dispute. Subsection (j) of the statute quoted above provides: "An electricity provider shall provide net metering to eligible customers until the load of net metering customers equals 5% of the total peak demand supplied by that electricity provider during the previous year." Ameren maintains that the electricity provider referred to in the denominator is Ameren and Ameren's undisputed total peak demand supplied to its default supply customers last year was 1937.515 MW. This is the denominator proposed by Ameren. This construction, however, has the unreasonable effect of ignoring the substantial number of customers who receive supply net metering from RES while receiving delivery net metering from Ameren. It also results in an absurd result because it does not address the total delivery service net metering in effect despite the statute's reference to when the "load [i.e. capacity] of its net metering customers equals 5% of the total peak demand supplied by that electric provider during the previous year."

The Commission recognizes that Section 16-107.5(j) uses the word "supplied" in referring to the "total peak demand," which is the denominator of the 5% calculation. However, the Commission concludes that it is far from clear that the statute is intended to limit the percentage calculation to Ameren default supply customers. On the contrary, the Commission concludes that in the context of the statute which addresses 5% of "total peak demand," the term "supplied by that electricity provider" uses "supplied" as a verb that is synonymous to deliver. The legislature intended to structure the percentage calculation so that Ameren would be required to provide delivery netting until the total generating capacity of Ameren's *delivery* net metering customers is equal to 5% of the total peak demand *delivered* by AIC. *Supply* net metering is unaffected by the percentage calculation, and it is unreasonable and absurd to resolve the ambiguity of Section 16-107.5(j) by limiting the percentage formula to only a portion of Ameren's Rider NM distributed generation customers (customers who take default supply service). A partial analysis will fail to reveal the true state of distributed generation penetration in Ameren's service territory and will not provide a reasonable basis for ending delivery net metering.

The statute requires that the calculation adopted result in a percentage that reflects the actual state of the distributed generation market, and the Commission finds that this requires that both the numerator and denominator be based on the same group of customers, with both the numerator and the denominator being all Ameren customers who receive net metering under Rider NM, irrespective of whether they use Ameren default service supply or subscribe to a RES.

As argued extensively by the parties, Ameren's Rider NM results in an "apples-to-oranges" comparison. Ameren's methodology includes a numerator and a denominator, but it is not a percentage in any meaningful way. The Commission agrees with the JSPs' assessment that it is "entirely unclear what the ratio produced by the Rider NM Methodology actually represents." JSPs IB at 10. The calculation, in order to produce a percentage, must look at the same group of customers in both the numerator and denominator. The Commission finds Ameren Rider NM calculation to be inconsistent with

the language and intent of the statute and is a calculation that results in a number that has no meaning within the context of the statute.

The Commission agrees with the Joint NGOs that it may be reasonable to assume that the legislative intent is to look at distributed generation penetration at the distribution level as the measure of when it is appropriate to switch from full net metering to rebates. The Commission notes, however, that the Joint NGOs' denominator includes the demand of all Ameren distribution customers, consistent with that intent and with a reasonable reading of the ambiguous language of the statute.

With respect to the inclusion of community solar in the numerator of the calculation, the Joint NGOs argue that because community solar subscribers do not receive delivery netting, community solar subscribers should be excluded from the calculation. The definition of net electricity metering indicates that it is to be offered to eligible customers which are defined as follows:

> "eligible customer" means a retail customer that owns or operates a solar, wind, or other eligible renewable electrical generating facility with a rated capacity of not more than 2,000 kilowatts that is located on the customer's premises and is intended primarily to offset the customer's own electrical requirements.

220 ILCS 5/16-107.5(a). Although, the definition of eligible customer does not include customers whose solar is not located on the customer's premises, Section 16-107.5(l)(1)(A) states that "[n]otwithstanding the definition of 'eligible customer' . . . each electricity provider shall allow net metering" (220 ILCS 5/16-107.5(l)(1)) to "a community-owned solar project" (220 ILCS 5/16-107.5(l)(1)(A)). When Section 16-107.5 is read as a whole, it is clear that community solar subscribers are appropriately included in both the numerator and the denominator as "net metering customers."

Accordingly, the Commission finds that the 5% threshold in Rider NM should be calculated with a numerator that consists of Ameren's net metering customers, including community supply, and customers receiving their supply from a RES or utility. The denominator shall consist of the total peak demand delivered by Ameren in the previous year, again, including customers receiving their supply from a RES and from the utility. The Commission notes that this is consistent with the reporting requirements of Section 16-107.5(k) and does not result in double counting RES supplied customers.

The Commission is only considering whether the 5% threshold in Rider NM is calculated consistently with the statute. The remainder of Rider NM is not at issue, is outside the scope of this docket, and remains unaffected. Rider NM dictates the resulting billing changes that happen when the 5% threshold is met; thus, Ameren's claims regarding the implications of a change in the 5% threshold calculation need not be considered. The Commission's lack of discussion of the remainder of Rider NM issues and implementation is not a decision on the merits of any other provision of Rider NM and is without prejudice to future consideration, should issues be brought to the Commission's attention.

The Commission further notes that Ameren argues that the costs to continue full net metering are greater than the cost of providing new net metering customers with a rebate instead. Docket No. 20-0389, however, has not concluded and the appropriate value of the rebates has not yet been determined. Moreover, a comparison of costs based on premature ending of net metering is irrelevant because the statute requires that full net metering be available until the 5% threshold is reached. The statute does not direct the Commission to consider the cost of continuing net metering when deciding when 5% has been met. Similarly, the statute does not require that the Commission consider the impact on the solar industry when interpreting the 5% threshold.

On exceptions, various proposals were made regarding notice and the Special Permission tariff filed in Docket No. 20-0753. This docket, however, with its accelerated timeline, is limited to the specific question posed in the Initiating Order.

The Commission finds that Ameren's Rider NM incorrectly implements the 5% threshold contained in the Act. Therefore, Ameren is directed to file a revised Rider NM consistent with the findings herein within twenty-one (21) days of this Order, with an effective date of seven (7) business days after the date of filing.

The Commission further finds, that because Rider NM went into effect without suspension and investigation, Rider NM has not previously been found by the Commission to be just and reasonable. Therefore, since Ameren's Rider NM did not correctly implement the 5% threshold, the Commission finds it necessary and appropriate for the Commission to direct Ameren to make whole with respect to the 5% threshold any customer that began taking service under Rider NM on or after October 2, 2020

Finally, as noted above, Docket 20-0389 has not concluded. In addition to determining the appropriate value of rebates, the parties should address in Docket 20-0389 a reporting timeline for Ameren Illinois to notify its customers and the Commission on the Company's distributed generation penetration calculated in a manner consistent with this Order.

IX. FINDINGS AND ORDERING PARAGRAPHS

The Commission having considered the record and being fully advised in the premises, finds that:

(1) Ameren Illinois Company d/b/a Ameren Illinois is a public utility as defined by the Public Utilities Act, 220 ILCS 5/3-105;

(2) the Commission has jurisdiction over Ameren Illinois Company d/b/a Ameren Illinois and the subject matter herein;

(3) Rider NM does not correctly implement Section 16-107.6(j) of the Act;

(4) Rider NM should be amended to be consistent with the findings herein;

(5) Ameren Illinois Company d/b/a Ameren Illinois should, effective as of the day of this Order, make whole any customer that began taking service under Rider NM on or after October 2, 2020; and

(6) Ameren Illinois Company d/b/a Ameren Illinois should file new tariff sheets within twenty-one (21) days of this Order, with an effective date of seven (7) business days after the date of filing.

IT IS THEREFORE ORDERED by the Illinois Commerce Commission that Rider Net Metering as presently in effect for net metering service rendered by Ameren Illinois Company d/b/a Ameren Illinois should be amended to be consistent with the findings discussed here.

IT IS FURTHER ORDERED that Ameren Illinois Company d/b/a/ Ameren Illinois is directed to file new tariff sheets consistent with the findings herein within twenty-one (21) days of this Order, with an effective date of seven (7) business days after the date of filing. The new tariff sheets shall reflect an effective date not less than seven (7) business days after the date of their filing, with the tariff sheets to be corrected within that time period, if necessary, except as is otherwise required by Section 9-201(b) of the Act, 220 ILCS 5/9-201(b).

IT IS FURTHER ORDERED that Ameren Illinois Company d/b/a/ Ameren Illinois is directed, effective as of the date of this Order, to implement revisions to the timing of the billing methodologies described in Rider NM consistent with the revisions to Rider NM required by this Order, including compensating Rider NM customers for all credits they would have earned had the 5% threshold was calculated pursuant to the correct methodology adopted in this Order.

IT IS FURTHER ORDERED that all motions, petitions, and objections that have not been disposed of are hereby deemed to be disposed of in a manner consistent with the conclusions herein.

IT IS FURTHER ORDERED that pursuant to Section 10-113(a) of the Public Utilities Act and 83 Ill. Adm. Code 200.880, any application for rehearing shall be filed within 30 days after service of the Order on the party.

IT IS FURTHER ORDERED that subject to the provisions of Section 10-113 of the Public Utilities Act and 83 Ill. Adm. Code 200.880, this Order is final; it is not subject to the Administrative Review Law.

By Order of the Commission this 2nd day of December, 2020.

(SIGNED) CARRIE ZALEWSKI

Chairman

Commissioner Bocanegra concurs.
Commissioner Oliva dissents.