

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

AMEREN ILLINOIS COMPANY d/b/a Ameren Illinois	:	
	:	
	:	Docket No. 10-0568
Approval of the Energy Efficiency and Demand-Response Plan	:	
	:	

ILLINOIS POWER AGENCY’S POST-HEARING BRIEF

The Illinois Power Agency (“IPA” or “Agency”), by its attorneys, Kelley Drye & Warren LLP, pursuant to Section 200.800 of the Rules of Practice of the Illinois Commerce Commission (“Commission”), 83 Ill. Adm. Code 200.800, hereby submits its post-hearing Brief in the above-captioned matter to the Commission.¹

I. Introduction

This matter concerns the Ameren Illinois Company (“Ameren”) and the Illinois Department of Commerce and Economic Opportunity (“DCEO”) proposed plan to implement energy efficiency (“EE”) and demand response (“DR”) programs and measures, pursuant to Section 8-103 of the Public Utilities Act (“the Act” or “PUA”), 220 ILCS 5/8-103. Ameren acknowledges that its proposed portfolio of EE and DR programs for the three-year period from does not comply with the EE and DR savings obligations imposed by Section 8-103. Ameren Ex. 1.0 at 4, 6. Ameren requests that the Commission modify its statutory EE and DR obligations pursuant to Section 8-103(d) of the Act, 220 ILCS 5/8-103(d). *Id.* Other parties to this case criticize Ameren for not investigating all workable solutions to meets its statutory obligations, particularly for Plan Year (“PY”) 4 and PY5. Staff, for example, requests that the

¹ This Brief follows the outline agreed to by parties, and the headings are designated according to that outline.

Commission outright reject Ameren's request to reduce its statutory obligations. Staff Ex. 1.0 at 4.

Most troubling is Ameren's complete failure to develop and implement a DR proposal that satisfies its obligations under Section 8-13(c). In Ameren's original plan, filed on September 30, 2010, Ameren proposed to meet its obligations under Section 8-103(c) through a program that does not rely on customer "response" to lower peak demand. Rather, Ameren proposed to install distribution system upgrades that would enable them to manage its system peak more efficiently. Ameren Ex. 1.1 at 152-154. Parties, including the Illinois Attorney General ("AG"), noted that this purported "demand response" proposal is already required under the PUA, and is not a "demand response" plan. AG Ex. 1.0 at 5 (*See also*, ELPC Ex. 1.0 (Crandall) at 10.) Ameren responded to this criticism by removing its Voltage Optimization Program from its DR proposal completely, and counting the expenses and savings associated with the program as an EE measure. Ameren Ex. 7.0 (Castenaro) at 2. The net effect is that Ameren proposes not a single DR measure for the period from June 1, 2011 to May 31, 2013. Ameren Ex. 7.1 at 1.

Given that Ameren proposes no DR measures, the Commission should reject Ameren's proposed EE and DR plan, and either 1) order Ameren to submit a revised draft plan that includes a viable DR program that satisfies Section 8-103(c) (*see*, 220 ILCS 5/8-103(f), or 2) authorize the Illinois Power Agency to conduct a competitive procurement that will permit the Illinois Power Agency to solicit bids from third-party demand response providers that will satisfy Ameren's minimum DR obligations under Section 8-103(c). The Illinois Power Agency is not only authorized to procure DR measures, but is required to do so for Eligible Retail Customers. 220 ILCS 5/ 16-111.5(b)(3)(ii).

II. Ameren Illinois' Integrated Energy Efficiency and Demand Response Plan

A. Electric Savings Goals²

1. Statutory Language

Section 8-103 of the Act requires Ameren to “use cost-effective energy efficiency and demand-response measures to reduce delivery load.” 220 ILCS 5/8-103(a). Ameren is required to implement programs to achieve specific minimum energy savings and demand response targets. In this case, Ameren petitioned the Commission to approve EE and DR programs that should achieve those goals for the years 2011, 2012, and 2013 (referred to by Ameren as Plan 2.) More specifically, Section 8-103 requires Ameren to achieve the following savings targets for the period from June 1, 2011 through May 31, 2014:

Plan Year 4: 0.8% of energy delivered in the year from June 1, 2011 – May 31, 2012;
Plan Year 5: 1.0% of energy delivered in the year from June 1, 2012 – May 31, 2013;
Plan Year 6: 1.4% of the energy delivered in the year from June 1, 2013 – May 31, 2014.

220 ILCS 5/8-103(b). Each year’s goal is stated as a percentage of the energy expected to be delivered in that year. So, for example, the EE measures to be implemented pursuant to the Act must reduce the amount of electricity that would otherwise be delivered from June 1, 2011 to May 31, 2012 by 0.8%. Importantly, each year’s annual EE goal builds on the EE and savings that have been earned from prior years; each year’s EE target is applied to a load forecast that already incorporates the reductions in energy delivery from prior years’ savings.

For DR, Ameren must “implement cost-effective demand-response measures to reduce peak demand by 0.1% over the prior year for eligible retail customers” 220 ILCS 5/8-103(c). “Eligible Retail Customers” are those “retail customers that purchase power and energy from [Ameren] under fixed-price bundled service tariffs, other than those retail customers whose

² The IPA does not comment on Ameren’s gas efficiency savings measures imposed by 220 ILCS 5/8-104.

service is declared or deemed competitive under Section 16-113 and those other customer groups specified in [Section 16-111.5], including self-generating customers, customers electing hourly pricing, or those customers who are otherwise ineligible for fixed-price bundled tariff service.” 220 ILCS 5/16-111.5. These customers generally include fixed-price customers who consume less than 100 kWh of energy. Like EE, the DR savings is incremental to the DR saved in prior years.

For the Plan Year 4 through 6 (years 2011 through 2013), Section 8-103(b) and 8-103(c) require Ameren to implement a three-year Plan that will achieve the following EE and DR savings:

	2011/PY4	2012/PY5	2013/PY6
Demand Response	4.42	4.2	4.16
Energy Efficiency			
Projected Energy			
Delivery	38,716,487	39,263,963	39,841,950
Load Reduction			
Target	309,732	392,640	557,787

Ameren Ex. 1.1 at Table 4.

A. Cost Limitations on EE and DR Programs

Section 8-103 imposes two independent restrictions on the costs associated with Ameren’s EE and DR measures. First, only “cost-effective” programs may be approved by the Commission. 220 ILCS 5/8-103(a). Section 8-103(a) specifies that “cost-effective” measures are measures that meet the total resource cost (“TRC”) test as defined in the Illinois Power Agency Act, 20 ILCS. 220 ILCS 5/8-103(a); *see* 20 ILCS 3855/1-10.³ The TRC test is met where:

³ The low-income measures required by subsection (f)(4) of Section 8-103 are exempt from the requirement to meet the TRC test. 220 ILCS 5/8-103(a).

for an investment in energy efficiency or demand-response measures, the benefit-cost ratio is greater than one. The benefit-cost ratio is the ratio of the net present value of the total benefits of the program to the net present value of the total costs as calculated over the lifetime of the measures. A total resource cost test compares the sum of avoided electric utility costs, representing the benefits that accrue to the system and the participant in the delivery of those efficiency measures, to the sum of all incremental costs of end-use measures that are implemented due to the program (including both utility and participant contributions), plus costs to administer, deliver, and evaluate each demand-side program, to quantify the net savings obtained by substituting the demand-side program for supply resources. In calculating avoided costs of power and energy that an electric utility would otherwise have had to acquire, reasonable estimates shall be included of financial costs likely to be imposed by future regulations and legislation on emissions of greenhouse gases.

20 ILCS 3855/1-10.

Ameren's EE and DR savings targets increase incrementally each year, but the incremental effect on customers' rates is limited by Section 8-103(d). Section 8-103(d) provides that Ameren will reduce the EE and DR implemented in "any single year by an amount necessary to limit the estimated average increase in the amounts paid by retail customers in connection with electric service due to the cost of those measures to" a specified percentage of the "amount paid per kilowatt hour by those customers" in one or more specified years. 220 ILCS 5/8-103(d). Section 8-103(d) requires Ameren to reduce its EE and DR programs to limit the "estimated average increase" in consumer rates. For the period from June 1, 2011 to May 31, 2012 (PY4), the limit is "the greater of an additional 0.5% of the amount paid per kilowatt hour by those customers during the year ending May 31, 2010 or 2% of the amount paid per kilowatt hour by those customers during the year ending May 31, 2007." For the period after June 1, 2012 (PY5 and PY6), the spending limit is no more than "the greater of 2.015% of the amount paid per kilowatt hour by those customers during the year ending May 31, 2007 or the incremental amount per kilowatt hour paid for these measures in 2011."

B. Failing to Implement EE and DR that Meet the Obligations Under the Act.

The Act imposes on Ameren the ultimate responsibility to design, develop and file EE and DR measures and plans with the Commission. 220 ILCS 5/8-103(e). However, Ameren shares with the Department of Commerce and Economic Opportunity (“DCEO”) the obligation to implement EE programs (Ameren maintains exclusive control over implementing DR programs.) Ameren is required to implement programs and measures to achieve at least 75% of the EE statutory targets, and DCEO is required to implement programs to achieve 25% of the statutory target. 220 ILCS 5/8-103(e). While DCEO is required to implement 25% of the targets, the costs associated with DCEO and Ameren’s EE programs are not allocated pro rata; DCEO determines the apportioned costs for its EE plans and measures once its has executed grants and contracts for its share (*i.e.* 25%) of the EE savings plan. 220 ILCS 5/8-103(e). Costs collected by Ameren for EE programs implemented by DCEO are collected by Ameren through its tariffs, and then paid to DCEO. *Id.*

If DCEO is unable to meet its annual EE savings goal (*i.e.* 25%), Ameren and DCEO are required to jointly submit a proposal to the Commission explaining the performance shortfall, and recommending an appropriate modification to the plan. *Id.* Notably, the Act does not give Ameren an opportunity to request a modification of its plan from the Commission if DCEO expects to fall short of the statutorily mandated EE savings; the modification to the statutory obligation occurs only after DCEO tries, but fails to achieve the statutory obligation. If after two years, Ameren “fails to meet the efficiency standard specified in subsection (b) of this Section . . . it shall make a contribution to the Low-Income Home Energy Assistance Program . . . [of] \$335,000. If Ameren fails to meet the efficiency standards⁴ after three years, Ameren is still

⁴ Ameren is not deemed to have failed to meet the EE standards to the extent such failure is due to DCEO. 220 ILCS 5/8-103(k.)

required to make the payment to the Low-Income Home Energy Assistance Program, and “the responsibility for implementing the energy efficiency measures . . . *shall be transferred to the Illinois Power Agency. . . .*” *Id.*[emphasis added.]

2. Ameren Illinois’ Plan – Ameren’s Demand Response Proposal Does Not Satisfy Its Obligations Under Section 8-103(c)

“Demand-response” is defined in Illinois as “measures that decrease peak electricity demand or shift demand from peak to off-peak periods.” 20 ILCS 3855/1-10. In its September 30, 2010 filing, Ameren proposed a single DR program its refers to as a “Voltage Optimization” program. Ameren Ex. 1.1 at 143. Under Ameren’s proposal, Ameren would install “Volt/VAR” devices to manage voltage and reactive power through its distribution and feeder systems. *Id.* Doing so would help Ameren maintain “a flatter distribution circuit profile” while still delivering to customers “an acceptable voltage at the end of the circuit.” *Id.* Once installed, the Volt/VAR devices would permit Ameren to control loads eight times per year for four hours per event, resulting in 32 hours of load reduction. *Id.* at 154. The target market for its Voltage Optimization program is residential and small commercial customer loads. However, the program is intended to be “behind the scenes” with “no detectable impact to households” and will cause no change in behavior by the customer. *Id.* If implemented, the impact should reduce annual MW load by 4.5 MW per year. *Id.*

Parties commented that the Voltage Optimization proposal is not a “demand response” program at all, but is instead an investment that Ameren is required to make as part of its ongoing distribution obligations. ELPC Ex. 1.0 (Crandall) at 10-11; AG Ex. 1.0 (Mosenthal) at 51. The Commission Staff further recommends that the Commission “reject Ameren’s proposed DR program and order Ameren to conduct a pilot of the Voltage Optimization Program” to determine if the program actually works. ICC Staff Ex. 1.0 (Hinman) at 7. In response to this

criticism, Ameren revised its proposal to “remove the Voltage Optimization Program from its Plan and to redistribute the program funds to the Energy Efficiency programs as suggested by Intervenors.” Ameren Ex. 7.0 (Martin) at 2-3. Ameren revised its proposed plan and increased its EE budgets and EE targets accordingly. *Id.*

The net result of Ameren’s revision is that it proposes no DR program at all for the period from June 1, 2011 to May 31, 2014. Ameren’s proposed EE and DR plan is not only deficient, but unlawful and contrary to Section 8-103(c), which requires Ameren to “implement cost-effective demand-response measures to reduce peak demand by 0.1% over the prior year for eligible retail customers” 220 ILCS 5/8-103(c). There is no evidence of record that the Voltage Optimization program is an adequate DR program that complies with Ameren’s obligation to reduce customer demand during peak load, or to shift demand from peak to off-peak.

Some parties have suggested that Ameren be given credit for this EE measure in satisfying its obligations under Section 8-103(e). AG Ex. 1.0 (Mosenthal) at 51-52. Mr. Mosenthal asserts that capturing peak savings through the residential EE programs can be viewed as meeting the statute’s requirements for incremental DR resources of 0.1% per year if Ameren can demonstrate that the programs actually results in a decrease in peak demand or a shift of demand from on-peak to off-peak periods. *Id.* However, Mr. Mosenthal does not provide information to demonstrate that the Voltage Optimization program does indeed reduce demand. In fact, Ameren’s evidence is to the contrary. According to Ameren, the Volt/VAR devices allow Ameren to control the delivery of supply, and to provide “a flatter distribution circuit profile” while still delivering to customers “an acceptable voltage at the end of the circuit.” Ameren Ex. 1.1 at 152. The devices do not actually modify demand behavior; Ameren

acknowledges that the devices are installed “behind the scenes,” are not detectable by the customer, and result in no change in behavior by the customers. *Id.* at 154. Ameren’s proposed plan therefore contains no DR measures.

Section 8-103(f) provides that if Ameren’s does not propose a plan that satisfies “the utility’s portion of the energy efficiency standards identified in subsection (b) and the demand-response standards identified in subsection (c)” the Commission may enter an order disapproving the Plan. 220 ILCS 5/8-103(f). If the Commission disapproves the plan, “the Commission shall, within 30 days, describe in detail the reasons for the disapproval and describe a path by which the utility may file a revised draft of the plan to address the Commission’s concerns satisfactorily.” *Id.*

Given that Ameren proposes no DR measures, the Commission should not approve Ameren’s proposed plan. If Ameren fails to implement an EE program approved by the Commission under 8-103(b), Section 13-801(f) requires the Commission to transfer “the responsibility for implementing the energy efficiency measures of the utility...” to the Illinois Power Agency 220 ILCS 5/8-103(f). Notably, the “transfer of responsibility” to the IPA is only for EE savings required under Section 13-801(b); Section 8-103(f) does not specifically mandate that the responsibility to procure DR savings be implemented by the IPA. However, the Act does require the IPA to procure DR savings measures for those Eligible Retail Customers. 220 ILCS 5/16-111.5(b)(3)(ii). Specifically, Section 16-111.5(b)(3) requires the IPA to provide a plan “for meeting the expected load requirements that will not be met through preexisting contracts. This plan *shall* include:”

- ii. the proposed mix of demand-response products for which contracts will be executed during the next year. The cost-effective demand-response measures shall be procured whenever the cost is lower than procuring comparable capacity products, provided that such products shall:

(A) be procured by a demand-response provider from eligible retail customer;

(B) at least satisfy the demand-response requirements of the [RTO] market in which the utility's service territory is located, including, but not limited to, any applicable capacity or dispatch requirements;

(C) provide for customers' participation in the stream of benefits produced by demand-response products;

(D) provide for reimbursement by the demand-response provider of the utility for any costs incurred as a result of the failure of the supplier of such products to perform its obligations thereunder; and

(E) meet the same credit requirements as apply to suppliers of capacity, in the applicable regional transmission organization market.

For the current and previous procurement cycles, the IPA has argued that the foregoing provisions require the IPA to conduct a competitive bid for DR in Ameren's territory. To date, the Commission has rejected the IPA's efforts to comply with its statutory mandate under this Section.⁵ However, given that Ameren no longer conducts any DR for the Plan 2 period from June 1, 2011 to May 31, 2014, the Commission should now authorize the IPA to conduct a competitive bid for demand response.

If the Commission does not authorize the IPA to conduct a competitive procurement event under Section 16-111.5, the IPA requests that the Commission reject Ameren's plan, and order Ameren to submit a revised plan within thirty days that includes a viable DR program that satisfies its obligations under Section 8-103(c).

Wherefore, for each of the foregoing reasons, the Illinois Power Agency respectfully requests that the Commission reject Ameren's proposed Plan 2 on the basis that the Plan does not comply with the minimum DR measures required under Section 8-103(c). Further, the IPA

⁵ *In re Illinois Power Agency Petition for Approval of Procurement Plan*, ICC Docket No. 09-0373, Order at 152-153 (December 28, 2009).

requests that the Commission authorize the Illinois Power Agency to conduct a competitive procurement to solicit bids from third-party demand response providers that will satisfy Ameren's minimum DR obligations under Section 8-103(c), or in the alternative, order Ameren to submit a revised draft plan that includes a viable DR program that satisfies Section 8-103(c).

Dated: November 24, 2010

Respectfully submitted,

Illinois Power Agency

By: 

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NOTICE OF FILING

Please take notice that on November 24, 2010, I caused to be filed via the Illinois Commerce Commission's eDocket, the **ILLINOIS POWER AGENCY'S POST-HEARING BRIEF**. A copy of the foregoing documents are hereby served upon you.



Henry T. Kelly, attorney for the
Illinois Power Agency

CERTIFICATE OF SERVICE

I, Henry T. Kelly, an attorney, on oath state that I served a copy of the **ILLINOIS POWER AGENCY'S POST-HEARING BRIEF** on the service list maintained on the Illinois Commerce Commission's eDocket system for the instant docket via electronic delivery on November 24, 2010.



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