

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

Illinois Commerce Commission)	
On Its Own Motion)	
)	Docket No. 11-0341
v.)	
)	
Ameren Illinois Company)	
d/b/a Ameren Illinois)	
)	
Reconciliation of Revenues Collected)	
Under Riders EDR and GDR)	

**REPLY BRIEF OF THE CITIZENS UTILITY BOARD AND
THE PEOPLE OF THE STATE OF ILLINOIS**

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Now come the Citizens Utility Board (“CUB”), through its attorney; and the People of the State of Illinois, by and through Illinois Attorney General Lisa Madigan (“the People” or “the AG”); pursuant to the Rules of Practice of the Illinois Commerce Commission (“ICC” or “the Commission”), 83 Ill. Admin. Code Part 200.800 and the briefing schedule established by the Administrative Law Judge (“ALJ”), and hereby file this Reply Brief in the above captioned proceeding.

The sole contested issue addressed in this docket is whether certain costs associated with Ameren Illinois Company’s (“Ameren”) Small Business Heating Ventilation and Air Conditioning (“SB HVAC”) gas energy efficiency program should be disallowed as imprudent. As noted in the CUB/AG Initial Brief, the Staff of the Illinois Commerce Commission’s (“Staff”) proposed disallowance of these costs should be rejected by the Commission. As discussed below and in Ameren and the Natural Resource Defense Council’s (“NRDC”) Initial Brief, the decision to continue the program was not imprudent since, among other reasons, Ameren believed it could make changes to the program which would render it cost-effective, and the evaluator did not recommend discontinuing the program. Staff’s recommendation should

also be rejected because it counters established Commission practice that assesses cost-effectiveness of efficiency programs at the portfolio level, and could have a detrimental impact on the development of robust energy efficiency programs – both gas and electric – in Illinois.

II. THE COSTS ASSOCIATED WITH AMEREN’S SMALL BUSINESS HVAC PROGRAM SHOULD NOT BE DISALLOWED.

A. The Record Evidence Supports A Conclusion That Ameren Did Not Act Imprudently.

In its Initial Brief, Staff argues that the costs associated with Ameren’s SB HVAC Program, totaling \$119,550, were imprudently spent by the Company and should be disallowed. Staff Initial Brief at 4. Staff argues that it was unreasonable of Ameren to continue the SB HVAC Program because the program was projected to “provide negative net benefits to Illinois ratepayers in PY2.” *Id.* Staff also alleges that “it is unreasonable to allow AIC to cite portfolio level cost-effectiveness as its defense and entire basis for alleging prudent management of the SB HVAC Program.” Staff Initial Brief at 5.

While CUB and the People agree that it would be unreasonable for a utility to cite portfolio level cost-effectiveness as the sole justification for retaining a particular program that does not pass the Total Resource Cost (“TRC”) test, Staff is wrong to discount and dismiss the fact that portfolio level cost-effectiveness is the standard established by the Public Utilities Act (“Act”) and reinforced by the Commission in multiple prior dockets. 220 ILCS 5/8-103(f), ICC Docket 10-0564, Order of May 24, 2012 at 92; ICC Docket No. 07-0539, Order of February 6, 2008 at 21; ICC Docket No. 10-0568, Order of December 21, 2012 at 30. More importantly, Ameren is not using the cost-effectiveness of its energy efficiency programs at the portfolio level as a “defense or entire basis for alleging prudent management” of the SB HVAC program, as Staff avers. Rather, CUB and the People, Ameren, and NRDC have all found that the totality of

evidence supports Ameren's conclusion that it would not be imprudent to continue the SB HVAC program, which was specifically designed to target what the evidence showed was a particularly difficult market to penetrate because small business traditionally have limited funds to spend on energy efficiency resources. AIC Ex. 4.0 at 4-5. This customer class funds the energy efficiency programs, like other customer classes, and the program was forecasted to better and more cost-effectively reach that customer sector in the future. *Id.* at 4-10. The preponderance of the evidence showed that Ameren prudently managed expenditures related to the SB HVAC program by properly responding to TRC test results, offering a program to a hard to reach customer sector, and attempting to transform the small business market for energy efficiency programs.

B. The Evidence Shows That Ameren and Program Implementers Believed the SB HVAC Program Would Become Cost-Effective Over Time.

Staff alleges that Ameren failed to prudently respond to an initial TRC assessment conducted by an evaluator in August of 2010, in PY 1. Staff Initial Brief at 12-13. Notwithstanding that the statutory requirement for cost-effectiveness is at the portfolio level, and the evidence that the SB HVAC program was designed to transform the difficult energy efficiency market for small businesses, CUB and the People believe strongly that the cost-effectiveness of the SB HVAC program, and all programs, should be maximized, and that utilities should evaluate and adjust programs every year to increase cost-effectiveness. In PY 2, Ameren took steps to improve the cost-effectiveness of the SB HVAC program in response to recommendations from the program implementer. The implementer recommended modifying the SB HVAC program to "include further outreach to program allies and the small business community," as well as "increasing the incentives for HVAC tune-ups and bundling them with

other outreach activities.” Ameren Exhibit 6.0 at 7:146-150. With these modifications, “the Program was expected “to yield a TRC” that was greater than 1.” Ameren Exhibit 6.0 at 10:156-158. Given these recommendations, Ameren “cultivate[d] ally participation and installation of equipment.” Ameren Initial Brief at 17. Ameren also began bundling the “gas furnace tune-ups with other SB HVAC activities, like those related to AC tune-ups and the installation of “smart” thermostats.” Ameren Initial Brief at 18-19. As Ameren points out in its Initial Brief, Staff even agreed that “bundling” the tune-ups with other SB HVAC activities is “helpful.” (*See* Docket No. 11-0341, Tr. at 147:15-16 (Mar. 13, 2013).)

C. The SB HVAC Program Was Designed and Implemented to Help Transform the Market for Small Business Customers.

NRDC cites Dr. Chamberlin’s assertion that programs can have value to customers even when they do not pass the TRC test, if those programs are a “trial of emerging technology”, reach a “market segment not otherwise able to participate in energy efficiency programs,” “break down market barriers,” “create[] some additional value not easily measured by TRC,” or “take[] several years to mature.” NRDC Initial Brief at 3, citing Ameren Ex. 5.0 at 7-8. Ameren witness Dr. John Chamberlin testified that this is particularly true of programs like SB HVAC that “require the engagement of allies.” *Id.* As noted by Ameren in its Brief, programs that “rely heavily on trade ally coordination” may “not be cost-effective in its early years,” but can be “expected to become cost effective” as they mature. Ameren Initial Brief at 22, citing Ameren Ex. 5.0 at 7-8. This is because the “development of the trade ally network increases expenses in the early years, but costs decline as the network matures.” *Id.*

Ameren witness Chamberlin testified that the SB HVAC program reaches a market segment that has “numerous constraints” that limit participation in energy efficiency programs, “including shortage of capital, frequently leased physical space, and focus on day-to-day

operations.” Ameren Ex. 5.0 at 7-8. While Staff considers expenditures on the SB HVAC program to have been a “harm” to ratepayers, CUB and the People disagree, and believe the evidence supports a conclusion that it was not unreasonable or imprudent to maintain the SB HVAC program because it was designed to reach a difficult market segment and break down market barriers, such as the initial lack of a trade ally network. Moreover, it was not unreasonable to assume that the program might require multiple years to mature. As Ameren noted in its Brief, Ameren witness Kenneth Woolcutt testified that it was reasonable to assume, based on the initial evaluator reports that the program might improve in its cost-effectiveness due to the fact that the program was in its initial stages when evaluated. Ameren Ex. 6.0 at 7. In short, the preponderance of the evidence suggests that Ameren’s decision to retain the program was not unreasonable and imprudent.

D. Granting Staff’s Requested Disallowance Would Hinder the Future Development of Robust Energy Efficiency Programs For All Market Segments.

Staff’s argument that Ameren acted imprudently in continuing to fund the SB HVAC program rests almost entirely on the Program Year (“PY”) 1 TRC test results. Staff Initial Brief at 15. Ameren concurs, citing “Staff’s near exclusive reliance on the preliminary TRC results” as a measure of prudence. Ameren Initial Brief at 19. CUB and the People agree with NRDC that utilities should re-evaluate all programs for cost-effectiveness annually, and make the appropriate adjustments each year, but that the “value of programs...must not be limited to the TRC test as proposed by the Staff.” NRDC Initial Brief at 3. Although the gas efficiency program expenses being evaluated in this docket involve pre-date the passage of Section 8-104, which detailed energy efficiency program parameters and cost recovery criteria, the evaluation criteria included in that section of the Act should inform the Commission’s decision here. Section 8-104(f)(5) specifically requires gas utilities to demonstrate that their programs should

“represent a diverse cross-section of opportunities for customers of all rate classes to participate in the programs,” as well as be cost-effective at the “overall portfolio” level. 220 ILCS 5/8-104(f)(5).

In oral and written testimony and in brief, Staff has repeatedly cited language in the Rider Gas Energy Efficiency (“GEE”) Plan Order where the Commission recommended that Ameren “monitor the projected benefits and costs of the proposed gas griddles and spray valve measures” as grounds for disallowance of funds of the SB HVAC program. Staff Brief at 5-6, citing ICC Docket 08-0104, Order of October 15, 2008 at 10-11. This language falls under a section of the Final Order titled, “Gas Griddles and Spray Valve Measures.” *Id.* Staff fails to explain how a Commission directive specifically related to Ameren’s Small Business Food Service program is relevant, much less applicable, to the SB HVAC program, which is not mentioned in the referenced section of the Final Order.

CUB and the People agree with Ameren that Staff’s policy recommendation that the Commission should direct Ameren to only spend funds on a program “if and when projected benefits exceed projected costs” fails to take into account a host of factors and consequences related to evaluating cost-effectiveness, and would have “severe” impacts and “create significant roadblocks” to the continued development of robust efficiency programs. Ameren Initial Brief at 26. Staff’s recommended disallowance would create a precedent that if applied to all utility energy efficiency prudence reviews would thwart utility efforts to design programs that reach hard-to-reach customer sectors and lay the groundwork for market transformation. Ameren’s SB HVAC Program was designed to target small businesses, “a particularly difficult market to penetrate due to the fact that they traditionally have limited funds to spend on energy efficiency

investments and the relatively lower savings that can be calculated on the small business scale.”

Ameren Ex. 4.0 at 4:84-87.

CUB and the People agree with Ameren that Staff’s proposal “ignores the fact that preliminary TRC test results vary depending on a number of factors,” that “TRC results may vary depending on when the calculations are performed,” that “reasonable people could disagree about what should go into a particular TRC calculation,” and would “prevent measures and programs from evolving and thus becoming cost effective as the portfolio matures.” Ameren Initial Brief at 27-28. CUB and the People believe the evidence supports giving Ameren the benefit of the doubt regarding the Company’s decision to retain a program that ultimately failed to achieve expectation of cost-effective delivery of energy savings within the allotted timeframe.

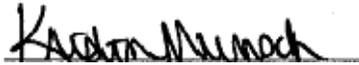
III. CONCLUSION

CUB and the People recommend that the Commission reject Staff’s proposed disallowance of the costs of the SB HVAC program. The SB HVAC program was anticipated to be cost-effective when approved in ICC Docket 08-0104, modified based on the program implementer’s recommendations when it was found to be cost-ineffective, and was designed to reach the small business customer market, which is made up of customers that face difficulties, financial and otherwise, participating in energy efficiency programs. To be clear, CUB and the People believe all utility energy efficiency programs should be evaluated for cost-effectiveness and continuation or modification each year, and the record shows that this is already standard practice. A TRC test result below 1 for a particular program designed to engage a difficult customer market, however, is not adequate justification for allegations of imprudence. The evidence shows that it was reasonable for Ameren to believe that this program would provide value and benefits to small business customers in PY 2, and could be expected to provide more

cost-effective benefits in the future. The SB HVAC program costs at issue should not be disallowed.

Wherefore, CUB and the People respectfully request that the Commission enter an Order in this Docket consistent with the recommendations in this Reply Brief and the CUB/AG Initial Brief.

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