

**STATE OF ILLINOIS  
ILLINOIS COMMERCE COMMISSION**

ILLINOIS COMMERCE COMMISSION	)	
On Its Own Motion	)	
	)	
vs.	)	
	)	
AMEREN ILLINOIS COMPANY	)	
d/b/a Ameren Illinois	)	
	)	
Reconciliation of revenues collected	)	Docket No. 11-0341
under Rider EDR with the actual costs	)	
associated with energy efficiency and	)	
demand-response plans.	)	
	)	
Reconciliation of revenues collected	)	
under Rider GER with the actual costs	)	
associated with natural gas energy	)	
efficiency plans.	)	

**REPLY BRIEF ON EXCEPTIONS OF THE NATURAL RESOURCES DEFENSE  
COUNCIL**

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ATTORNEY FOR Natural Resources Defense Council

September 10, 2013

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**INTRODUCTION**

Now Comes Natural Resources Defense Council (“NRDC”), by its attorneys, and pursuant to Section 200.830 of the Rules of Practice of the Illinois Commerce Commission (“Commission”), hereby submits this Reply Brief on Exceptions. This brief addresses the Brief on Exceptions submitted by the Staff of the Illinois Commerce Commission (“Staff”) in which it recommends reversing finding in the Administrative Law Judge’s Proposed Order (“ALJPO”) that Ameren Illinois Company (“Ameren”) should be entitled to recover \$119,550, reflecting the costs associated with Ameren’s Small Business (“SB”) HVAC Program. While Ameren filed a Brief on Exceptions on several minor topics, the recovery of the costs of the SB HVAC program is the sole contested issue before the Commission.

The ALJPO accepts the arguments of Ameren, NRDC, The Illinois Attorney General and the Citizens Utility Board that Ameren's expenditures on the SB HVAC program were prudent. That finding was based on findings of fact and findings of law. The important findings of fact are as follows:

1. The implementer provided Ameren with preliminary Total Resource Costs ("TRC") values only two months into a three year program.
2. The implementer did not recommend elimination of the SB HVAC program. Instead, the implementer recommended modifying the program.
3. The implementer projected that the program as modified would become cost-effective over the life of the plan.
4. Ameren modified the program in a manner consistent with the programmer's recommendations.

The ALJPO notes that "although Staff challenges these assertions and the underlying support for them, the Commission is not inclined to find that all the other Parties have 'mischaracterize[d] the evidence' as argued by Staff." ALJPO at 47-48.

The ALJPO also accepts the legal position taken by NRDC and the other parties that cost-effectiveness should be evaluated at the portfolio level rather than at the measure or program level; it should be evaluated over the life of the program rather than each year, and; that prudence should consider factors other than a cost effectiveness formula. These are all principles set out in Section 8-104(f)(5) of the Public Utilities Act and Commission precedent. The ALJPO rejects the Staff's argument that because the Ameren portfolio of programs in this proceeding predate Section 8-104(f)(5) of the Public Utilities Act, the provisions in that section and associated Commission case law are irrelevant, stating:

However, the Commission believes the objectives and criteria in the section do provide some guidance, and should not be totally disregarded, in determining whether AIC's expenditures on the SB HVAC program in PY 2 should be disallowed as imprudent. In this case, AIC and Intervenors contend, and the Commission agrees, that the program at issue was designed and implemented to encourage and develop participation by customers in a hard-to-reach rate class, which is consistent with the policy goals in Section 8-104(f)(5).

ALJPO at 48.

The Staff's Brief on Exceptions challenges both the findings of fact and findings of law in the ALJPO.

### **ARGUMENT**

There is no need for NRDC to address the Staff's disputes with the finding of fact in the ALJPO. Staff BOE at 4-7. Ameren's initial and reply briefs explain the steps it took to ensure the prudence of its expenditures and adequately address the Staff's argument that the ALJPO was incorrect to disregard the Staff's view of the facts. (*See* Ameren's Initial Brief at 10-17; Ameren Reply Brief at 2-11). Applying those facts to the prudence standard, it is apparent that expenditures on the SB HVAC program should be recovered. As summarized by Ameren:

Staff's single-minded focus on preliminary TRC results improperly ignores several factors relevant to AIC's decision to continue the SB HVAC Program, including the timing of the TRC results, the program implementer's recommendation to continue the Program, the Program's projected cost-effectiveness, and the impact discontinuing the Program would have on the overall portfolio

Ameren Reply Brief at 2-3.

Although the Staff BOE expends considerable energy setting out what it believes are the relevant facts, the Staff BOE contains little legal argument. In fact, the Staff BOE does not provide any argument challenging the conclusion in the ALJPO that the provisions of Section 8-104(f)(5) of the Public Utilities Act regarding the importance of evaluating the prudence of

Ameren's expenditures are relevant to this proceeding. Nevertheless, the Staff proposes to strike the following language from the ALJPO:

the Commission believes the objectives and criteria in the section [Section 8-104(f)(5)] do provide some guidance, and should not be totally disregarded, in determining whether AIC's expenditures on the SB HVAC program in PY 2 should be disallowed as imprudent." ALJPO at 48.

By taking out that conclusion, the Staff leaves the Commission with the highly focused, and incorrect test championed by the Staff: each program or measure in a portfolio must be projected to meet the TRC test each and every year of a program or else subsequent expenditures will be disallowed.

The Staff's proposed modification should be rejected on both legal and public policy grounds. In the absence of statutory guidance on the standard to be used for this proceeding, the Commission is entitled to consider the standard set forth in Section 8-104(f)(5). Expenditures under that section of the Act and the purpose of those expenditures are identical to those in this proceeding. Moreover, the standard set out in that section is good public policy.

The determination of whether utility costs were reasonably and prudently invested in cost-effective efficiency measure should not be based on a simple formula that provides a cost benefit analysis for each energy efficiency measure for each year of a plan. Long term benefits to ratepayers and society will be better judged if the Commission evaluates the full portfolio of measures over a several year period. As noted by Ameren witness Mr. Woolcutt, adoption of the Staff's position would encourage utilities to overemphasize measures that obtain short term benefits and would discourage them from proposing programs leading to long term benefits. Moreover, they would be discouraged from penetrating underserved markets. Ameren Ex. 6.0 at

10. Ameren witness Mr. Chamberlin articulated several ways in which programs that fail the TRC test may still provide a valuable addition to a portfolio:

- a) The program is a trial of an emerging technology,
- b) The program reaches a market segment not otherwise able to participate in energy efficiency programs,
- c) The program is expected to break down market barriers.
- d) The program creates some additional value not easily measured by TRC, such as lighting programs that improve workplace productivity
- e) The program takes several years to mature. As noted by Mr. Chamberlin, this is particularly true of programs such as the SB HVAC program that require the engagement of allies.

Ameren Ex. 5.0, Chamberlin Rebuttal at 7-8

By focusing its attention exclusively on the TRC of a single program for a single year, the Staff ignores all of these legitimate reasons to continue a program. In this case, Ameren has provided evidence that the SB HVAC program is designed to increase the overall portfolio effectiveness through its outreach to a customer segment that would otherwise have limited ability to participate in the energy efficiency programs and through the development of a trade ally network. Ameren Ex. 5.0, Chamberlin Rebuttal at 16. In summary, by requiring that individual measures or programs have a positive TRC throughout their life, the Staff's proposed standard would discourage the development of measures or programs that may evolve into becoming cost-effective or assist the portfolio in other ways.

In summary, the ALJPO's findings of fact are supported by the record, its conclusions of law are supported by the Public Utilities Act and Commission precedent, and its application of those facts to that law were correct and consistent with public policy. The Staff's challenges to those findings and conclusions should be rejected.

## CONCLUSION

For the reasons stated above, the Commission should reject the changes to the Administrative Law Judge's Proposed Order recommended by the Commission Staff in its Brief on Exceptions.

Dated: September 10, 2013

Respectfully submitted,  
Natural Resources Defense Council

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of Natural Resources Defense Council's Reply Brief On Exceptions has been served upon the parties reported by the Clerk of the Commission as being on the service list of this docket, on the 10th day of September, 2013, by electronic mail.

*/s/ Stephen J. Moore* \_\_\_\_\_

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