

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

AMEREN ILLINOIS COMPANY)	
d/b/a Ameren Illinois)	
)	Docket No. 13-0498
)	
Approval of the Energy Efficiency and)	
Demand-Response Plan Pursuant to)	
220 ILCS 5/8-103 and 220 ILCS 5/8-104)	

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

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Pursuant to Section 200.830 of the Rules of Practice of the Illinois Commerce Commission (“Commission” or “ICC”), the Natural Resources Defense Council, (“NRDC”), through its attorneys, Rowland & Moore LLP, files this Initial Brief on Exceptions to the Administrative Law Judges’ Proposed Order (“ALJPO” or "PO") issued December 23, 2013.

I. INTRODUCTION

NRDC respectfully files this Brief on Exceptions in order to object to the conclusions in the ALJPO regarding five key issues that are fundamental to safeguarding the value that Ameren Illinois Company’s (Ameren’s or AIC’s) customers will realize from energy efficiency programs under 220 ILCS 8-103 and 8-104. Specifically, NRDC urges the Commission to issue a final order that differs from the proposed order with respect to the following issues: (1) The adequacy of Ameren’s proposed savings targets; (2) The extent to which Ameren should be expected to expend its available energy efficiency budgets; (3) The process for designing and implementing a pilot program for large industrial customers; (4) Limitations on the company’s flexibility to make changes in its programs and budgets after approval of Plan 3, and (5) Ameren’s proposal to allow the company to change its savings targets in response to changes in deemed net-to-gross or TRM values.

II. ARGUMENT

A. Adequacy of Proposed Savings Targets: The ALJPO Erred In Concluding that Ameren's Proposed Plan Satisfies The Requirements of the Act.

1. Ameren's Proposed Goals Allow The Company to Spend Substantially More Per Unit of Energy Savings than It Has Actually Spent in Past Years.

Ameren's proposal rests on a projection that the cost of the average MWh of savings will be 75 percent higher in PY 7-9 than it was in PY4 and 27 percent higher than in PY5. As shown in Figure 1 of NRDC Witness Grevatt's testimony (NRDC 1, p. 6, Line 106), Ameren projects that for the next three years, the average cost of savings will be \$192.47/MWh, compared to the PY 4 cost of \$110.18 per MWh, and to the PY5 estimated cost of \$151.55/MWh. Witness Grevatt describes Ameren's justification for these estimates as, "grossly insufficient." NRDC Ex.1, p. 5, Lines 93-94.

The portfolio-wide cost per unit savings increases are driven in large part by projected but unjustified increases in costs for two of its largest programs – the Residential Standard CFL program and the Business Standard program. Ameren's proposed Residential Standard CFL program projects a cost per bulb that is 46 percent higher than the cost per bulb it reported in PY5. The record shows that if Ameren achieved savings through its Residential Standard CFL Program at a cost per bulb equal to its PY5 cost per bulb, it would be able to achieve 31,000 MWh in savings over and above the proposed goals for the program. NRDC Ex. 1, page 12, line 199. Similarly, Ameren projects that the cost of saved energy for the Business Standard program will increase by 36 percent, from \$125 per MWh in PY 5 to \$170 per MWh in PY 7-9, without providing any justification for such an increase. The record shows that correcting this unsupported cost increase would result in an additional 40,000 MWh of electricity savings over the course of the plan.

As with its electric programs, Ameren has projected enormous increases in costs per unit of energy saved for its gas programs as well. Specifically, Ameren projects an increase in the cost per therm saved in the Gas Business Standard Program from \$0.98 in PY 5 to \$2.78 in PY 7-9. This is a 184 percent increase in costs for which Ameren provides no explanation. NRDC therefore urges the Commission to require Ameren to achieve the same level of savings per dollar spent in the Business Standard Program in PY 7-9 as it expects to achieve in PY 5 and 6, and to achieve 6 million therms of saved energy per year at the portfolio level, resulting in a total increase of 4.1 million therms over the three-year Plan. NRDC Ex 1, p. 24, Lines 388 to 395.

2. Ameren Has An Established Pattern of Proposing Goals that Are Far Lower than Achievable Within Its Budget Limitations.

Ameren's proposal is consistent with its history of proposing goals that are substantially lower than its ability to achieve savings. In the previous plan case (10-0568) Ameren proposed an electric target of 584,000 MWh over the three year plan. The Commission found that this was too low and ordered the company to submit a revised plan. The revised plan that was later approved required Ameren to achieve 734,000 MWh, 25 percent more than the original plan would have required. However, even the revised plan clearly did not require Ameren to achieve as much savings as it could have within the budget limitations. In PY 4 and 5 combined Ameren exceeded its electric savings target by 18% while only spending 88% of its budget, and in PY 6 the company itself is projecting to exceed its target by 26%. If in PY6 the company follows its PY4-PY5 pattern of underspending by 12% it would mean that by fully expending the budgets it could have saved as much as 1,000,000 MWh over the three year period- 120,000 MWh more than currently projected, and 72% higher than its original proposal in that case.

3. The Commission Has an Obligation to Ensure that Savings Targets Reflect the Maximum Savings Achievable Within Budget Limitations.

Sections 8-103 and 8-104 of the Public Utilities Act make it the policy of the state that utilities must use energy efficiency to reduce both direct and indirect costs to electric customers by avoiding the need for new utility infrastructure and reducing environmental impacts of the utility system.

Section 8-103 of the Public Utilities Act requires electric utilities, including Ameren, to “implement cost-effective energy efficiency measures,” in order to meet annual incremental savings goals. The savings goals specified for the years covered in the plan currently before the Commission are 1.8% of delivered energy for the year beginning June 1, 2014 (Program year 7, or “PY7”) and 2% of delivered energy for the each year after, including program years 8 and 9 (PY8 and PY9). 220 ILCS 5/8-103(b)(1). Section 8-104 of the Public Utilities Act sets forth a similar provision for gas utilities, including Ameren to meet gas savings targets equal to a given proportion of sales which increases annually. 220 ILCS 5/8-104(c).

In both 8-103 and 8-104, the amount utilities may spend on achieving these energy efficiency targets is capped at roughly two percent of revenues. 220 ILCS 5/8-103(d) and 8-104(d). The two sections include nearly identical language regarding how this cap is to apply. Specifically in each case, the utility must limit or reduce the amount of energy efficiency it undertakes “by an amount necessary” to avoid spending above the two percent budget limitation. Moreover, in 8-103(f)(1) and 8-104(f)(1) the utility files a plan every three years that must, “Demonstrate that its proposed energy efficiency measure will achieve,” the savings targets, “as modified” by the budget caps. Under both the electric and gas sections, the Commission must issue an order approving or disapproving of the plan based in part on whether such a demonstration has been made by the utility.

In Ameren's last energy efficiency plan filing (10-0568), the Commission was similarly faced with a request by Ameren for modified goals in order to remain within the spending cap. The Commission's decision to reject the plan and require Ameren to make a compliance filing rested on an interpretation of the statute that the revised targets must be designed to maximize the savings achieved within the spending limitations. The order reads (at pages 31-32):

Following a review of the party's arguments, and taking into account the Commission's findings presented here, it appears to the Commission that Ameren could achieve additional savings and achieve higher modified goals under Section 8-103 of the Act. The Commission finds, and Ameren acknowledges, that the revised plan does not contemplate meeting the energy savings goals expressed in Section 8-103(b). The Commission recognizes that Ameren indicates that it is constrained by the spending limitations imposed by Section 8-103; however, the Commission believes that a revised plan could be submitted by Ameren, implementing the findings expressed in this Order, which would encompass greater energy savings, while complying with the spending limitations. The Commission recognizes that the statute imposes an ever greater energy efficiency savings requirement on Ameren each year, without a proportionate increase in funding. The Commission believes that this will require Ameren and the various other stakeholders involved in this process to develop innovative processes to leverage the available funding to implement the will of the Legislature. The Commission believes it is appropriate to direct Ameren to make a compliance filing within 30 days of the date of this Order, as Ameren suggested in its Brief would be appropriate. The Commission directs that this compliance filing contain a revised Energy Efficiency and Demand Response Plan, which contains terms and provisions consistent with and reflective of the findings and determinations contained in this Order.

NRDC seeks a similar order in this case, recognizing the Commission's critical role in ensuring that the goals of sections 8-103 and 8-104 are met, and that utility customers benefit from cost-effective investments in energy efficiency to the maximum extent possible within the limits of the budget caps.

4. Ameren Has Failed to Justify Its Increased Cost Per Unit Savings Projections.

In defense of its unacceptably low proposed savings targets, Ameren makes three arguments: (1) That the intervenor witnesses have premised their criticisms on a "vague notion that Ameren can and should 'do more' rather than on specific recommendations supported with

adequate analysis and data...” (2) That intervenors premise their criticism of the proposed goals on past performance but that the Commission has not yet approved the verified and evaluated savings from PY 4-6; and (3) That asking Ameren to achieve savings consistent with past performance would be “unfair” and would “seem to create strange incentives to meet but not exceed savings goals and would punish Ameren Illinois for acting in good faith.” We address each of these arguments below.

a. Intervenor Witnesses Provided Concrete Evidence and Specific Recommendations Regarding the Adequacy of Ameren’s Proposed Savings Targets.

Ameren states that the “the recommendations to increase savings goals each seem premised on a vague notion that Ameren Illinois can and should “do more” rather than on specific recommendations supported with adequate analysis and data that would be equivalent to the rigorous analyses provided by Ameren Illinois in support of Plan 3.” (Ameren Brief at p. 16). On the contrary, both NRDC Witness Grevatt and AG Witness Mosenthal provided very specific analysis and data and each concluded that Ameren had relied on unsupported increases in the cost to deliver savings in the Residential Standard CFL program and the Business Standard programs.

Witness Grevatt explains that while the PY5 cost per standard CFL was \$1.72, Ameren’s Plan 3 targets are premised on a cost per bulb of \$2.52. NRDC Ex 1, p 12. This is true even though Ameren eliminated more expensive specialty CFL bulbs, which made up 13 percent of the PY5 portfolio from the program, in future years – a change that would be expected to have reduced, not increased, the average cost per bulb. Ameren’s responses fail to justify this increase.

First, in his rebuttal testimony response, Ameren Witness Andrew Cottrell offered a new calculation of proposed savings which he calls an “alternative scenario,” under which he reduced the cost per bulb slightly from \$2.52 to \$2.31, rather than to the \$1.72 that was achieved in PY5. As an explanation, Mr. Cottrell explained that they reduced the cost to reflect lowering incentive levels, but noted that “The delivery fee per bulb, as per the projected implementation contractor, has not changed.” Ameren Ex. 7, page 4, line 65-66. The justification for the large “delivery fee” is not provided.

In response to a data request (NRDC 4.01), Ameren provides an explanation for the ramp up in cost per bulb in between program years 5 and 6, but does not explain why that increase is relevant to PY 7-9. Between PY5 and PY6 Ameren increased the volume of CFLs it set out to rebate from 2.4 million bulbs in PY5 to 4 million bulbs in PY6. In order to support this large ramp-up, the implementation contractor added three staff people and increased the marketing budget. However, the volume of bulbs to be discounted in PY 7-9 has sharply declined from PY6 levels, to roughly the PY5 pre-ramp-up level of 2.5 million. Moreover, the data response does not explain why three additional staff people and additional marketing should increase the total program cost by \$1.7 million, from \$4.6 million in PY5 to \$6.3 million in PY7.

Ameren has failed to justify either its original or its “alternative” cost per bulb of \$2.52 or \$2.31, respectively. Given that this single program is responsible for 11 percent of the total portfolio savings and 32 percent of residential savings, Ameren should be required to base its CFL savings on a reasonable and justified cost per bulb estimate. Absent compelling evidence to the contrary, the PY5 actual cost per bulb of \$1.72 should be used. Using this estimated cost per bulb, Ameren can realize substantial cost savings that could be directed to either CFLs or LEDs.

If directed to CFLs, Ameren should be held to a savings goal that is 31,000 MWh higher than proposed.

Similarly, Ameren projects that the cost of saved energy for the Business Standard program will increase by 36 percent, from \$125/MWh in PY 5 to \$170/MWh in PY 7-9, without providing any justification for such an increase. NRDC Witness Grevatt noted that a change in the net-to-gross value for the program would justify only a 3 percent increase in the cost of saved energy, not the 36 percent increase Ameren projects. NRDC Ex 1, p. 9, line 134. Moreover, changes in the federal lighting standards that will eliminate T12 lighting from the market would not impact the portfolio until January 2016, and even after that point only one-tenth of the Business Standard program would be impacted by the T12 elimination.

Ameren's has not responded to NRDC's critique of the Business Standard program, either in rebuttal testimony or in its briefs. A simple calculation of the impact of that change, using the Illinois TRM values suggests that the actual impact of the change in federal lighting standards would be to increase the cost of savings in the Business Standard Program to \$141/MWH, rather than to \$170/MWH. Witness Grevatt provides a transparent calculation of a reasonable savings target under this cost assumption of 237,000 MWh over the three year plan, which is an increase of 40,000 MWh. NRDC ex 1, p. 10, lines 158-163.

Ameren has likewise projected enormous increases in costs per unit of energy saved for its gas programs as well. Specifically, Ameren projects an increase in the cost per therm saved in the Gas Business Standard Program from \$0.98 in PY 5 to \$2.78 in PY 7-9. This is a 184 percent increase in costs for which Ameren provides no explanation. According to Witness Grevatt: "... I am not aware of any reason one should expect the increased cost per therm for Business Standard and Business Custom in its Plan. There do not appear to be any significant

baseline changes in the mix of measures that are included in these programs, and the NTG for gas is consistent with prior years. If, as Ameren described, it has shifted costs for dual fuel measures from gas to electric programs, the cost of saved gas should decrease.” NRDC Ex 1, p. 23, Lines 377-381. NRDC therefore urges the Commission to require Ameren to achieve the same level of savings per dollar spent in the Business Standard Program in PY 7-9 as it expects to achieve in PY 5 and 6, and to save 6 million therms per year at the portfolio level. NRDC Ex 1, p. 24, Lines 388 to 395.

Finally, NRDC and other witnesses pointed out that Ameren had failed to include CFL carry over savings from Plan 2. Specifically, Witness Grevatt estimated that the impact of carryover savings in PY 7-9 from bulbs rebated in PY 4-6 would be an additional 21,000 MWh, with 14,174 MWh counted toward the PY7 target, and 6,877 counted toward the PY8 target. This would increase the total three year savings for the portfolio by 3.5 percent. NRDC Ex 1, p. 15, lines 232-246. In its initial brief, Ameren has agreed to include carryover savings in its targets, but did not specify the amount by which this would increase the savings targets. Therefore NRDC seeks a Commission order adopting the carryover savings amounts noted above and contained in Mr. Grevatt’s testimony.

In sum, NRDC Witness Grevatt and other witnesses including AG Witness Mosenthal have provided specific evidence that the Ameren targets were unnecessarily low due to enormous unsupported cost-increase projections affecting the Residential Standard CFL program and the Business Standard gas and electric programs, as well as the failure to count carryover savings. NRDC urges the Commission to order Ameren to increase the savings targets for these programs accordingly, which would increase the total plan savings by 92,000 MWh and 4.1 million therms.

b. Verified, Evaluated, Reported Savings for PY 3, PY4 and PY5 Provide A Solid Basis for Plan 3 Goals.

Ameren attempts to deflect criticism of its proposed savings goals by casting doubt on the savings values it has reported as having been achieved under Plan 2, stating that “...the only years for which the Commission has confirmed final savings amounts is for PY1 and PY2.” Ameren continues, noting that “previous years’ savings that Intervenors use as a comparison are estimated based on different (sometimes substantially different) and changing (sometimes dramatically different) savings values (eg., NTG and TRM values).”

This is a particularly specious argument. Ameren itself relies heavily on its past performance upon which to base its future program goals, as it should and as it must. Ameren’s own experience offering the same or similar programs in its service territory is as good a basis for future performance as one could find, followed by the experience of other utilities with the same or similar programs in other service territories. Further, where NTG or TRM values have changed, the intervenor witnesses have noted those changes and the minimal impact those changes would have on the resulting saving expectations, and have made adjustments in their recommendations accordingly.

Ameren has proposed achieving substantially less per dollar it spends than it has in the past, according to its own reported and evaluated estimates of PY4 and PY5. Having failed to justify these increases with evidence of market conditions or other considerations that would warrant large cost increases, the company attempts to cast doubt on the validity of its own reported savings results for PY4 and PY5.

Unfortunately, the ALJPO finds the Commission “somewhat hampered by the fact that previous savings goals have only been confirmed by the Commission for PY1 and PY2.”

ALJPO at 24. However, it is critical to acknowledge that every planning case will be conducted

in the absence of performance history for recent years that has been confirmed through the full Commission process. Nonetheless, the most powerful basis upon which to judge a proposed plan will be the most recent evaluated results of those same programs in the same service territory. If the Commission finds that it cannot rely on evaluated (but not yet “confirmed”) performance data from previous years to judge the adequacy of a proposed target for a program, it will be forced to make determinations in a self-imposed vacuum of the most pertinent information. NRDC strongly urges the Commission to find that it can and should use evaluated data of past program performance as evidence suggesting what can be reasonably expected in the future, and to use such data in this case to conclude that Ameren’s targets are unreasonably low.

c. Setting Targets That Reflect the Achievable Potential Within the Budget Limitations Is not Unfair or Punitive, It is the Law.

Ameren suggests that to insist upon targets that would maximize savings within the budget limitation would be “unfair” and would “punish Ameren Illinois for acting in good faith.” In fact, the law requires the Commission to insist upon targets that maximize savings within the budget restraints, and to do less would diminish customer benefits and undermine progress toward the objectives of the statute.

Sections 8-103 and 8-104 require the utility to achieve specific savings targets each year, and to limit or reduce the amount of energy efficiency it undertakes “by an amount necessary” to avoid spending above a two percent budget limitation. (220 ILCS 8-103(d) and 8-104(d)). The utility files a plan every three years that must, “Demonstrate that its proposed energy efficiency measure will achieve,” the savings targets, “as modified” by the budget caps. 220 ILCS 8-103(f)(1) and 220 ILCS 8-104(f)(1). Under both the electric and gas sections, the Commission must issue an order approving or disapproving of the plan based in part on whether such a demonstration has been made by the utility.

As previously noted, in Ameren’s last energy efficiency plan filing (10-0568), the Commission was similarly faced with a request by Ameren for modified goals in order to remain within the spending cap. The Commission’s decision to reject the plan and require Ameren to make a compliance filing rested on an interpretation of the statute that the revised targets must be designed to maximize the savings achieved within the spending limitations. NRDC seeks a similar order in this case, not as a punishment for Ameren Illinois for having exceeded its previous targets, but as a way to ensure that Ameren’s customers benefit as much as possible from energy efficiency programs as envisioned by the Illinois legislature when it enacted the statutes under which these programs were created.

5. While The Obligation to Meet Targets Rests with Ameren, The Obligation to Approve Targets Rests with the Commission.

Both Ameren and the ALJPO note that the Act puts the burden of meeting savings goals on the company. Specifically, as the ALJPO recounts on p. 8, “Ameren suggests that it is understandable that other parties would want the Commission to include each and every one of their respective proposals, but Ameren believes the Act places the responsibility on the utilities to meet the savings goals – not AG, NRDC or CUB.” In its conclusion, the ALJPO also notes that the Act “imposes the requirements to comply with the design and implementation of a gas and electric energy efficiency savings Plan on AIC.” ALJPO at 24.

While it is undisputed that Ameren is responsible for designing programs to *meet* the savings targets as approved Commission, it does not follow that the company should therefore be empowered to *set* its own targets at levels that are substantially lower than achievable within its spending limitations. On the contrary, the Commission’s foremost obligation is to ensure that the modified targets are only modified from the statutory levels “by an amount necessary” to avoid exceeding the budget limitations. See, eg, 220 ILCS 5/8-103(f)(1). If the Commission

fails to require Ameren to achieve as much as it can within its budgets, it will deny consumers a substantial portion of the benefits of the savings for which they are paying.

Proposed Language

The Commission should modify the conclusion on page 24 of the ALJPO as follows:

The Commission notes that notwithstanding the statutory savings requirements of the Act for both gas and electric, there is the previously discussed spending limit, and the utility plan may be approved, despite not meeting the savings requirements, if there is "substantial evidence that it is unlikely that the requirements could be achieved without exceeding the applicable spending limits." The Commission further notes that the plan may not be approved absent a finding that the proposed targets represent the amount of savings the utility should be expected to achieve within its spending limits.

~~While the parties have discussed several areas of the Plan where increased savings might be achieved, it appears to the Commission that this decision is somewhat hampered by the fact that previous savings goals have only been confirmed by the Commission for PY1 and PY2. AIC also notes that previous years savings used as a comparison are estimated based on different and sometimes changing savings values. The Commission also recognizes that the Act imposes the requirements to comply with the design and implementation of a gas and electric energy efficiency savings Plan on AIC. The Commission expects AIC to work toward the goals expressed in the Act, however, b~~Based on the evidence presented, it appears to the Commission that the modified Plan presented by AIC in its rebuttal testimony, does not satisfyes the requirements of the Act, within the imposed spending limits, therefore the Commission will not approve the setting of the modified goals presented by AIC and finds that the savings presented are not adequate and do not comply with the requirements of the Act. The Commission recognizes that Ameren indicates that it is constrained by the spending limitations imposed by Section 8-103; however, the Commission believes that a revised plan could be submitted by Ameren, implementing the findings expressed in this Order, which would encompass greater energy savings, while complying with the spending limitations. The Commission believes it is appropriate to direct Ameren to make a compliance filing within 30 days of the date of this Order. The Commission directs that this compliance filing contain a revised Energy Efficiency and Demand Response Plan, which contains terms and provisions consistent with and reflective of the findings and determinations contained in this Order.

B. The ALJPO Conclusions With Regard to The Company's Failure to Spend Its Available Budgets Are Unclear and Ambiguous.

The record shows and the parties have not disputed that Ameren has achieved its modified targets while not spending its available budgets, and that if it had spent its available budgets during the course of Plan 2, it could have achieved roughly 10 percent, or 120,000 MWh more savings. NRDC has asserted that this fact should serve foremost as compelling evidence that Ameren has a strong tendency to substantially understate the level of savings it can achieve with a given budget, in order to easily over-comply. Unfortunately, this tendency, while insulating the company from any level of compliance risk, works at odds with the goals of the statute, to deliver as much savings as possible within the budget limitations, to lower overall system costs for all electric and gas customers.

The ALJ's proposed order is unclear and confusing in its conclusions on the issue of whether and how to ensure that the full budgets are spent to deliver savings for customers. First, the ALJPO mischaracterizes NRDC's position, apparently accepting Ameren's earlier mischaracterization that NRDC seeks an order requiring Ameren to spend 100% of its budgets. In fact, NRDC has consistently stated that the most important way to address this problem is to set appropriately high saving targets, and has also agreed with staff's position that Ameren should be directed to spend its budgets to the extent practicable and cost-effectively.

Second, the ALJPO rejects what it refers to as the CUB/NRDC position, while articulating but not deciding whether to adopt staff's alternative recommendation. The ALJPO states in its conclusion that, "It appears to the Commission that requiring AIC to spend all available budgeted funds in the manner CUB and NRDC recommend could create a situation where AIC would be required to spend funds in a manner that is not prudent or to spend money on measures that are not cost-effective." However, the proposed order does not make any clear

decision about staff's recommendation, which is paraphrases as follows: "Staff believes AIC should be directed to spend all funding to the extent practicable on cost-effective energy efficiency measures." While we note that cost-effectiveness should be consistently applied at the portfolio level, the Commission could address the company's practice of leaving unspent budgets (and therefore savings) on the table by directing it to "spend all funding prudently and to the extent practicable on measures that are part of a cost-effective portfolio."

Finally, the ALJPO's conclusion restates Ameren's argument that unspent amounts can be carried over to increase savings in subsequent years, but does not order that unspent balances must be carried over and used to augment results in subsequent years. Specifically, the ALJPO states that, "AIC also asserts that these unspent funds can then be carried over to subsequent program years to ultimately increase the cumulative savings achieved over the three-year plan cycle." However, the substantial unspent funds from PY 4 and 5 have not been carried over to increase savings in subsequent years and there is little reason to assume that Ameren will carry over unspent amounts absent a Commission order requiring it to do so.

NRDC therefore asks the Commission to modify the ALJPO both to order the company to "spend all funding to the extent practicable, prudently and on measures that are part of a cost-effective portfolio" and to require that unspent amounts must be carried over to increase savings for subsequent program years.

Proposed Language

The Commission should modify the conclusion on page 29 of the ALJPO as follows:

~~CUB and NRDC believe that AIC should spend all available budgeted funds over the next plan cycle. Staff believes AIC should be directed to spend all funding to the extent practicable on cost-effective energy efficiency measures. Both AIC and Staff oppose the proposals of CUB and NRDC. Among other things, While CUB suggests that AIC should be required to spend all of its funds, and Staff recommends that AIC should be required to spend all funding to the~~

extent practicable on cost-effective energy efficiency measures, AIC argues that imposing a spending requirement may force it to spend resources in a way that does not represent a good use of ratepayer funds, as there are instances where AIC may be able to achieve and even exceed the savings goals without spending the entire budget. AIC also asserts that these unspent funds can then be carried over to subsequent program years to ultimately increase the cumulative savings achieved over the three-year plan cycle.

It appears to the Commission that Ameren's practice of not spending its available budgets to achieve cost-effective energy savings undermines the intent of the Act, and should be addressed first and foremost by scrutinizing the savings targets to ensure that they reflect the highest level of savings that Ameren can reasonably be expected to achieve with the given budgets. However, the Commission further directs Ameren to work throughout the year to ensure that it is capturing all of the savings possible with its available funding and to the extent any funds are remaining at the end of the year, the Commission directs Ameren to carry those funds over to the following year and to increase its savings targets for that year accordingly. requiring AIC to spend all available budgeted funds in the manner CUB and NRDC recommend could create a situation where AIC would be required to spend funds in a manner that is not prudent or to spend money on measures that are not cost-effective. Having reviewed the arguments of the parties, the Commission declines to adopt the proposals of CUB and NRDC.

C. The ALJPO Erred in Excluding Stakeholders from the Process of Developing a Large Customer Pilot Program.

The Illinois Industrial Energy Customers (IIEC) sought an opportunity to develop a new program that will better serve large industrial energy customers. In response to the Illinois Industrial Energy Consumers (IIEC), Ameren has proposed to add a Large C&I Pilot Program, “similar to that identified by IIEC in its testimony as being included in ComEd’s Plan 3.” Ameren brief at 51. Ameren provides little detail, other than that Ameren intends to invest \$5.1 million in this program over the next three years, to achieve approximately 55,000 MWh in savings. Ameren Ex. 6.0 at 25:559-564. To develop the program details, Ameren Witness Goerss suggests that Ameren will, “will continue to work with IIEC and Ameren Illinois’ commercial and industrial customers.” Ameren brief at 51.

NRDC supports the development of a pilot program to better serve large industrial customers, but objects to the process by which Ameren proposes to develop a fairly substantial

pilot program. The Stakeholder Advisory Group (SAG) should be involved in the development of the pilot, and the parameters of the pilot program should be subject to Commission review before the budget is approved. Such a pilot, accounting for 13.6 percent of the business program savings even at the pilot stage and could grow substantially over time, should be subject to careful review to ensure that program dollars are being used in ways that maximize the savings captured by the portfolio.

The ALJPO directs Ameren to work with the IIEC, without the involvement of the SAG, and simply, “report to the SAG its progress, if any, in developing a large C&I program that attempts to meet the needs of this customer group.” This is not an adequate process for a program of this magnitude, and significance. The ALJPO is not clear about whether a pilot could begin without Commission consideration of the program design, or what the purpose is of reporting its progress to the SAG. The ALJPO appears to relegate the members of the SAG, many of whom have substantial expertise regarding the design of industrial efficiency programs and have been deeply involved in the considerations about the ComEd program that Ameren is modeling its program on, to a role of simply receiving a progress report and observing the pilot program’s implementation. This result is counterproductive and does not inspire confidence that the resulting program design will ensure that the program will result in maximizing cost-effective energy savings. NRDC has testified regarding minimum requirements of an adequate industrial pilot program in other dockets before this Commission and has a legitimate stake in the development of this pilot program as well.

We therefore urge the Commission to order that the company work with interested stakeholders as well as IIEC to develop a consensus driven pilot program, and that the final program be subject to Commission approval.

Proposed Language

The Commission should modify the conclusion on page 73 of the ALJPO as follows:

IIEC proposed that Ameren should, in consultation with large customers, develop a pilot program that will better enable large industrial customers, such as IIEC members, to maximize their economic energy efficiency opportunities. The AG supports the IIEC proposal and recommends the Commission include in its Order a requirement that AIC report to the SAG its progress, if any, in developing a large C&I program that attempts to meet the needs of this customer group. NRDC supports the development of a pilot program to better serve large industrial customers, but believes the SAG should be involved in the development of the pilot, and the parameters of the pilot program should be subject to Commission review before the budget is approved. Staff does not oppose this idea in concept but, claims AIC has not provided sufficient information for Staff to support its proposal.

AIC says it has reallocated a portion of its budget to this pilot program and will continue to work with IIEC and Ameren's C&I customers to provide additional electric program offerings within the confines of the Act. In response to Staff's concern regarding the lack of detail on this program, AIC says such details cannot yet be provided because they do not exist.

First, despite Staff's concerns about the lack of information, the Commission notes all other parties support the proposal and Staff does not oppose the idea in concept. However, because of the large size of the pilot program and the potential for it to grow over time, the Commission believes that the development of the pilot should be conducted collaboratively between Ameren, IIEC and other Intervenors or SAG members with a significant interest in this issue and/or expertise in the design of industrial energy efficiency programs. Moreover, we note that Ameren has indicated that it will model its pilot on a similar pilot under consideration in the ComEd case. It appears to the Commission that the parties to that case should work with the stakeholders involved in the Ameren pilot program to design a statewide approach which may result in identical offerings or different offerings if warranted by the differing conditions of the two service territories. Finally, the Commission believes that a final pilot of this magnitude, because it will be relied upon to deliver a large portion of the total C&I savings in Ameren's portfolio, should be approved by the Commission before it is implemented. The Commission believes the record supports IIEC's proposal and finds that it should be approved. As noted above, both the AG and NRDC support IIEC's proposal but appear to have slightly different views of the role for the SAG. Of the two recommendations, the Commission finds the AG's to

~~be more reasonable. As a result, the Commission directs AIC to report to the SAG its progress, if any, in developing a large C&I program that attempts to meet the needs of this customer group.~~

D. The ALJPO erred in its recommended approach to allowing Ameren flexibility to modify programs and budgets.

Ameren seeks a Commission order explicitly granting the company broad flexibility to make changes in its programs during the course of implementing the three year plan. Ameren Witness Obeiter specifies that, “Such authority should include, but not be limited to, changing the level of rebates paid to participants, adding or deleting measures from programs, shifting budget dollars between programs within the natural gas or electric portfolios, and discontinuing unsuccessful programs.” Ameren Ex. 10, p. 2, lines 35-38. Ameren’s direct testimony suggests that this flexibility should extend to changing program targets as well. Ameren Ex. 1.1, p. 18.

NRDC agrees that it is important for portfolio administrators to be empowered to make changes in the portfolio or programs in response to unanticipated changes in the marketplace. However, this flexibility must be bound by reasonable limitations. If, for example, the Commission orders Ameren to adopt higher savings goals for certain programs as part of the final plan, Ameren should not be able to unilaterally lower these goals post- plan adoption. Likewise, if Ameren gains approval for its proposed industrial pilot program as part of this filing, it should not be given so much flexibility that it could eliminate that pilot program without agreement of the parties to this case or the Commission. To grant such broad flexibility would be to render this process largely moot.

NRDC Witness Grevatt and the Attorney General’s Witness Mosenthal both suggested allowing the Company flexibility to make changes that would impact any given program’s budget by less than a fixed percentage. Mosenthal suggested 20 percent, while Grevatt

suggested that stakeholders should collaborate to define this limit, but noted that “10% of the portfolio budget could be a good place to start the discussion.” Both witnesses suggested that larger changes should be contingent on a stakeholder process and/or Commission approval.

Ameren Witness Obeiter disagrees with Mosenthal and Grevatt, opining that such a limitation would be burdensome, and that Ameren can be trusted to use broad, unfettered flexibility responsibly. However, none of Ameren’s witnesses presented any evidence that a 10 or 20 percent limitation on such authority would have hindered any decision that Ameren has made in the past regarding program changes, nor do any of the Ameren witnesses suggest an alternative threshold (25 or 30 percent, for example), or another mechanism to ensure that the company is prohibited from making the kinds of changes described above that would plainly undermine the plan approval process.

NRDC therefore seeks a Commission determination that Ameren may make program changes that impact any program budget by no more than 20 percent without seeking stakeholder or Commission approval, and that any larger changes must be presented to the SAG. If the SAG is unable to arrive at a consensus view regarding a proposed program change within a time frame agreed upon by the parties, the Company could seek Commission approval.

The ALJPO rejects NRDC’s proposal, and adopts instead the “event based limitations” proposed by Staff. Specifically, Staff supports AIC’s flexibility request in this regard only if the Commission explicitly requires the following: (1) AIC is directed to prudently respond to changes (e.g., TRM, NTG, market) in the implementation of its programs; (2) AIC is directed to spend all funding to the extent practicable on cost-effective energy efficiency measures in order to exceed the modified savings goals; (3) AIC is directed to avoid over-promoting cost-ineffective measures so as to help ensure participation of these cost-ineffective measures does

not exceed expectations; (4) AIC is directed to provide cost-effectiveness screening results in its quarterly ICC activity reports for new measures the Company adds to its Plan during implementation; and (5) AIC is directed to explain how it responds to TRM, NTG, and other changes in its quarterly ICC activity reports it will file with the Commission in this docket.

It is difficult to see how this list of directives functions in the day to day administration of Ameren's portfolio as any kind of actual limitation on Ameren's flexibility to make dramatic changes in program elements. Whether or not Ameren has observed these directives is not ascertainable by a program administrator during the program year. In fact, for many of these directives, even after the end of a program year it may be difficult or impossible to ascertain whether the company has in fact complied with these directives, because they are subjective. A program administrator, in determining whether or not he could make a change, would either need to assume that he has unfettered flexibility, or, if he is acting conservatively, would need to assume that no changes were permissible absent an adjudication determining that the company had complied with this list of directives.

By contrast, the AG's and CUB's proposal to simply allow flexibility up to a threshold of 20 percent of a program budget, and to require SAG review of larger changes with Commission approval needed only if the SAG cannot agree, is far easier to administer. The AG proposal gives the Company clear authority to make changes below a sharply defined line, and a clear process for seeking approval for larger changes.

NRDC urges the Commission to modify the ALJPO's conclusion on page 138-139 with respect to this issue by accepting the AG/CUB proposal, and rejecting Ameren's and staff's recommended approaches.

Proposed Language

The Commission should modify the conclusion on pages 138-139 of the ALJPO as follows:

The AG and CUB recommend the Commission adopt specific limits on Ameren's flexibility to change its programs and measures. Specifically, they recommend that any shifts of budgets that result in a variance from planned annual program budgets of 20% or more would trigger goal adjustment. CUB also supports the AG's proposal for Ameren to discuss proposed program and budget changes with the SAG.

Ameren opposes the AG and CUB's recommendation. AIC claims the flexibility it seeks is not unlimited because it is still under an obligation to act reasonably and prudently to be able to recover the costs of its energy efficiency and demand response programs. AIC also says if any party disagrees with a change that it makes, that party can petition or seek redress from the Commission.

Staff supports AIC's flexibility request in this regard only if the Commission explicitly requires the following: (1) AIC is directed to prudently respond to changes (e.g., TRM, NTG, market) in the implementation of its programs; (2) AIC is directed to spend all funding to the extent practicable on cost-effective energy efficiency measures in order to exceed the modified savings goals; (3) AIC is directed to avoid over-promoting cost-ineffective measures so as to help ensure participation of these cost-ineffective measures does not exceed expectations; (4) AIC is directed to provide cost-effectiveness screening results in its quarterly ICC activity reports for new measures the Company adds to its Plan during implementation; and (5) AIC is directed to explain how it responds to TRM, NTG, and other changes in its quarterly ICC activity reports it will file with the Commission in this docket.

Staff notes the Commission declined to impose limits on AIC's request for flexibility in previous Plan dockets based on the information available at that time. Staff believes that AIC has not used this flexibility prudently, particularly in the addition of cost-ineffective measures to Plans after the plans were approved.

The parties agree that Ameren should have flexibility to change its programs and measures. The Commission must decide what, if any, restrictions should be placed on Ameren's flexibility. In the past, the Commission has rejected the suggestions that specific restrictions should be placed in AIC's flexibility. It appears to the Commission that Staff has raised some valid concerns with Ameren's past practices in its exercise of

this flexibility. While the Commission does not endorse each issue raised by Staff, the Commission shares some of Staff's concerns regarding Ameren's past practice may impinge on ratepayers receiving the net benefits they deserve.

~~It appears to the Commission that Ameren has identified some potential shortcomings in the limitations proposed by the AG and Staff. Despite these potential shortcomings, the Commission finds that it is necessary to impose some limitations on Ameren's flexibility to protect ratepayers. The Commission believes that Staff's event based limitations are more appropriate than the AG's proposed budget based limitation. As a result, the Commission is compelled to adopt the limitations proposed by Staff. However, the list of directives suggested by Staff is not an objective, workable set of limitations that a portfolio administrator can use to guide its day to day decisions about whether a specific program change is appropriate. Moreover, neither AIC nor Staff has demonstrated that a 20% budget threshold is unduly restrictive. We therefore adopt the AG's recommendation that Ameren is authorized to make changes that impact a program budget by no more than 20%, and may propose larger suggestions to the SAG. In the rare instance where a large change is needed and the SAG fails to reach consensus on a change within a time frame agreed upon between AIC and the SAG, the Commission will make a final determination.~~

E. The ALJPO erred in allowing Ameren to modify goals in response to changes in NTG and TRM values.

While Ameren's proposed targets are so low as to have effectively eliminated any risk of noncompliance, Ameren nonetheless also seeks Commission approval for risk-mitigation strategies including the authorization to change its savings targets when there are changes in the NTG or TRM deemed savings values. The Commission should reject this proposal.

NRDC Witness Grevatt uses the example of a change in the NTG value applied to CFLs. In his example, a lowering of the NTG value, which should normally result in the program administrator shifting program funds to higher yielding measures or programs, would, under Ameren's proposed rule change, instead simply result in lower targets –and therefore less

savings per dollar spent for Ameren customers. This is not an outcome that the Commission should support.

The purpose of measuring and updating deemed savings and NTG values is to trigger action on the part of program administrators to make appropriate changes so that the energy savings promised to the utility customers can be achieved. As Witness Grevatt explains, under Ameren's proposal, the company "would have no incentive to design programs that minimize free ridership, which in turn maximizes ratepayer benefits."

Staff Witness Hinman suggests that NRDC's concern should be minimized if the Commission "explicitly required that AIC be held accountable to prudently respond to such changes in the implementation of its programs. Staff Ex. 3.0, p. 7, lines 142-144. The ALJPO appears to have accepted this reasoning. However, NRDC strongly disagrees. Under the ALJPO's conclusion, the Commission would be obliged to carefully investigate how Ameren responded to a large variety of changing market conditions, to determine after the fact whether the company made prudent adjustments, *having eliminated the strongest incentive that the company would have had to make such adjustments.*

If the Commission accepts the company's proposal to adjust targets after each change in the TRM or NTG values, it will be sending a strong signal to the company that it need not make otherwise prudent adjustments to maintain progress toward savings targets. It would be ironic and ineffective to then expect the Commission to thoroughly investigate each case in which the company should have made a "prudent" response to a changing market to determine whether its response was in fact adequate. Simply put, the Commission should not change the rules to eliminate the impetus for the company to act in its customers' best interests, and then expect the Company to react to market conditions as if the previous rules were still in place. Nor should it

expect that difficult, time consuming, contentious after-the-fact reviews of the company's actions will produce better outcomes than simply requiring the company to make adjustments to meet savings targets over the course of the Plan.

Proposed Language

The Commission should modify the conclusion on pages 150-151 of the ALJPO as follows:

Ameren requests the Commission grant it authority to annually adjust its goals to align them with changes to TRM values and NTG ratio values. Ameren suggests this enables the savings goals to remain commensurate with them as approved and thus enables the appropriate use of approved costs. Ameren notes that while it would gain gains certainty on values and goals, while still being responsible for achieving participation. Ameren suggests that the Intervenors' concerns are unfounded and based on unwarranted assumption, and also does not agree with Staff's proposed conditions on granting this request.

The AG suggests however, that NTG values can be highly influenced by program administrator actions, such as program mid-course corrections, and this would remove any incentive for utilities to strive for higher NTG values and to make appropriate program changes when NTG values are becoming increasing low. For example, the AG suggests that a utility would be indifferent if their assumed CFL NTG value of 0.44 dropped to 0.05, because its goals would simply be adjusted to accommodate this unfortunate outcome.

The AG notes that Ameren also proposes that goals be adjusted based on changes to realization rates, and recommend that this proposal also be rejected. The AG states that realization rates reflect the ratio of gross savings that a utility has tracked and estimated to the actual estimated gross savings from impact evaluations. This variance in gross savings can come from a number of things, including utility errors in its database, failure to accurately apply the agreed upon TRM values, or other factors that are generally in control of the utilities and/or their contractors. As a result, realization rates going forward should be presumed for planning purposes to be 1.0. Ameren also proposes that goals be adjusted based on any annual changes to the TRM. This proposal is yet another inappropriate policy.

NRDC also recommends against this request, believing it could send the wrong signal to a company. For example, if a NTG value for a

lighting program decreases, the desirable response on the part of a program administrator would be to shift money into higher yielding programs, or to make other adjustments to stay on course toward the goal. Under Ameren's proposal, the administrator would simply lower the goals, to the detriment of its customers. CUB similarly opposes this provision.

Staff supports AIC's request on this issue only if the Commission explicitly requires the following: (1) AIC is directed to prudently respond to changes (e.g., TRM, NTG, market) in the implementation of its programs; (2) AIC is directed to spend all funding to the extent practicable on cost-effective energy efficiency measures in order to exceed the modified savings goals; (3) AIC is directed to avoid over-promoting cost-ineffective measures so as to help ensure participation of these cost-ineffective measures does not exceed expectations; (4) AIC is directed to provide cost-effectiveness screening results in its quarterly ICC activity reports for new measures the Company adds to its Plan during implementation; and (5) AIC is directed to explain how it responds to TRM, NTG, and other changes in its quarterly ICC activity reports it will file with the Commission in this docket. If the Commission adopts this approach to adjustable savings goals, Staff suggests it should direct AIC to file a public version of the spreadsheet that demonstrates the savings forecasted in the approved Plan match the calculated savings in the spreadsheet listing all the measures with the associated IL-TRM measure codes.

The Commission notes that the TRM and NTG values upon which adjustments to savings goals would be made are not set by Ameren, but rather are values that were either provided by independent evaluators and the SAG/TAC, agreed-to by the parties or derived from a Commission approved process. The Commission also notes that no evidence has been presented that Ameren is not committed to energy efficiency or integrity in administering its plan portfolios, although some parties suggest that Ameren might try harder. The AG even notes that the Ameren Program Administrators have repeatedly demonstrated a willingness to reach out to stakeholders and seek expert input throughout the SAG process – a tendency that is much appreciated and valued; although the AG also cautions against removing all risk for the utility. The Commission also notes the issues that have been raised about the possible threats to the energy efficiency programs should this request be granted.

The Commission believes that based on the evidence presented, it is not appropriate to adopt the change proposed by Ameren on this issue, with the additional conditions identified by Staff. ~~The Commission will also require that Ameren file a public version of the spreadsheet that demonstrates the savings forecasted in the approved Plan match the~~

~~calculated savings in the spreadsheet listing all the measures with the associated IL TRM measure codes.~~

III. CONCLUSION

NRDC respectfully urges the Commission to issue an order that differs from the ALJPO in the following respects:

1. The Commission should find that Ameren's proposed savings targets are inadequate in that they do not reflect the amount of savings that could reasonably be expected to be achieved with the available program budgets. Specifically, NRDC urges the Commission to order Ameren to increase the savings targets for these programs accordingly, which would increase the total plan savings by 92,000 MWh and 4.1 million therms.

2. Regarding Ameren's failure to spend its available budgets, the Commission should modify its conclusion to order the company to "spend all funding to the extent practicable, prudently and on measures that are part of a cost-effective portfolio" and to require that unspent amounts must be carried over to increase savings for subsequent program years.

3. Regarding the development of a pilot program to serve large industrial customers, the Commission should require the company to work with interested stakeholders as well as IIEC to develop a consensus driven pilot program, and that the final program be subject to Commission approval.

4. Regarding Ameren's request for flexibility to make any and all program changes after the plan is approved, the Commission should adopt AG's and CUB's proposal to simply allow flexibility up to a threshold of 20 percent of a program budget,

and to require SAG review of larger changes with Commission approval needed only if the SAG cannot reach consensus.

5. The Commission should reject Ameren's request to modify savings goals each time there is a change in the NTG or TRM values.

Dated: December 30, 2013

Respectfully submitted,
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of Natural Resources Defense Council's Initial 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 30th day of December, 2013, by electronic mail.

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