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 of the Public Utilities Act	))))	

REPLY BRIEF ON EXCEPTIONS AND EXCEPTIONS OF THE PEOPLE OF THE STATE OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS
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The People of the State of Illinois, by and through Lisa Madigan, Attorney General of the State of Illinois ("the People" or "AG"), pursuant to the schedule established by the Administrative Law Judge's ("ALJ"), hereby file their Reply Brief on Exceptions in the above-captioned proceeding. The People's Reply Brief on Exceptions responds to the Briefs on Exceptions and Exceptions filed by Ameren Illinois Company ("Ameren", "AIC" or "the Company) and the Commission Staff ("Staff").

I. POLICY ISSUES

A. Spillover Assessments

In its Brief on Exceptions ("BOE") and proposed Exceptions language, Ameren takes issue with the Proposed Order's conclusion on page 99, which declines to require the inclusion of a measurement of spillover in net-to-gross ("NTG") evaluations. AIC BOE at 4-6; AIC Exceptions at 98. The People support Ameren's Exceptions and Proposed Language on this point. Indeed, NTG evaluations require an examination of both free ridership *and* spillover in order to fairly assess the impacts of energy efficiency programs. Failure to include spillover in NTG analysis ignores important benefits of efficiency programs that Ameren's programs should rightly be credited for when energy savings calculations are made.

While the People concur with the Proposed Order's observation at page 98 that "it can be costly to determine spillover", there is a way to account for it fairly without incurring additional costs. Specifically, as noted by AG witness Mosenthal in ICC Docket No. 13-0495, Commonwealth Edison Company's ("ComEd") Three-Year Energy Efficiency Plan filing, the SAG, in consultation with EM&V consultants, can agree to deem a spillover assumption regardless of whether a formal EM&V study tied to the program was conducted. These deemed values can be based on research outside of Illinois and professional judgment, and could be selected as zero or any other number. ICC Docket No. 13-0495, AG Ex. 1.0 at 41-42.[1] This same point is highlighted in AIC's Brief on Exceptions. AIC BOE at 5.

In addition, there is precedent for the SAG adopting spillover factors when they were not explicitly evaluated. In the latest SAG process of attempting to reach consensus on NTG ratios for Electric Program Years 5 & 6 and Gas Program Years 2 & 3, all parties reached consensus to explicitly add an estimate of spillover to the evaluated free ridership results for some programs for some selected utilities whose evaluations had not included spillover. ICC Docket No. 13-0495, AG Ex. 1.0 at 41.[2] This occurred, Mr. Mosenthal testified, because only one utility's evaluation explicitly estimated spillover for a particular program. As a result, stakeholders agreed to allow this same amount of spillover to be assumed for the other program administrators

[1] Pursuant to Part 200.640(a)(2) of the Commission's Rules of Practice, the People request the Commission take administrative notice of this evidence. 83 Ill.Admin.Code Part 200.640(a)(2).

[2] Pursuant to Part 200.640(a)(2) of the Commission's Rules of Practice, the People request the Commission take administrative notice of this evidence. 83 Ill.Admin.Code Part 200.640(a)(2).

for this program. There simply is no reason why the SAG cannot still operate in this way, and deem values while carefully allocating limited EM&V resources.

For all of these reasons, the Commission should include AIC's proposed modification to the Proposed Order on this issue.

B. Net-to-Gross Analysis

In its BOE, Staff argues that its proposed NTG methodology should be adopted, rather than the Proposed Order's retention of the existing NTG framework. The People did not except to the Proposed Order's conclusion, which retained the existing NTG framework. PO at 121. The People believe that further refinement of the existing NTG framework can be accomplished in the SAG and presented to the Commission in a petition or future proceeding.

That being said, the People concur with the arguments presented by Staff that the only real issue of contention between Staff and other non-utility stakeholders was the definition of voting parties. The People concur with Staff that its proposed NTG methodology – with the caveat that the definition of voting parties be revised to permit one vote per party and that voting parties not have a financial interest in the NTG calculation – should be adopted in the Final Order for all of the reasons stated earlier in this Brief and in prior OAG briefs in this docket.

In its BOE, Ameren argues that the Commission's Final Order should reject the Proposed Order's conclusion, which retains the existing NTG framework, and instead adopt the AIC NTG proposal, which vests all authority for determining NTG ratios with Ameren's independent evaluators. AIC argues that its proposal would be more cost-effective than the existing and Staff-proposed methodologies, and that parties who disagreed with the values set by AIC's evaluator "could petition the Commission to investigate the value setting process, as well as the value itself". AIC BOE at 9.

This methodology, however, inappropriately removes stakeholders and the Commission Staff ("Staff") from a critical component of the program evaluation process and would rely on outdated measurements of NTG ratios that are not informed by market and regulatory changes. As noted by Staff witness Hinman, under AIC's approach, a two-year lag exists between the time the NTG values go into effect for prospective application because the PY1 evaluations are not complete until midway through PY2, and would not apply for prospective application until PY3. Staff Ex. 2.0 at 18. As a result, prospective application estimates savings based on conditions that are about *two years old* at the time the NTG ratio values are being applied. As Staff noted in its Brief, when the market is stable, this may be a reasonable approach. But when the market is changing, a NTG ratio value that is two years out of date by the time it is applied is problematic because it requires utility ratepayers to bear all of the risk in times of uncertain market conditions. Staff IB at 49-50.

Unlike Ameren's NTG proposal, Staff's NTG Framework, which is supported by the AG with one caveat related to the definition of voting parties, has two critical components that address and respond to significant market change. First, it removes the ambiguous phrase "significant" market change. Instead of a "significant" market change triggering a retrospective evaluation, there will be a partially retrospective application at times when the parties cannot reach consensus on a prospective NTG value. The second part is changing the retrospective application that occurs under the previously approved NTG Framework to a potentially partial retrospective application. AG Ex. 2.0C at 4-7.

As noted by AG witness Mosenthal, one of the underlying disputes among parties that caused delays was disagreement about how to define whether a program or market has changed significantly. AG Ex. 1.0 at 38. The new Staff-proposed modified NTG framework simply requires that EM&V consultants work jointly to recommend a single comprehensive set of best-estimate NTG values to use for each program, even when there is no historic Illinois evaluation to rely on or whether or not a program or market is undergoing significant change. Further, it establishes a schedule that, if kept to, resolves concerns about not having certainty by March 1, thereby Ameren and other utilities with the savings-calculation-certainty they desire

In arguing against adoption of the compromise Staff NTG framework, AIC posits that Staff and Intervenors have not been able to reach consensus on all of the details involved in NTG analysis. This ignores the consensus that *has been* achieved, which is significant. Indeed, the only primary disagreement is whether voting parties should be permitted to have multiple votes. They, should not, for all of the reasons articulated in the AG Initial Brief. *See* AG IB at 42-44.

The AIC argument also ignores the successful collaboration that has been achieved through the SAG, as evidenced by recent Commission orders in Docket 12-0528 and 13-0077, which approved the development of annual Technical Resource Manuals that are established and updated by members of the SAG with the assistance of independent evaluators on an annual basis. The NTG process incorporates a similar give-and-take among stakeholders, along with the approval of a consensus-building process incorporating SAG member votes. The updated NTG values are then submitted to the Commission for approval.

For all of these reasons, the Commission's Final Order should either retain the Proposed Order's conclusion that the existing NTG framework be followed, or adopt Staff's proposed modified NTG framework, with the caveat that voting rules be established consistent with the recommendations made the AG's Initial Brief at pages 38-45.

Ameren's so-called alternative recommendation, while incorporating the Staff-proposed schedule for stakeholder review of evaluators' NTG conclusions, nevertheless appears to assign ultimate responsibility in cases where no consensus is achieved to the AIC evaluator, with prospective application of those results. Specifically, the proposed language reads:

> "As a result, for purposes of Ameren's Plan 3 the Commission adopts a compromise modification of declines to modify the NTG Framework and concludes that the NTG Framework adopted from Plan 2 should be utilized without modification which incorporates the evaluation timing as proposed by Staff, whereby NTG and TRM values derived through the SAG consensus process *or provided by the independent evaluator by March 1st are applied prospectively to the following program year.*

AIC Exceptions Language at 121-122 (emphasis added). This is hardly an insignificant modification, as it appears to minimize the input of SAG experts on the evaluation process, and again ignores the reality that these programs are financed by and designed for ratepayers – not the utilities. It is critical that the ratepayers' representatives – SAG members – are permitted to remain involved in all critical program development, delivery and evaluation processes, and that incentives (some degree of uncertainty regarding an evaluation result and possible retrospective application of that result) remain. Adoption of either of AIC's proposed modifications to the Proposed Order would essentially strip the SAG of its role in advising the utilities on these critical programs. For these reasons, AIC's proposed exceptions should be rejected.

C. Aligning the Timing of the Application of the NTG Framework and the Illinois Technical Resource Manual ("TRM")

Ameren's BOE, while supporting the Proposed Order's conclusion that aligns the timing of the application of the NTG framework and the updated TRM values, includes a proposed modification that all NTG and TRM values be applied prospectively. AIC BOE at 11. While the People concur that a degree of certainty is necessary to ensure the development of robust efficiency programs, that goal is also exactly what the current NTG framework, adopted in

Ameren's last three-year plan order, Docket No. 10-0568, as well as Staff's proposed new NTG framework, attempt to establish. *See* AG Initial Brief at 38-45; AG Reply Brief at 21-25

Ameren notes that its proposed language seeks to mimic the prospective application of TRM values approved by the Commission in Docket No. 13-0077. AIC BOE at 11. However, both the existing NTG framework and Staff-proposed NTG framework mainly provide for prospective application of all consensus values. The Staff-proposed framework retains one important retrospective application of values. Instead of a "significant" market change triggering a retrospective evaluation, as existed under the current NTG framework, there will be a partially retrospective application at times when the parties cannot reach consensus on a prospective NTG value. Staff's proposal is that the last two years' evaluators' NTG estimates be averaged. The distinction is that at the time of the filing with the ICC, the evaluations for the immediately prior program year are generally not yet available. As a result, Staff is proposing averaging one known NTG estimate (PYt-1) with one, as-yet-unknown-NTG estimate (PYt). This provides less certainty to the utilities than their proposal, but allows use of more current evaluations that in general should better reflect the likely current and future performance of the program. AG Ex. 2.0C at 4-6.

As noted by AG witness Mosenthal, this proposal provides a reasonable but significant incentive for all parties to reach consensus on a best estimate of future NTG ratios, and failing to reach consensus would result in less certainty and potentially more risk to all parties. AG Ex. 2.0C at 5. Thus, retaining this minimal retrospective application of NTG values is critical to incentivizing consensus building. Accordingly, AIC's proposed language at page 131 of its Exceptions and the arguments presented at page 11 of the Company's Brief on Exceptions should be rejected in the Commission's Final Order.

D. Aligning Savings Goals According to Changes in Values

In the OAG Brief on Exceptions, the People explained why the Proposed Order's conclusion granting AIC's request to align savings goals according to changes in values represents bad public policy and strips any incentive to modify programs when conditions require changes. AG BOE at 26-32. Mr. Mosenthal testified that the TRM is a living document, and it is imperative that it go through annual updates to modify any values for which there is now better information, or to add new measures. The TRM and TRM policy dockets[3] were established, and procedures agreed to, to ensure a timely update process whereby program administrators will know any TRM changes by March 1 of each year, 90 days prior to the beginning of the next program year and use of the next TRM version. This allows utilities the opportunity to modify plans, shift promotions of measures, incentive levels, etc. as they see fit to manage these known and certain changes. AG Ex. 1.0 at 41-42. Such changes, however, do *not* require the continuous adjustment of savings goals, and for these reasons, the Proposed Order's conclusion should be modified on this point.

In its Brief on Exceptions, Ameren of course supports the Proposed Order's conclusion permitting it to constantly update it savings goals, but objects to the five requirements recommended by Staff that enables that goal adjustment. AIC BOE at 15. In the OAG Brief on Exceptions, the People explained why these five requirements are of questionable value, vague and do little to minimize the disincentives to modify programs as needed to ensure cost-effectiveness. AG BOE at 26-32. In that regard, there is little to respond to in AIC's complaints in its BOE, except to urge the Commission to revise the Proposed Order's conclusion that adopts Ameren's and Staff' proposals on this point, and ultimately reject the Company's request to

[3] Docket Nos. 12-0568 and 13-0077, respectively.

revise set savings goals in accordance with changes in TRM values, as recommended in the OAG Brief on Exceptions. *See* AG BOE at 26-32.

E. Portfolio Flexibility

Ameren, in its Brief on Exceptions, raises issue with the Proposed Order's conclusions adopting Staff's recommendation. In response, the People hereby reiterate and adopt those arguments presented in their Brief on Exceptions on this issue. *See* AG BOE at 19-25. The People agree with the Proposed Order's conclusion that some level of oversight is required. PO at 139.

As previously stated by the People, however, the Commission should adopt Mr. Mosenthal's proposal that triggers goal adjustments and requires Ameren to build a consensus for program changes within the SAG – particularly applicable to any budget shifts above 20%. AG BOE at 20; AG IB at 49-50; AG Ex. 1.0C at 34-35. Mr. Mosenthal's proposal still provides necessary oversight by involving the technical expertise of the SAG without creating the additional administrative burdens associated with opening a docket with the Commission for each large change in budget. AG IB at 50. At the same time, Mr. Mosenthal's proposal provides Ameren with the flexibility that it needs in order to effectively manage its portfolio. AG IB at 50. Therefore, the People urge the Commission to adopt Mr. Mosenthal's reasonable proposal on portfolio flexibility in its Final Order.

II. STAFF AND INTERVENOR PROPOSED CHANGES TO THE AIC PLAN

A. Conservation Voltage Optimization

Although ELPC expresses a preference for a Voltage Optimization ("VO") program to be funded by other means, ELPC keeps the door open to funding VO technology through the limited efficiency funds available under Section 8-103. ELPC BOE at 14. In response, the People reiterate their position that it is inappropriate to pursue this measure with the very limited demand-side management funding resources in Illinois. AG IB at 33; AG Ex. 2.0 at 12. The People agree that VO technology *can be* a cost-effective approach to better manage the electrical grid and it can achieve some reductions in energy demand. *See* AG IB at 33. However, as the People have consistently noted throughout this docket, VO is a *supply-side solution* to efficiency that remains completely under the utilities' control, is invisible to customers, and does not require any customer action to be successful. AG IB at 33. This stands contrary to the very purpose of Section 8-103 funds, which is to *work with customers* to assist them with investments in efficiency at their facilities. 220 ILCS 5/8-103(c). Therefore, the Proposed Order correctly concluded that the record in this docket does not support funding VO through energy efficiency funds (PO at 82) and ELPC's request to open the door to this type of funding should be disregarded by the Commission.

Contrary to ELPC's views, it does not appear necessary to establish an alternative funding mechanism for VO. The Proposed Order notes that Ameren is currently exploring VO programs under its Advanced Metering Infrastructure ("AMI") Plan. PO at 82. The AMI Plan has mechanisms for funding that are completely separate from energy efficiency. There is nothing in the record that would suggest that the AMI Plan funds are somehow deficient for purposes of funding VO. Thus, there is no reason before the Commission in this docket to consider alternative funding sources for VO. The People support the findings of the Proposed Order and continue to agree with Ameren that any installation, operation or maintenance of a voltage optimization program should remain with the utility and outside of the energy efficiency portfolio. PO at 82; AIC IB at 62. Therefore, the People urge the Commission to adopt the Proposed Order as drafted and reject the exception proposed by ELPC related to funding VO through Section 8-103 funds.

III. CONCLUSION

WHEREFORE, the People respectfully request that the Illinois Commerce Commission enter an order consistent with the recommendations made in this Reply Brief on Exceptions and the OAG Brief on Exceptions filed on December 30, 2013.

Respectfully submitted,

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