

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

Illinois Commerce Commission)	
On Its Own Motion)	
)	Docket No. 11-0592
-vs-)	
)	
Ameren Illinois Company d/b/a Ameren)	
Illinois)	
)	
Investigation into compliance with the)	
efficiency standard requirement of Section)	
8-103 of the Public Utilities Act)	

**BRIEF ON EXCEPTIONS OF
AMEREN ILLINOIS COMPANY**

October 7, 2014

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I. INTRODUCTION

Ameren Illinois Company (“Ameren Illinois” or “AIC”) respectfully submits this Brief on Exceptions to the Administrative Law Judge’s Proposed Order (“ALJPO”) issued in this proceeding on September 23, 2014. The ALJPO correctly found that Ameren Illinois met the statutory energy efficiency savings goal mandated by Section 8-103(b) of the Public Utilities Act (the “Act”) for Program Year 3 (“PY3”) – the *only* matter identified in the Initiating Order issued by the Illinois Commerce Commission (the “Commission”) as being the subject of investigation in this docket. (08/23/11 Initiating Order at 1-2.) However, as follows, certain changes to the ALJPO are nonetheless warranted.

This Brief on Exceptions is generally organized according to the order in which the ALJPO progresses. Where the ALJPO specifically directed Ameren Illinois to respond with supplemental information—particularly relating to the amount of peak demand reduction accomplished during PY3 and to the appropriate amount for savings banking—Ameren Illinois has provided that information, if available. Ameren Illinois’ exceptions are presented as follows:

- (A) Exception 1 — Peak Demand Reduction
- (B) Exception 2 — How to Calculate the Savings Goal
- (C) Exception 3 — Banking of Energy Efficiency Savings
- (D) Exception 4 — Technical Corrections to the Finding and Ordering Paragraphs

These exceptions are intended only to ensure that the Final Order is complete, fair and accurate.

II. EXCEPTIONS

Ameren Illinois takes exception to the following aspects of the ALJPO, and provides answers to the ALJPO’s specific requests for supplemental information, when available.

A. Exception 1 — Peak Demand Reduction

The ALJPO correctly declines to find that Ameren Illinois failed to comply with the peak demand reduction requirements set forth in 220 ILCS 5/8-103(c), but goes on to (1) order the parties to identify AIC's actual peak demand reduction and where in the record that figure can be found; and (2) find that the amount of Ameren Illinois' peak demand kW reduction must be calculated in a manner that reflects participants or technology that was acquired only during a particular program year. These findings are each addressed, in turn, below.

First, for clarity of the record it should be noted that in an effort to limit the contested issues in this docket Ameren Illinois agreed that certain limited statements about demand response could be reflected in the Final Order (*see* Ameren Illinois Reply Brief at 2), but Ameren Illinois has always maintained its position that determination of compliance with demand response reduction requirements set forth in Section 8-103(c) remains beyond the scope of this proceeding. The Commission's Initiating Order made it clear that the only purpose of the Commission's investigation was: "to determine whether the respondents have complied with the incremental energy savings mandated by *Section 8-103(b)* of the Public Utilities Act, as modified by subsections (d) and (e) of that Section." (8/25/11 Initiating Order at 1, 2 (emphasis added).) Accordingly, the Commission's investigation has been and remains limited to whether Ameren Illinois met its energy efficiency savings goals under Section 8-103(b), not the peak demand reduction goals called for in Section 8-103(c). To expand the scope of the docket beyond what the Commission has ordered – and to make a determination of non-compliance – would be improper and unfair. *See ICC, on its own Motion, v. ComEd*, ICC Docket No. 11-0593, 03/5/14 Final Order at 26 ("Fundamental due process requires notice of what is at issue in a pleading.") (citing *Quantum Pipeline Co. v. Illinois Commerce Comm'n*, 304 Ill. App. 3d 310, 320, 709 N.E.2d 950 (3rd Dist. 1999)). Accordingly, the Final Order should reflect limited language, if

any, regarding demand response reductions, which language is set forth below in Ameren Illinois’ suggested changes below.

Second, the ALJPO required the parties to “state what Ameren [Illinois] actually achieved in terms of peak demand reduction and where in the record that figure can be found.” *ALJPO* at 5. The figures needed to determine what Ameren Illinois achieved in terms of peak demand reduction can be found in the *Independent Third-Party Evaluators’ Reports*, which were filed on e-Docket on June 1, 2012. In those reports, the independent third-party evaluators determined that Ameren Illinois has achieved the following peak demand reductions (as measured in kW): 564 kW (*Impact and Process Evaluation of 2010 (PY3) Ameren Illinois C&I Electric Energy Efficiency Programs Report*, docketed June 1, 2012, as “PART ELEVEN,” p. 82); 372–1,344 kW¹ (*Demand Response Program Evaluation*, docketed June 1, 2012, as “PART NINE,” p. 3); and 36,494 kW achieved through the normal course of running the other PY3 energy efficiency programs during Program Year 3.² When combined together, the total amount of peak demand reduction achieved by Ameren Illinois for PY3, as determined by the independent third party evaluators, was anywhere from 37,430–38,402 kW. A review of the May 9, 2013, evidentiary hearing transcript, however, shows that while the independent third-

¹ This figure was reached by multiplying the number of participating thermostats—1619—by the minimum and maximum average load reductions achieved during the test event (-.023 kW and -.83 kW, respectively).

² The achieved kW savings were determined by the independent third-party evaluator and provided along with the kWh savings each program in the remaining energy efficiency program reports filed on e-Docket on June 1, 2012. The relevant reports, page numbers (internal), and reduction figures are as follows:

Title	Docket Part	Page	Net kW Reduction
<i>Appliance Recycling Program Evaluation</i>	PART TWO	12	1015
<i>Heating and Air Conditioning Electric Program</i>	PART FOUR	14	5929
<i>Multifamily Program Evaluation</i>	PART FIVE	2	393
<i>Home Energy Performance Electric Program Evaluation</i>	PART SEVEN	10	154
<i>Lighting and Appliance Evaluation</i>	PART EIGHT	3	8389
<i>C&I Electric Energy Efficiency Programs Report</i>	PART TEN	2	20614
		Total:	36494

party evaluators' reports were filed on e-Docket, they were not entered into the evidentiary record.

Third, Ameren Illinois also takes exception to the ALJPO's determination that, "[i]n the future, the amount of Ameren [Illinois]'s peak demand reduction shall be calculated in a manner that reflects participants or technology that was acquired only during a particular [program]³ year." *ALJPO* at 5–6. This conclusion disregards the operational reality of the technology in place and used for demand response, and strays from the intention of Section 8-103(c), which asks only that electric utilities implement "cost-effective demand-response measures to reduce peak demand by 0.1% over the prior year" without setting forth any installation-related restrictions. 220 ILCS 5/8-103(c) (emphasis added).

A review of Ameren Illinois' PY3 residential demand-response program illustrates the point. While Ameren Illinois installed programmable thermostats for a number of customers in PY2 and PY3, the kW reductions did not occur at the time of the install. Rather, the kW reductions occurred in PY3, when Ameren Illinois used its capability to remotely cycle off customers' air conditioner units through the installed programmable thermostats. The kW reduction, therefore, was not tethered to the time at which the thermostats were *installed*; but rather to the timing and duration of "off-cycling" events. Accordingly, peak demand kW reduction, in a given program year, should not be limited to only that which is achieved through *installations* that occurred during that program year. Instead, it should include *any* peak demand kW reduction accomplished in that program year, regardless of when the equipment used to achieve the kW reduction was installed. Such a finding would comport with the practical

³ As noted below, Ameren Illinois respectfully suggests that references to "Plan Year 3," where made in the ALJPO to refer to the program year commencing in 2010, should be changed to refer to "Program Year 3," or simply "PY3," in order to avoid confusion with the term "Plan Year."

realities of demand response and with the language of Section 8-103 itself, which does not set forth any installation-related restrictions.

Accordingly, on pages 5 and 6, in the demand reduction “Analysis and Conclusions” section, the language should be revised as follows:

Analysis and Conclusions

~~Staff does not state how Ameren failed to meet its PY3 demand response target. It appears that Staff is arguing that improper testing nullifies the results from that testing. However, it is not clear that this is the argument that Staff is making.~~

~~Also, Ameren Illinois’s statutory peak demand reduction target for PY 3 was 5263 kW. Staff does not state what Ameren actually achieved in terms of peak demand reduction. In fact, no party made it clear as to what Ameren’s actual achievement regarding demand response was. Possibly, it is the 564 KW figure that CUB mentioned above, however, it is unclear whether this figure represents the results from only one test or whether it represents the entirety of peak demand savings. Thus, it is unclear from the evidence presented as to what Ameren actually achieved in terms of peak demand reduction. Therefore, **Despite the requests of certain parties to address the issue of Ameren Illinois’ demand response kW reductions,** the Commission declines at this time to find that Ameren Illinois failed to meet its PY3 demand response target. The Commission reminds the parties that they must present evidence establishing the figures as to what was actually achieved in terms of energy efficiency and they must present arguments that paint a well-developed picture of what happened, and what exactly they are asking the Commission to do in order to allow the Commission to reach an informed decision.~~

~~On Exceptions, the parties shall state what Ameren actually achieved in terms of peak demand reduction and where in the record that figure can be found. Staff shall also clarify its argument in a manner that addresses the issue above. Staff shall also clarify whether the previously installed programmable thermostats to which it refers are programmable thermostats installed in PY2, or whether this reference includes other programmable thermostats. Staff shall further clarify whether the programmable thermostats from PY3 in the test results at issue are segregable, and if so, the results for the programmable thermostats for PY3.~~

~~However, Staff does raise a valid concern regarding use of pre-existing equipment or customers when evaluating an energy efficiency program. As Staff notes, the demand response savings for any given plan year should be calculated based upon new (acquired during the plan year) thermostats, or other new (new to the PY year in question) measures or participants, when calculating the program year’s achieved demand response savings. This is true because the energy~~

~~savings based upon pre-existing customers or equipment is merely the status quo. It does not reflect the new energy savings resulting from a utility's energy efficiency program.~~

~~Indeed, Ameren's methodology appears to include persons or entities that acquired programmable thermostats before the time when those customers participated in this program. It cannot be the General Assembly's intent, when enacting Section 8-103 of the Public Utilities Act, to have persons/entities in Ameren's service territory pay for an energy efficiency program while allowing the utility to base its energy savings from that program on factors that do not actually result from the plan year program. In the future, the amount of Ameren's peak demand reduction shall be calculated in a manner that reflects participants or technology that was acquired only during a particular plan year.~~

B. Exception 2 — How to Calculate the Savings Goal

The parties disputed whether Ameren Illinois' savings goal for Program Year 3 should be calculated relative to projected throughput or actual throughput. Section 8-103(b) sets an energy savings goal of "0.6% of energy delivered in the year commencing June 1, 2010[.]" 220 ILCS 5/8-103(b). The statute assigns 75% of the responsibility for meeting that goal to the utilities, and 25% to the Department of Commerce and Economic Opportunity ("DCEO"). 220 ILCS 5/8-103(e). However, in Docket No. 07-0539, the Commission interpreted this directive to mean that Ameren Illinois was responsible for achieving approximately 80% of total portfolio savings, while the DCEO was responsible for achieving the remaining 20% of total portfolio savings.

For PY3, Ameren Illinois calculated its savings goal for Program Year 3 by multiplying 0.6% by the amount of "energy delivered in the year commencing June 2, 2010." The amount of energy delivered in the year commencing June 2, 2010, was 37,866,031 MWH (megawatt hours). The resulting calculation produces a total savings portfolio goal of 227,196 MWH. Ameren Illinois' portion of the goal, then, would be 80% of that figure, totaling 181,757 MWH.

Staff, on the other hand, argued that the phrase "energy delivered" in the operative section does not mean "energy delivered," but instead means "energy *projected to be* delivered." Because Ameren Illinois initially projected a Program Year 3 delivery of 38,635,500 MWH,

Staff multiplied that figure by 0.6% to get a total savings portfolio goal of 231,813 MWH. Then, Staff multiplied the total savings portfolio goal by 80% to determine Ameren Illinois' independent responsibility, which under this method would be 185,450 MWH.

For PY3, Ameren Illinois achieved savings of 263,374 MWH in Program Year 3, which more than covers Ameren Illinois' portion of the goal *and* the total portfolio savings goal that includes DCEO, even though Ameren Illinois is not responsible for DCEO's savings. Accordingly, for purposes of this docket only, Ameren Illinois does not take exception to the ALJPO's use of the savings goal calculation based on projected throughput, as suggested by Staff. Nonetheless, Ameren Illinois recommends that certain inadvertently incorrect figures be corrected to comport with the evidence and ensure a complete and accurate Final Order.

On Page 6, the following corrections to various figures and calculations should be made:

2. Energy Savings Based Upon Actual Energy Delivered Instead of Forecasted Savings

Based upon the amount of actual energy that was delivered, Ameren Illinois's Third-Party Evaluators calculated the combined savings achieved by the residential and business programs to be 263,374 MWH (megawatt hours) in energy savings. (*See, e.g., Ameren Illinois* Initial Brief at 4). Because Section 8-103 of the Act requires the savings goal to be 0.6 percent of "energy delivered" in Program Year 3 MWHs, the energy total portfolio savings goal for Ameren, using the amount of actual energy that was delivered, would be 227,196 MWH ~~181,757 MWH~~. This figure represents the actual amount of delivered energy (37,866,031 MWH) times 0.6%. Ameren Illinois would be responsible for 181,757 MWH of that savings goal, which is 80% of the total. ~~80 percent (the amount that Ameren is responsible for of the total savings goal).~~

Using the amount of energy that was projected to be delivered, 38,635,500 MWH, Staff opined that the total statutory savings goal for PY3 would be 231,813 MWH, which is 0.6 percent of the projected figure. Ameren Illinois would be responsible for 185,450 MWH of that goal, which is at 80 percent. Thus, Ameren Illinois ~~exceeded the statutory goal of 0.6% the portion of the statutory goal for which it was responsible~~ by 77,924 MWH₂ using Staff's approach₂ or by 81,617 MWH using Ameren Illinois's approach.

On Page 7, the following corrections must be made:

Ameren Illinois's Position

Ameren Illinois contended that although it and Staff initially disputed the amount of its PY3 energy savings, Ameren Illinois agreed to accept Staff witness Ms. Hinman's proposal regarding how to measure energy savings in order to narrow the issues in this docket, and for this docket only. As a result, Ameren Illinois and Staff agreed that Ameren Illinois's PY3 energy savings is ~~75,948~~ 263,374 MWHs.

Analysis and Conclusions

The Commission concludes that energy savings should be calculated based upon projected figures, not actual figures. As the AG/CUB note, this methodology is preferable, as, when planning an energy efficiency portfolio, a person must rely on forecasts. Additionally, as Staff noted, this is what has been done in energy efficiency plan proceedings in the past for other utilities. Thus, allowing energy savings to be calculated based upon projected figures provides for consistency. Although the statutory language is not a model in terms of clarity, the phrase "delivered energy" in Section 8-103(b) of the Act means *projected* delivered energy. 220 ILCS 5/8-103(b). Any other interpretation does not take into consideration that planning of an energy efficiency portfolio must occur well in advance of when it actually takes place. This interpretation also avoids the windfalls and penalties that a utility could receive in terms of meeting its energy efficiency goals which could be based upon unforeseeable events, like weather. The amount of Ameren Illinois's PY3 energy savings, ~~therefore is 75,948~~ 263,374 MWHs. Ameren Illinois met its statutory goal.

C. Exception 3 — Banking of Energy Savings

Finally, the ALJPO correctly states that Ameren Illinois is entitled to bank 15% of the program year's compliance obligation, to be consistent with the determinations made by the Commission in Docket No. 11-0593, titled *Illinois Commerce Commission v. Commonwealth Edison Co., Investigation into Compliance with the Efficiency Standard Requirement of Section 8-103 of the Public Utilities Act*. The parties disputed, however, whether the banking percentage should be determined against the excess of savings achieved by Ameren Illinois over the *total* statutory portfolio savings goal, or against the excess of savings achieved by Ameren Illinois over Ameren Illinois' *portion* of the statutory savings goal. The ALJPO decides that the banking allotment should be calculated against the *total* statutory savings goal, encompassing both

Ameren Illinois' and the DCEO's responsibilities. The ALJPO also concludes that "cumulative" banking should be allowed from year to year. Ameren Illinois does not take exception to any of these conclusions, and writes only to respond to the ALJPO's request for additional information.

On Page 10, the ALJPO asks that Ameren Illinois state the amount of the DCEO's energy savings, where in the record those savings can be found, and how those savings were calculated. A review of the record, however, shows that DCEO's achieved savings were not at issue in this docket, nor did DCEO participate or file testimony. Accordingly, there is no evidence to which Ameren Illinois can refer to identify what DCEO's achieved savings were for PY3.

On Page 11, the ALJPO also directs Ameren Illinois to state the percentage of savings it wishes to bank and provide the numerical amount of the banked savings, calculated in a manner consistent with the ALJPO. In response to the ALJ's request, Ameren Illinois provides the following proposed exception language, which includes the requested information:

~~In Briefs on Exception, Ameren shall state the percentage of energy savings that it wishes to "bank" and the numerical amount of energy savings that it wishes to "bank," as calculated in accordance with the conclusions herein. It shall also state whether it is "banking" amounts from a previous year or previous years and the numerical amounts involved.~~

For the current year, Ameren Illinois is allowed to bank 15% of the total statutory savings goal, including both Ameren Illinois' and the DCEO's portions. The total statutory savings goal based on projected throughput is 231,813 MWH. 15% of that figure is 34,772 MWH. To this amount, Ameren Illinois adds its previous bank of 16,890 MWH to create a total bank of 51,662 MWH. The entire amount is available for use in meeting future years' savings goals.

D. Exception 4 — Technical Corrections to the Finding and Ordering Paragraphs

Ameren Illinois does not generally take exception to the final conclusions reached by the ALJPO, but does request certain technical corrections to make the findings consistent with the

record on the actual savings achieved by Ameren Illinois in Program Year 3 and to make consistent the use of the term “Program Year” as opposed to “Plan Year.”

On Page 12, the following changes must be made:

(4) the statutory energy savings goal for ~~Plan Program~~ Year 3 as set forth in Section 8-103(b) and the demand response reduction goal as set forth in Section 8-103(c) have been achieved in the Ameren Illinois Company service territory;

(5) Ameren Illinois Company, which achieved ~~75,948~~ 263,374 MWHs of energy savings during PY3, exceeded its portion of the statutory energy savings goal mandated by Section 8-103(b) of the Public Utilities Act, as modified by subsections (d) and (e) of that Section, and therefore no penalties will be assessed;

(6) Ameren Illinois Company is permitted to “bank” 34,772 MWHs from ~~Plan Program~~ Year 3 ~~which, added to its previous bank of 16,890 MWH, creates a bank of 51,662 MWH~~ for use in the following year.

IT IS THEREFORE ORDERED that Ameren Illinois Company is found to have achieved ~~263,374~~ 75,948 MWHs of energy savings during ~~Plan Program~~ Year 3, and therefore is found to have complied with the incremental energy savings mandated by Section 8-103(b) of the Public Utilities Act, as modified by subsections (d) and (e) of that Section.

IT IS FURTHER ORDERED that Ameren Illinois Company is permitted to “bank” 51,662 MWHs from ~~Plan Program~~ Year 3 and from previous years for use in years that follow ~~Plan Program~~ Year 3.

III. CONCLUSION

Ameren Illinois appreciates the work of the ALJ in preparing the ALJPO, but respectfully requests that it be revised as set forth in the exceptions above.

DATED: October 7, 2014

Respectfully submitted,

AMEREN ILLINOIS COMPANY

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CERTIFICATE OF SERVICE

I, Mark W. DeMonte, an attorney, state that I served a copy of the foregoing Brief on Exceptions to the service list maintained on the Illinois Commerce Commission's e-Docket system for Docket No. 11-0592 via electronic delivery on October 7, 2014.

Dated: October 7, 2014

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