

**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)	

**AMEREN ILLINOIS COMPANY'S
BRIEF IN REPLY TO EXCEPTIONS**

October 21, 2014

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I. INTRODUCTION

Ameren Illinois Company (“Ameren Illinois” or “AIC”) submits this Brief in Reply to the Exceptions filed by the Staff of the Illinois Commerce Commission (“Staff”) and by the People of the State of Illinois (“AG”) on October 7, 2014.

As has been the case throughout this proceeding, no party has questioned Ameren Illinois’ compliance with the statutory mandate for energy efficiency or its achievement of its energy savings goals, the *only* issue identified by the Illinois Commerce Commission (“Commission”) as being the subject of investigation. Achievement of efficiency goals is a straightforward issue that would require resolution of only a couple technical issues regarding banking in the Final Order. However, Staff’s Brief on Exceptions (“BOE”) requests exceptions concerning Ameren Illinois’ achievement of its demand response savings goal and the respective responsibilities of Ameren Illinois and the Department of Commerce and Economic Opportunity (“DCEO”), which require response. For the reasons that follow, the Commission should reject Staff’s proposed exceptions on these issues and should instead enter a Final Order consistent with the positions set forth by Ameren Illinois.

II. ARGUMENT

Ameren Illinois focuses on two issues in this brief.¹ First, Ameren Illinois urges the Commission to affirm the ALJPO’s rejection of Staff’s belated request for a finding that Ameren Illinois did not meet its demand response savings goal as set forth in Section 8-103(c) of the Public Utilities Act (“Act”), an issue neither identified in the Initiating Order as a subject of the Commission’s investigation nor addressed in Staff testimony. Second, Ameren Illinois requests

¹ Ameren Illinois’ silence on an issue should not be construed as agreement with any position on that issue.

that the Commission reject Staff's exceptions concerning DCEO savings and resolve whether 15% or 10% of achieved savings can be banked in a given program year.²

A. Demand Response Savings Goal Set Forth in Section 8-103(c). (Staff BOE at 4-7.)

The ALJPO correctly declined to find that Ameren Illinois failed to comply with the peak demand reduction requirements set forth in 220 ILCS 5/8-103(c), but went on to (1) order the parties to identify AIC's actual peak demand reduction and where in the record that figure could 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.

Although both of those queries were beyond the scope of this proceeding, Ameren Illinois responded to them in its BOE. First, Ameren Illinois identified the total amount of its peak demand kW reduction for PY3 by listing the locations of those figures in the Independent Third Party Evaluators' Reports, though Ameren Illinois noted that the reports had not been entered into the evidentiary record.³ (Ameren Illinois BOE at 3.) Second, Ameren Illinois explained why the ALJPO's conclusion 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] year[.]" (ALJPO at 5-6), should be

² AG also offers exception language that would have the Commission encourage DCEO to actively participate in Commission proceedings in the future, and relies on the Commission's Final Order in Docket No. 11-0593 as support for such a request. Unlike Docket No. 11-0593, however, DCEO has not appeared in this docket.

³ A clarification should be made to the demand response section on page 3 of Ameren Illinois' BOE. The Independent Evaluators' Reports cited by Ameren Illinois reference both "peak" demand savings and "coincident" peak demand savings, though the two terms can be used interchangeably for purposes of the ALJ's inquiry. *See e.g.*, Appliance Recycling Program Evaluation at 11 (filed on Jun. 1, 2012 (part two)) (explaining coincidence factor); Lighting and Appliance Evaluation at 8 (filed on Jun. 1, 2012 (part eight)) (explaining coincidence factor); Multifamily Program Evaluation at 8—or at 11 using external numbers, as the internal page numbers drop off (filed on Jun. 1, 2012 (part five)) (explaining coincidence factor); C&I Electric Energy Efficiency Programs Report at 55 (filed on Jun. 1, 2012 (part ten)) (noting the calculation of "peak kW impact estimates").

modified. Specifically, the conclusion does not comport with the operational reality of the demand reduction technologies being employed by the utilities and does not further the purpose of the statute. (Ameren Illinois BOE at 4–5.)

Staff also responded to the ALJPO’s queries. In doing so, Staff appeared to imply that the Independent Third Party Evaluators’ Reports, which had been filed on e-Docket, were received into evidence at the evidentiary hearing (they were not). Staff also continued to argue that PY3 demand savings calculations should reflect only those achieved by technologies installed in PY3. (Staff BOE at 3–4.) Finally, Staff provided a low figure for Ameren Illinois’ total PY3 demand reduction that ignores any coincident peak demand savings achieved through the PY3 energy efficiency programs. Staff’s positions concerning demand response are untenable, and the Commission should not adopt them.

1. Compliance with Section 8-103(c) Is Not Properly Before the Commission and It Would be Unfair to Address it.

Ameren Illinois has continually maintained the position that a finding of noncompliance with the peak demand reduction requirements set forth in Section 8-103(c) is beyond the scope of this proceeding and that to make such a finding would be unfair because the Commission did not provide notice that its investigation in this docket would include such an inquiry. The caption of the Commission’s Initiating Order in this proceeding refers only to the “efficiency standard” set by Section 8-103, not to the peak demand reduction standard. The body of the Initiating Order made it even clearer that the scope of this docket was limited to an investigation into compliance with the energy efficiency standards set forth in Section 8-103(b) *only*. (Initiating Order at 1, 2.) Ameren Illinois reasonably understood this to mean that the peak demand savings goal was not at issue. Now, Staff has not only made peak demand savings goal attainment an issue, it is aggressively pursuing a finding of non-compliance on an incomplete

record and incorrect calculations. That is unfair, and the Commission should not adopt Staff's positions.

“[A]n administrative proceeding is governed by the fundamental principles and requirements of due process of law.” *Abrahamson v. Ill. Dep’t of Prof’l Regulation*, 153 Ill. 2d 76, 92, 606 N.E.2d 1111, 1119 (1992). Among other things, “[f]undamental due process requires notice of what is at issue in a pleading.” *ICC v. ComEd*, ICC Docket No. 11-0593, 03/5/14 Final Order at 26 (citing *Quantum Pipeline Co. v. Illinois Commerce Comm’n*, 304 Ill. App. 3d 310, 320, 709 N.E.2d 950 (3rd Dist. 1999)); *see also Walsh v. Champaign Cnty. Sheriff’s Merit Comm’n*, 404 Ill. App. 3d 933, 938, 937 N.E.2d 1167, 1171 (4th Dist. 2010) (“[I]n order to comply with administrative due process, there must be a *definite charge, adequate notice*, and a full and impartial hearing.” (emphasis added)). Adequate notice, according to the Illinois Administrative Procedures Act, is notice that includes “[a] reference to the particular Sections of the substantive and procedural statutes and rules involved.” 5 ILCS 100/10-25(a)(3).

Ameren Illinois did not receive adequate notice that it would be called to answer in this docket for its PY3 peak demand savings targets. Importantly, Staff’s investigation during testimony was limited to Ameren Illinois’ attainment of its efficiency goal; “Staff did not take a position on demand response targets or achieved levels” in testimony. (Staff Prehearing Memorandum (May 7, 2013) at 5.) It was not until nearly two years after this docket opened that Staff—in a reply brief to which Ameren Illinois did not have an opportunity to respond—first asked the Commission to find “that Ameren failed to meet its PY3 demand response target.” (Staff Reply Brief at 9). Fortunately, the ALJ recognized the complete absence of evidence in the record with respect to non-compliance with demand response goal attainment and declined to make such a finding. But due process and fairness warrant more—the Commission should

remove all policy decisions and discussion regarding demand response from the Final Order and defer them to a future docket that would have appropriate evidence and advocacy on the issue.

Quantum Pipeline Co., 304 Ill. App. 3d at 320.

2. Staff Improperly Relies on Materials Not in Evidence; Incorrectly Calculates Demand Savings for PY3; and Unfairly Requests a Finding of Non-Compliance with Section 8-103(c).

In response to the ALJPO's queries regarding Ameren Illinois' PY3 demand savings amounts, Staff improperly suggests in its exceptions that the Commission can base its findings on materials not received into evidence. Staff also limits its demand savings calculation to only those savings accomplished through thermostats that were installed in PY3 and ignores the coincident demand savings achieved through the PY3 energy efficiency programs. The Commission should not adopt any of these positions.

First, the Commission record is limited to those items delineated in 83 Ill. Admin. Code 200.700, which, in relevant part, include "evidence received." A review of the transcript of the evidentiary hearing shows that the Independent Third Party Evaluators' Reports that were *filed* on e-Docket were never *received* into evidence. (Docket No. 11-0592, Hearing Transcript (May 9, 2013).) As the Commission's Final Order must be based on proper evidence, Staff's proposed exceptions calculating demand response savings, which are based on Staff's review and analysis of the Independent Third Party Evaluators' Reports not in evidence, should not be accepted.

Second, even if the Commission were to refer to the matters outside the record (which it should not), Staff's position that demand savings should be limited only to those thermostats installed in PY3, as well as the ALJPO's adoption of that position, is also wrong and should not be included in the Final Order. As explained by Ameren Illinois in its BOE, the Act provides only that utilities "implement cost-effective demand-response measures to reduce peak demand by 0.1% over the prior year for [applicable customers.]" 220 ILCS 5/8-103(c). There is no

installation-related restriction in the Act for demand response savings and, as explained by Ameren Illinois in its BOE, it makes no logical sense to impose one here due to the technological realities of programmable thermostats. (AIC BOE at 4–5.) Staff has cited no legal authority to the contrary, nor could it, and all changes suggested by Staff related to this theory should be rejected. (Staff BOE at 3–8.)

Finally, the Commission should not rely on Staff’s understated demand savings calculation to determine non-compliance. In its BOE, Staff stated that Ameren Illinois achieved a total peak demand reduction of just 1,349.02 kW in PY3 and then requests a finding of non-compliance with the Act’s PY3 demand response goal. (Staff BOE at 5–6.) Such a finding would be unfair, improper and wrong. Because demand response goal attainment has been beyond the scope of this docket, the record is incomplete and undeveloped on the issue and thus does not provide the full picture of how much demand savings Ameren Illinois achieved in PY3. Moreover, even if the independent evaluator reports relied upon by Staff were considered, those reports do *not* support a finding of non-compliance as Staff states, but just the opposite—they would establish compliance.

The Independent Third Party Evaluators’ Reports, which as noted above were not received into evidence, provide more than just the peak demand reductions achieved through the programmable thermostats that were the focus of Staff’s analysis. The reports also calculate the *total peak*⁴ demand savings (in kW) achieved through Ameren Illinois’ various efficiency programs. The following chart shows the peak kW reduction achieved by Ameren Illinois as

⁴ As explained above in footnote 3, certain reports calculate “coincident” peak demand savings, which for purposes of this analysis is the same as “peak” demand savings.

calculated by the independent third party evaluators, apart from those savings achieved through programmable thermostats:

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

(Ameren Illinois BOE at 3.) When combined with the kW savings achieved by the programmable thermostats, the total amount of peak demand savings achieved by Ameren Illinois for PY3 was anywhere from 37,430–38,402 kW, against a goal for peak demand of 5,263 kW.

It is not reasonable to simply ignore those peak demand savings achieved through the PY3 energy efficiency programs and find non-compliance in this docket. In fact, doing so would be inconsistent with the most recent Final Order approving Ameren Illinois’ Plan 3. Specifically, in that docket the Commission decided to *include* coincident peak kW reduction when determining compliance with future peak demand savings goals:

The Company’s [energy efficiency and demand response] Plan [3] demonstrates that its proposed EE and demand-response measures will achieve the required 0.1% peak demand reduction over the prior year. No demand response program is proposed; rather, Ameren proposes to meet its demand response goal for reducing peak demand through its proposed EE measures. *Staff supports AIC’s proposal.* The Act defines demand response as “measures that decrease peak electricity demand or shift demand from peak to off-peak periods.” 20 ILCS 3855/1-10. *Allowing the implementation of EE measures that decrease peak electricity demand to count toward the statutory peak demand reduction target provides incentives to the utilities to focus on such measures. Furthermore, this is in line with the stated purpose of the statute....*

Docket No. 13-0498, Final Order (Jan. 28, 2014) at 41 (emphasis added).

Accordingly, even if the Commission addresses demand savings compliance, Staff's understated calculation of the PY3 demand savings should be disregarded. The calculation ignores the coincident demand savings achieved by Ameren Illinois' PY3 energy efficiency programs and does not comport with its own position and the Commission's most recent finding these savings should be *included*, not ignored.⁵ Indeed, when one considers them, Ameren Illinois achieved over 30,000 kW more in peak demand savings than its goal of 5,263 kW. A finding of non-compliance with Section 8-103(c) would not be warranted or fair.

B. Ameren Illinois and DCEO

Ameren Illinois generally agrees with the section of Staff's BOE devoted to DCEO's savings and the banking allotment. (Staff BOE at 14–17.) However, a couple of points require response or clarification.

First, the Commission should not add language suggesting, as Staff has proposed in its BOE, that banking depends on the entire savings goal for a year being met, including DCEO's portion. (Staff BOE at 14.) The Act explicitly states that a utility cannot be held responsible for any failure to meet the savings goal that is caused by DCEO's inability to satisfy its portion of the statutory requirement. 220 ILCS 5/8-103(k) ("No electric utility shall be deemed to have failed to meet the energy efficiency standards to the extent any such failure is due to a failure of the Department[.]") Restricting banking in a future year where a utility meets its own goal but DCEO either fails to carry its burden or fails to establish that it has could be viewed as a penalty on the utility in contravention of Section 8-103(k). In any event, Ameren Illinois believes the

⁵ Notably, the Final Order approving Ameren Illinois' first energy efficiency and demand response plan ("Plan 1"), which included PY3, was silent on this issue. See Docket No. 07-0539, Final Order (Feb. 6, 2008).

Commission should refrain from deciding it in a docket where it is not at issue because the total goal attainment is uncontested.

Second, Staff's BOE allots 10% of the total statutory savings goal as based on projected throughput for PY3 banking (Staff BOE at 16), but the ALJPO directed the parties to use 15%, so as to allow consistent banking between Commonwealth Edison ("ComEd") and Ameren Illinois. (ALJPO at 7–8, 10–11.) While Ameren Illinois had initially only requested banking in the amount of 10%, Ameren Illinois followed the ALJPO's directive and calculated its proposed banked amounts in its Brief on Exceptions using 15%. Ameren Illinois acknowledges, however, that a close reading of the Final Order in ComEd's PY 3 savings docket, Docket No. 11-0593 (Final Order at 12–18, 27), does not appear to clearly resolve the issue in favor of 15% banking, and that the final figure allotted to ComEd for banking in that proceeding appears to be just 10%. Whatever the equally-applicable rule is, Ameren Illinois will follow it. If the Commission determines that the Final Order in ComEd's case allowed 15% banking, then the Final Order in this case should include the 15% banking figures given by Ameren Illinois on page 9 of its Brief on Exceptions. If the Commission determines that 10% is the rule, then Ameren Illinois does not object to the figure given by Staff in its BOE on page 16. (Staff BOE at 16.)

III. CONCLUSION

In conclusion, the Commission should disregard Staff's proposed changes in accordance with the arguments set forth above and instead incorporate the proposed changes sought by Ameren Illinois, as well as grant any other relief that is just and equitable.

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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 in Reply to 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 21, 2014.

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