

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

CITIZENS UTILITY BOARD)
and)
ENVIRONMENTAL DEFENSE FUND)
) Docket 15-0100
)
Petition to Initiate a Proceeding to)
Investigate the Adoption of a Utility Time of)
Use Rate.)

**REPLY BRIEF ON EXCEPTIONS OF
AMEREN ILLINOIS COMPANY**

July 16, 2015

Introduction

On June 25, 2015, the Administrative Law Judge's (ALJ) Proposed Order (ALJPO) was issued in this matter. Ameren Illinois Company d/b/a Ameren Illinois (Ameren Illinois or AIC) did not submit a Brief on Exceptions to the ALJPO. On July 9, 2015, Citizens Utility Board (CUB) and the Environmental Defense Fund (EDF) (collectively, the CUB/EDF) submitted their Joint Brief on Exceptions (BOE). This Reply Brief on Exceptions addresses the CUB/EDF BOE. For the reasons stated herein, the Commission should reject the CUB/EDF proposed changes, and instead adopt the ALJPO as issued by the ALJ.

Reply to CUB/EDF Exceptions

CUB/EDF take exception to the fact that the ALJPO does not go as far as they think appropriate in prescribing the future stakeholder process as it relates to a consideration of time of use (TOU) rates. CUB/EDF now request not only an investigation but also a new workshop process to convene immediately and for which there is no record support.

CUB/EDF's requests are unnecessary because as is properly stated in the ALJPO, the Illinois Commerce Commission (ICC or Commission) has outlined a process that would ensure that a competitive market for dynamic pricing products would be allowed to develop. ALJPO at p. 8. That process is the Smart Grid Advisory Council (SGAC) stakeholder process. The SGAC was established pursuant to the Energy Infrastructure Modernization Act (EIMA), 220 ILCS 5/16-108.6(b), to advise public utilities investing in matters relating to smart grid electric system upgrades, including the deployment of appropriate technology, pursuant to Sections 16-108.5 and 16-108.6 of the EIMA. The ALJPO properly highlights that the SGAC did issue guidance on this matter prior to the filing of CUB/EDF petition. The ALJPO properly relies on the SGAC-issued Smart Grid Advisory Council – Guidance Regarding Implementation of Time of

Use Rates (SGAC Guidance) in evaluating the inappropriate nature of the CUB/EDF petition. The SGAC Guidance provides several conclusions and recommendations. Among them, and most relevant to this proceeding, are the SGAC's recommendation that the Commission consider taking action related to a utility offered TOU only after (1) the utilities work with the Retail Energy Supplier (RES) community to design and implement the billing, electronic data exchange and other necessary utility infrastructure to support TOU rate offerings, and after (2) completing development and implementation of necessary systems and reaching a threshold level of Automated Metering Infrastructure (AMI) deployment. SGAC Guidance at 6.

The recommendations made by CUB/EDF in the BOE would stand to second guess and undermine the recommendations found in the SGAC Guidance. More specifically, CUB/EDF request that the Proposed Order be modified such that the Commission will do two things on April 1, 2016:

- First, request from RESs information on what TOU and dynamic pricing rate offerings are available and how many customers have chosen them; and
- Second, open an investigation into whether or not to order Ameren Illinois and ComEd to offer a TOU option for residential and small commercial customers with AMI meters that purchase supply through the utility.

CUB/EDF BOE at p. 4. CUB/EDF also recommends the ICC's Office of Retail Market Development (ORMD) workshop process to begin immediately. CUB/EDF BOE at p. 5. These recommendations by CUB/EDF should be rejected for two reasons. First, the recommendations are a clear attempt by CUB/EDF to circumvent the SGAC and plainly rewrite the unambiguous recommendations of the SGAC. CUB/EDF take open shots at the SGAC Guidance and SGAC recommendation in their BOE alleging that the SGAC recommendation has "less-measurable criteria" than what they believe is appropriate. CUB/EDF BOE at p. 4. The SGAC was created to manage this very sort of issue and the Commission has identified the SGAC in

more than one Order to be the proper body to develop a proposal regarding increasing the availability and participation in dynamic pricing programs offered by either the utilities or alternative retail electric suppliers. Docket 12-0298, Order at 44; see also Docket 12-0244, Order on Rehearing at 26. CUB/EDF's displeasure with the SGAC recommendation is not a sufficient basis to revisit any of the findings made in the ALJPO. This is especially true given the fact that CUB is a member of the SGAC and has a designated role in this process.¹

The CUB/EDF recommendations in the BOE should also be rejected due to the fact that they are not supported by the record or facts found in the record. CUB/EDF make a number of summary conclusions in the BOE related to the sufficiency of AMI deployment as reaching the threshold level identified by the SGAC Guidance. CUB/EDF BOE at pp 2-4. CUB/EDF also raise new points and positions related to current and projected future market development and also customer education. CUB/EDF BOE at p. 3. Furthermore, CUB/EDF never introduced into the record statements or evidence related to their two-part BOE recommendation or the now proposed ICC ORMD workshop process. The BOE is not the proper stage for CUB/EDF to introduce new positions and/or recommendations as doing so is contrary to procedural rules; the parties to this docket had no opportunity to perform any evaluation of these new positions and the ALJ had no opportunity to evaluate them in making her analysis and conclusions. This is an important procedural misstep, if not checked it will unduly prejudice Ameren Illinois and therefore the CUB/EDF exceptions should be rejected.

¹ The CUB/EDF recommendations also make no effort to reconcile the fact which is supported by the record in this docket that it is unlikely that such TOU rates or tariffs could be offered or would attract significant customer participation. The Commission and other interested parties have repeatedly expressed noteworthy concerns related to whether the Commission can order a utility to offer the TOU rates identified in the Petition and also further concern over how a TOU rate would intersect with the integrated distribution company rules contained in Part 452 of the Illinois Administrative Code (83 Ill. Adm. Code 452).

Conclusion

In conclusion, the ALJPO properly dismisses the CUB/EDF petition and concludes that the CUB/EDF petition is premature. The Commission has identified the process for Ameren Illinois to work with the SGAC and other stakeholders to develop a proposal regarding increasing the availability and participation in dynamic pricing programs offered by either Ameren Illinois or the alternative retail electric suppliers. The SGAC has issued recommendations to this point and the CUB/EDF exceptions are a clear attempt to second guess and rewrite those recommendations. Additionally, CUB/EDF's introduction of new positions and requests for relief are improper at the exceptions phase of this litigation. Finally, the ALJPO correctly finds that it is clear that the Petition is premature and unnecessarily disrupts the process previously adopted by the Commission. The BOE raises no points that present sufficient basis to modify the ALJPO.

For the foregoing reasons, Ameren Illinois respectfully requests that the Commission reject the CUB/EDF proposed modifications to the ALJPO, and instead adopt the ALJPO as issued by the ALJ.

Dated: July 16, 2015

Respectfully submitted,

AMEREN ILLINOIS COMPANY
d/b/a Ameren Illinois



Edward C. Fitzhenry
Eric Dearmont
Kristol L. Whatley
Counsel for Ameren Illinois Company
One Ameren Plaza
1901 Chouteau Avenue
P.O. Box 66149 (MC 1310)
St. Louis, MO 63166-6149
(314) 554-3533, *voice*
(314) 554-4014, *facsimile*
efitzhenry@ameren.com
edearmont@ameren.com
kwhatley@ameren.com

CERTIFICATE OF SERVICE

I, Edward C. Fitzhenry, Counsel for Ameren Illinois Company, hereby certify that a copy of the foregoing *Reply Brief on Exceptions* was filed on the Illinois Commerce Commission's e-Docket and were served electronically to all parties of record in Docket 15-0100 on this 16th day of July, 2015.

A handwritten signature in blue ink that reads "Edward C. Fitzhenry". The signature is written in a cursive style with a large, stylized initial "E".

Edward C. Fitzhenry