

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

Illinois Power Agency)	
)	
)	Docket No. 16-0453
Petition for Approval of Procurement Plan)	

AMEREN ILLINOIS COMPANY’S REPLY BRIEF ON EXCEPTIONS

Ameren Illinois Company d/b/a Ameren Illinois (“Ameren Illinois” or “AIC”) submits, pursuant to 83 Ill. Admin. Code Part 200.830 and the briefing schedule established by the Administrative Law Judge (“ALJ”), its Reply Brief on Exceptions (“RBOE”) to the Brief on Exceptions (“BOE”) filed by the Illinois Power Agency (“IPA”) and the Staff of the Illinois Commerce Commission (“Staff”) with respect to the ALJ’s Proposed Order (“ALJPO”) issued in this proceeding on November 14, 2016.¹ These replies are organized first by party and then as consistent with the headings and structure of the ALJPO’s discussion of the 2017 IPA Procurement Plan (“Plan”).

I. REPLIES TO STAFF

A. Section 9.3—Workshop Consensus Items

Staff and Ameren Illinois are in agreement with the ALJPO’s express approval “of all the consensus language contained in the 2016 SAG report set forth in Appendix H to the 2017 Plan.” (Staff BOE at 4.) Moreover, in Staff’s BOE, Staff recommends the “addition of language to clarify the applicability of adoption of the consensus language, consistent with the IPA’s request.” (*Id.*) AIC agrees with both the substance of and rationale behind Staff’s recommendations. The clarifying language provided by Staff provides helpful guidance as to

¹ Ameren Illinois’ silence on an issue should not be construed as endorsement or disagreement with the ALJPO’s or a party’s treatment of that issue.

how the SAG members, including AIC, should use the consensus language in the upcoming year. The language could also help to avoid potential disputes with respect to the timing of when the consensus language should be revisited prior to the 2018 Plan docket. Accordingly, AIC would respectfully request that the Final Order reflect the changes proposed by Staff on this issue found on pages 4-5 in Staff's BOE.

B. Section 9.5.4.1—Programs Deemed “Not Responsive to the RFP” by Ameren Illinois and Section 9.5.4.1—Policy Implications

Staff correctly notes that both Staff and AIC remain concerned about energy efficiency programs bid into an electricity procurement plan “that are not primarily focused on electric savings.” (Staff BOE at 5.) Ameren Illinois joins Staff in its emphasis that:

(1) the standard by which the Commission approve the Plan, as set forth in Section 16-111.5(d)(4), requires that the Commission determine that the Plan will ensure “adequate, reliable, affordable, efficient and environmentally sustainable electric service at the lowest total cost over time, taking into account any benefits of price stability.” (Staff BOE at 5 (emphasis added).

(2) the provisions of the Section 16-111.5B call for other considerations by the Commission and the IPA (regardless of the IPA's current policy agenda) including but not limited to whether the new or expanded incremental energy efficiency would lead to “a reduction in the overall cost of electric service” (Staff BOE at 5-6 (citing Section 16-111.5B(a)(3)(D)); and

(3) notwithstanding the IPA's continued push for a determination by the Commission that there is some legal requirement that the Commission approve “all cost effective” programs, which as addressed in Section II below is not so, “cost-effectiveness must not be considered in a vacuum.” (Staff BOE at 6.)

Ameren Illinois further agrees with the Office of the Attorney General (“AG”), the Natural Resources Defense Council (“NRDC”) and Staff that the electric-only Utility Cost Test (“UCT”) “should be utilized” (Staff BOE at 7) over the Total Resource Cost (“TRC”) test to

determine “when a program would not be primarily focused on electric savings” (ALJPO at 80) as the UCT “is a more rationale test because it compares only what electric ratepayers would spend to all the benefits that they would receive.” (Staff BOE at 7.) Ameren Illinois has consistently raised the concern that electric customers should not be cross-subsidizing gas savings for gas customers through the Plan. Such cross-subsidization runs afoul of the cost-causation principles embodied in the Public Utilities Act, and the Commission should not endorse a policy in this docket. (AIC Objections at 12.)

Ameren Illinois would finally note that it agrees with Staff’s requested modification to the ALJPO, which recommends a statement in the ALJPO be removed as not founded upon the record evidence in this proceeding.

Accordingly, as reflected above, Ameren Illinois agrees with Staff’s proposed changes to pages 80-81 of the ALJPO that are set forth on pages 8-9 of Staff’s BOE, and Ameren Illinois would respectfully request that they be made in the Final Order.

C. Sections 9.5.4.2—Demand Based Ventilation Program and Section 9.5.5—Duplicative Programs

Ameren Illinois generally agrees with the suggested modifications set forth by Staff to pages 82 and 91 of the ALJPO, as set forth on pages 12 and 13 of Staff’s BOE. The Commission should include these proposed changes as they would make clear that the Commission has supported its findings and conclusions with evidence and argument founded in the record.

D. Section 9.6.8—ComEd Programs Recommended for Approval

While Ameren Illinois does not take a substantive position on ComEd’s programs themselves, the Company would like to make clear for the record that it supports many of Staff’s arguments with respect to purpose of this proceeding (to approve an electricity procurement plan, not an energy efficiency plan) (Staff BOE at 15); that the Commission must consider the cost of

electric service and the results of the UCT when reviewing cost-effective bids (*id.*); and that, regardless of what the IPA has incorrectly advocated, “Section 5/16-111.5B(a)(5) does not require ‘all’ cost-effective energy efficiency programs and measures to be included in a procurement plan” but rather “cost-effectiveness is a necessary condition, but not the sole condition, for inclusion in a procurement plan.” (*Id.* at 16 (emphasis added).) The Company addresses more fully the many arguments advanced by the IPA (and, previously, others) against these points—arguments that found themselves on advancing a policy rather than on applying the law—below in Section II of this RBOE. However, for purposes of replying to Staff’s BOE, Ameren Illinois agrees with and joins in Staff’s request to modify pages 103-104 of the ALJPO found on pages 16 and 17 of Staff’s BOE.

II. REPLIES TO IPA

A. Section 9.5.4.1—Programs Deemed “Not Responsive to the RFP” by Ameren Illinois

For the reasons set forth above in reply to Staff’s BOE on this same section, Ameren Illinois would request that the Commission adopt Staff’s requested language over the IPA’s on this issue. The IPA’s proposed changes go far beyond the issue of how to resolve cross-subsidization issues and into the realm of advancing other policy agendas (*e.g.*, the elimination of the uncontestable statement that “the Commission has the authority to use its judgment to set practical limits on the procurement of energy efficiency” (*see* IPA BOE at 4)). Staff’s suggested changes, however, result in the same outcome as requested by the IPA—SAG workshops—but Staff has appropriately and correctly modified the ALJPO in a manner that provides a clear and objective path forward.

B. Section 9.5.4.3—Behavioral Program

As explained by Ameren Illinois in its BOE, the ALJPO correctly credited the stated positions of every party other than the IPA, and excluded a bid for a behavioral modification program that, if approved, would: (a) cost Ameren Illinois ratepayers more than it would to procure comparable supply; and (b) potentially not even achieve the cost-effective savings claimed by the bidder. (*See* AIC Reply Brief at 19-21; *see also* Staff’s Objections at 17; AG Response at 11-12 (crediting Ameren Illinois’ and Staff’s arguments and stating that “[t]he OAG recommends that this particular bid at issue in Section 9.5.4.3 of the IPA’s Plan be excluded from the IPA Plan so that independent evaluators can assess the persistence of the program over a single year when the program is not being provided.”) Yet, the IPA, for its part, takes exception to the ALJPO’s conclusion and continues to argue in favor of including the entire bid for a variety of reasons that are not factually accurate or contrary to the law. The IPA’s positions, which were rightly rejected in the ALJPO, should also be rejected in the Final Order.

First, the IPA attacks the ALJPO’s conclusion with a carefully crafted—but nonetheless incorrect—implication that behavior programs like the bid at issue have been “exhaustively” studied for the persistence of savings, including in Illinois. (IPA BOE at 5 (“behavioral programs have already been exhaustively studied (including those from Illinois).”) In support of its argument, the IPA once relies on a report issued last month on Behavior Change Programs by the American Council for an Energy-Efficient Economy (“ACEEE”). (IPA BOE at 5, citing IPA’s Reply at 15-17.) This ACEEE report, however, wholly undermines the IPA’s position because the ACEEE report makes clear that “[l]ittle is known about the persistence of savings from behavioral programs.” (*See* Behavior Change Programs: Status and Impact, Sussman and Chikumbo (10/16), Report B1601, *cited in* IPA Reply Brief at 16. Fn. 8, at vii; *see also id.* at 50

(“Unfortunately, little is known about the persistence of savings from behavioral programs”); and 83 (“However, not knowing which behaviors are changed makes predicting the persistence of their savings challenging.”) Thus, the IPA’s own authority aligns with Ameren Illinois’, the AG’s and Staff’s positions that a persistence study of the dual fuel behavioral program being implemented in Ameren Illinois territory would benefit ratepayers and energy efficiency stakeholders alike. This, in and of itself, provides the “sound, unassailable reason” for the Commission’s exercise of its discretion to exclude the bid, notwithstanding the IPA’s disagreement with it.² (IPA BOE at 5.)

Second, even if the rationale above were not enough (it is), the IPA still refuses to acknowledge that the bid, which the IPA acknowledges was flawed on its face (*see* AIC BOE at 2), would be more expensive to procure than comparable supply. (Staff Objection at 17.) It continues to baffle why the IPA refuses to accept the Commission’s decision regarding its discretion to exclude otherwise cost-effective programs, issued in last year’s Final Order in Docket No. 15-0541, when those programs are more expensive than comparable supply. As noted above in Section I.B, it is not the law that the Commission must approve “all cost-effective” programs (no matter how many times the IPA or other parties state that it is) and cost-effectiveness should not be viewed in a vacuum. It simply makes no sense to approve a program, bid as a complete program, which costs ratepayers more than it would to procure

² The IPA’s undeveloped idea to conduct some sort of evaluation using a control group is also unsupported and should also be rejected. The idea appears to be based solely on the IPA’s own speculation—not any particular expertise or evaluation experience—which is in stark contrast to the recommendation by Ameren Illinois, Staff and the AG for an independent evaluation (conducted by an independent evaluator of such programs) to “assess the persistence of the program over a single year when the program is not being provided.” (AG Response at 11-12.) Despite the IPA’s questions about what would be involved in such an evaluation process, (IPA BOE at 7-8), those questions would be best left to the independent evaluator to address to ensure a full and fair evaluation of persistence, rather than addressed by the Final Order.

supply, particularly when those ratepayers could potentially get 95% of the benefits without spending a dime on the program. (Staff Objection at 17.) Such a result not only complies with the law, but would be better for ratepayers than the IPA's rigid policy and misapplication of the law.

Third, the IPA reaffirms its position that the behavioral bid should not be split up, citing a litany of unanswered questions and concerns with such an approach. (IPA BOE at 6-8.) Ameren Illinois agrees with the IPA's sentiment, and has set forth its reasons for not trying to parse out a portion of the bid and completely renegotiate it, contrary to the bidder's stated assumptions in the bid itself. (AIC BOE at 1-4.) To avoid redundancy, Ameren Illinois will not restate those positions here, but in sum to do so would be contrary to the bid process, fairness to other bidders, and other findings in the ALJPO that rejected that approach. Accordingly, for the reasons set forth in AIC's BOE the ALJPO should be modified to eliminate the alternative conclusion in the ALJPO. (*Id.*)

In conclusion, the Final Order should remain unchanged with respect to its exclusion of the behavioral modification bid and ordering of an independent evaluation of persistence. (ALJPO at 84) However, the ALJPO should be modified in the manner requested by AIC in its BOE. (AIC BOE at 4.) Such a result allows for AIC's customers to retain the benefit of the persisting savings (which Staff suggests could be up to 95% of the projected savings of the bid) without incurring the millions of dollars of costs associated with the bid, as well as allowing for customers and energy efficiency stakeholders to gain the benefit of an independent study of persistence.

C. Section 9.5.8—Ameren Illinois Reservations and Requested Determinations

While AIC does not agree with the language posed by the IPA in its BOE, AIC recognizes that, ultimately, the language reflects the IPA's position in its Plan and so the IPA can advocate for whatever positions it wants.

III. REPLY TO THE RENEWABLE ENERGY SUPPLIERS

The ALJPO correctly rejects the Renewables Suppliers recommendation to make payments to Distributed Generation Renewable Energy Credit ("DG REC") providers subordinate to the use of hourly ACP funds to purchase curtailed LTPPA RECs. The ALJPO is correct in their assessment that all parties seem to agree that curtailments are unlikely for 2017-2018, which would make the Renewables Suppliers' proposal moot. In addition, as explained by the IPA, in the event of a curtailment next year, the IPA could use the RERF to purchase the LTPPA RECs, which lessens the need for their proposal. Lastly, as correctly pointed out by the IPA, making new DG contracts subordinate to existing LTPPAs in allocating hourly ACP funds would require the introduction of new curtailment provisions into DG contracts, which would signal to possible bidders that the utilities cannot promise to actually purchase the RECs because they cannot promise the availability of funds. This would defeat the recent efforts to make the DG REC process more effective; the Renewables Suppliers recommendation should be rejected.

IV. CONCLUSION

For the reasons set forth above, Ameren Illinois Company respectfully requests that the Commission modify the ALJPO as set forth herein and in AIC's Brief on Exception.

Dated: December 2, 2016

Respectfully submitted,

AMEREN ILLINOIS COMPANY
d/b/a Ameren Illinois

By: /s/Mark W. DeMonte
One of its Attorneys

Matthew R. Tomc
Kristol W. Simms
AMEREN SERVICES COMPANY
One Ameren Plaza
1901 Chouteau Avenue
St. Louis, Missouri 63166
(314) 554-3533 (phone)
(314) 554-4014 (fax)
mtomc@ameren.com
ksimms@ameren.com

Erika M. Dominick
Regulatory Paralegal
Ameren Services Company
One Ameren Plaza
1901 Chouteau Avenue
St. Louis, Missouri 63166
Telephone: (314) 554-3649
edominick@ameren.com

Mark W. DeMonte
JONES DAY
77 W. Wacker Drive
Chicago, IL 60601-1692
Telephone: (312) 782-3939
Facsimile: (312) 782-8585
mdemonte@jonesday.com

CERTIFICATE OF SERVICE

I, Mark DeMonte, an attorney, certify that a copy of the foregoing Reply Brief on Exceptions was filed on the Illinois Commerce Commission's e-docket and was served electronically to all parties of record in this docket on this December 2, 2016.

/s/ Mark W. DeMonte
Attorney for Ameren Illinois Company