**STATE OF ILLINOIS**

**ILLINOIS COMMERCE COMMISSION**

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| Ameren Illinois Company | | |
| d/b/a Ameren Illinois | ) | |
| | ) | |
| Petition for Approval of Tariffs | ) | Docket 14-0097 |
| Associated with the Small Volume | ) | |
| Transportation Program | ) | |

**INITIAL BRIEF OF**
**THE ILLINOIS COMPETITIVE ENERGY ASSOCIATION,**
**THE RETAIL ENERGY SUPPLY ASSOCIATION,**
**AND THE RETAIL GAS SUPPLIERS**

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Pursuant to Section 200.800 of the Rules of Practice of the Illinois Commerce Commission ("Commission") and the Administrative Law Judge's Ruling, the Illinois Competitive Energy Association ("ICEA"), the Retail Energy Supply Association ("RESA")[1], and the Retail Gas Suppliers ("RGS") [2] submit this Initial Brief in this proceeding. This proceeding resulted from the compliance filing made by Ameren Illinois Company ("Ameren" or "AIC") which was

[1] RESA's members include AEP Energy, Inc.; Champion Energy Services, LLC; ConEdison *Solutions*; Constellation NewEnergy, Inc.; Direct Energy Services, LLC; Dynegy Energy Services; GDF SUEZ Energy Resources NA, Inc.; IDT Energy, Inc.,; Interstate Gas Supply, Inc. d/b/a IGS Energy; Just Energy; Liberty Power; MC Squared Energy Services, LLC; Mint Energy, LLC; NextEra Energy Services; Noble Americas Energy Solutions LLC; Nordic Energy Services, LLC; NRG Energy, Inc.; PPL EnergyPlus, LLC; Stream Energy; TransCanada Power Marketing Ltd.; and TriEagle Energy, L.P.. The comments expressed in this filing represent the position of RESA as an organization but may not represent the views of any particular member of RESA.

[2] On September 17, 2014, Dominion Retail, Inc., a member of the RGS, filed its motion to withdraw from this proceeding.

directed by the Commission in Docket 13-0192, in which the Commission approved a Small Volume Transportation ("SVT") Program for Ameren.

## I. INTRODUCTION

The gas customers of Ameren are the last significant group of customers in Illinois that are not currently able to select their gas supplier in an SVT program. The other two major gas utilities, Nicor Gas Company ("Nicor Gas") and The Peoples Gas Light and Coke Company ("Peoples Gas"), have Choice programs. The major electric utilities, Commonwealth Edison Company ("ComEd") and Ameren itself, also have Choice programs in place. (RGS Ex. 3.0, pp. 1-2)

Ameren appears to misunderstand the purpose of this proceeding. During cross-examination, Ameren asked the witness for the RGS, Mr. James Crist, if it was his recommendation that the Commission direct Ameren to implement an SVT Program. His response was that the Commission has already directed Ameren to implement an SVT Program in Ill. C. C. Docket 13-0192. (TR. 137) And the Commission authorized Ameren to collect over $10 million to implement that program. The instant proceeding is a compliance proceeding resulting from the Commission's Order approving an SVT Program for Ameren in Docket 13-0192. The Commission directed Ameren to make the compliance filing in order to address unresolved issues regarding SVT tariffs. The Commission's Order specifically found that the purpose of this proceeding was not to re-litigate matters resolved in Docket 13-0192. (Order in Docket 13-0192, p. 246)

Despite the Commission's order and the Commission's pro-choice policy, Ameren wishes to re-litigate the Commission's prior decision and terminate its Choice Program before it even begins. Ameren bases its claim on the theory that the Commission should allow it to deviate from the Choice Program the Commission authorized in its last rate case in favor of implementing what is in Ameren's sole opinion the most sophisticated choice program in Illinois. At the same time, it points to the cost of its unilaterally modified program as a basis for terminating it. Instead, Ameren offers a Gas Choice Program that suppliers in this proceeding have shown to be an ineffective program. Rather, Ameren is attempting to backtrack on years of preparing the already approved program by creating an unworkable program. The Commission should not indulge Ameren's circular reasoning or its request to deny customers the benefit of choice.

## II. PROCEDURAL HISTORY

### A. Ill. C. C. DOCKET 11-0279/11-0282

The first docket that dealt with the development and launch of an SVT program was AIC's base rate case in 2011 (Ill. C. C. Dockets 11-0279/11-0282). In that case, the initiation of a small volume transportation program for gas customers was proposed and acted upon favorably with the Commission directing its Staff to promptly convene workshops with the goal of developing consensus on SVT issues so that Ameren could file SVT tariffs. In the event consensus was not reached, Staff was to prepare a report detailing the workshop process and issues. The Commission's Order (dated January 10, 2012) proclaimed it "strongly embraces retail competition in the energy markets" and expressed the desire to "examine and address market barriers and other related issues as the program is being developed, rather than address them when a program might already be in place." (Order in Dockets 11-0279/11-0282, p. 195) This step forward was taken and workshops were held under the oversight of the Commission Staff's Dr. Rearden. (RGS 3.0, p. 2)

The workshop process was very extensive--eight workshops were held that were productive and had significant participation from various stakeholders including many Alternative Gas Suppliers ("AGS"). Robust discussion was held on aspects of an SVT program and fundamental program rules were developed. Dr. Rearden's report stated, "the workshops were successful in the sense that they cooperatively developed a set of tariffs that seemed to satisfy the majority of participants. Certainly, all participants did not agree with every word of the tariffs that were discussed. But it appeared to Staff that most stakeholders were content with the approach that was developed. However, the workshops did not result in 100% consensus on every aspect of the SVT program." (*Id*., pp. 2-3) In his report, Dr. Rearden included a letter from Ameren requesting to file SVT tariffs in its next gas rate case, planned for the first quarter of 2013. It appeared that two years after the SVT program concept was approved that it would finally come to life. (*Id*., p. 3)

B. **Ill. C. C. DOCKET 13-0192**

In its gas rate case (Docket 13-0192), AIC filed the SVT tariff along with related Rider GTA and Rider GSIC and the Commission again pushed the SVT program forward. The Order identified the threshold issue to be addressed--whether the Commission should approve an SVT program in this proceeding—noting that "AIC, Staff, ICEA/RESA and RGS either endorse approval of such a program in this proceeding, or they do not oppose such action." The Commission stated further that "the potential benefits of an SVT program in AIC's service territory, while not certain, are likely." The Commission concluded "that it is in the public interest to approve an SVT program at this time." While the Commission approved the SVT Program, it noted that not all operational, tariff design, and other related issues regarding the SVT tariffs had been fully addressed by the parties in Docket 13-0192. Therefore, the

Commission ordered Ameren to "promptly hold a workshop, following the issuance of this Order to focus on the issues that are *not resolved* by this Order." It also directed Ameren to file a petition, tariffs and testimony *in support of* the SVT program within 45 days of the date of the Order. (Order in Docket 13-0192, dated December 28, 2013, p. 246; emphasis added)

Docket 13-0192 was a gas base rate case and AIC included costs for the development and launch of the SVT program including information technology/billing system changes in its filing and those costs were included in the rate base approved in the Order in Docket 13-0192. Ameren was awarded an increase in rates, reflecting increases in operation and maintenance expense and rate base. Thus, the rates in place today that are currently being collected reflect the inclusion of costs for Ameren to follow the Commission order to file SVT tariffs and implement the SVT program. (RGS Ex. 3.0, pp. 3-4)

As directed by the Commission, AIC held two workshops in January 2014, on the 16th and again on the 28th. As Ms. Seckler described in her testimony, the workshop participants discussed the SVT program and tariff issues to continue to reach agreement on program specifics and improve the tariff language for filing. (Ill. C. C. Docket 14-0097, AIC Exhibit 1.0, p. 11) There was no discussion during those workshops that there could be a delay from the fourth quarter 2014 SVT program launch, nor a substantial increase in costs. (RGS Ex. 3.0, p. 5)

### C. **Ill. C. C. DOCKET 14-0097**

AIC filed the SVT tariffs, along with supporting testimony, on January 31, 2014, in this Docket 14-0097. Ameren did not ask the Commission to reverse its approval of the SVT Program; rather, Ameren maintained its neutrality regarding the SVT Program. (AIC Ex. 1.0, p. 3) Docket 14-0097 is not a base rate filing, nor a docket intended to examine the prudence of Ameren's costs, nor a docket to re-litigate issues decided in Docket 13-0192. This is a compliance docket to specifically review and approve the SVT tariff, after ruling on issues that were not resolved in Docket 13-0192. Not all issues were resolved in the January workshops so ICEA/RESA, RGS, the Commission Staff and the Citizens Utility Board ("CUB") filed direct testimony on April 11, 2014 and rebuttal testimony on April 25, 2014, all concerning SVT program and tariff issues. (RGS Ex. 3.0, p. 5) No party challenged the Commission's approval of the SVT Program in direct or rebuttal testimony.

A workshop was held on April 15, 2014, to focus on consumer protection issues, and it did. In general the discussion was on consumer education, consumer protection and consumer bill issues. (AIC Ex. 1.0, p. 11) There was no discussion during that workshop that the fourth quarter 2014 SVT program launch could be delayed, nor was there any indication of a substantial increase in costs to implement the program. (RGS Ex. 3.0, p. 6)

AIC did not make the parties aware of the substantial proposed revisions to SVT program costs and schedule until three days after Staff and Intervenors submitted their rebuttal testimony. On April 28, 2014, Ameren filed its Motion to File Supplemental Direct Testimony. In that Motion, Ameren claimed that its estimate of SVT Program costs had increased from the $10.6 million, approved by the Commission in Docket 13-0192 (the amount being recovered through current rates) to $34 million and that the SVT program launch, which had been planned for the fourth quarter of this year would now be two years later, in late 2016, at the earliest. (*Id.*, p. 6)

## III. CONTINUATION OF SVT PROGRAM-THE COMMISSION SHOULD APPROVE THE SVT TARIFFS SUBMITTED BY AIC IN THIS PROCEEDING, AS REVISED TO INCORPORATE THE MODIFICATIONS PROPOSED BY ICEA, RESA AND RGS.

RGS, ICEA and RESA continue to support the SVT Program. The record shows that there is still value in the Program and Ameren's customers will benefit by its implementation.

The record also shows that Ameren's and CUB's arguments that the Commission should reverse its approval of the SVT Program are without merit. Instead of reversing its approval of Ameren's SVT Program, the Commission should, in its Order in this proceeding, direct Ameren to minimize its costs as much as possible and to accelerate the implementation of the SVT Program as much as it can.

### A. BENEFITS OF THE SVT PROGRAM

While this proceeding is not about re-litigating the decision of the Commission to implement an SVT Program, it is unquestioned that customers will benefit from an SVT Program. And those benefits go far beyond the benefits cited in Ameren's superficial and flawed cost-benefit analysis (as discussed more fully herein). One of the major benefits of an SVT Program is the ability of suppliers to offer a diverse range of products and services that Ameren cannot offer. Such products can better meet the needs and preferences of customers, and can also help customers consume energy more efficiently.

Probably the most common example of products offered by suppliers is fixed rate products. In contrast, Ameren's supply customers pay a gas charge, which varies monthly and has experienced significant swings. (TR. 258). Customers who buy fixed-price products understand that they have a fixed, guaranteed price for the term of their contracts and that's the value that they attribute to their buying decision in making that purchase. (TR. 187) While fixed price products are important products offered by competitive suppliers, they certainly are not the only products.

Mr. Crist provided a lengthy list of products offered by competitive suppliers including those that are bundled with gas commodity. (AIC Cross Ex. 11) While Ameren argues that such products could also be provided by private companies, that argument misses the point—what those companies would lack would be the benefit of dealing with a single retail gas supplier that is also offering a commodity bundled with the product. (TR. 162) One need only look at the telecommunications and cable industry to understand that there is great value added for customers by bundling related products.

Mr. Crist provided an excellent example of a bundled product offered by Direct Energy Services in the service territory of Nicor Gas. The customer receives a Nest Smart Thermostat, which has a value of $249, bundled with a two-year fixed price contract and a $50 VISA gift card. Studies have shown that smart thermostats can save consumers up to 20% of their energy consumption. Thus, through such a bundled product, the supplier is actually helping customers use less energy and lower their overall energy bill. Mr. Crist also noted the benefits from such a bundled product would not be reflected in Mr. Glaeser's cost benefit analysis, which will be addressed later in this initial brief. (TR. 198-199)

As Mr. Crist stated, during cross-examination, there is a beauty in creating choice programs because, as has been demonstrated for the past two decades around the country in various markets, suppliers will come into the market, products will be developed, and customers will avail themselves of the choices. His experience is that suppliers must be making compellingly attractive offers to customers because in a variety of utility markets for both electricity and natural gas for the past two decades, choice programs have been launched and are healthy and growing. (TR. 192-193)

Mr. Crist also testified to wholesale benefits of an SVT Program. Those benefits include increased liquidity at the Ameren trading hubs because multiple suppliers are buying and selling at those hubs. Further, Choice programs bring greater reliability because suppliers have intrastate pipeline assets that can be utilized to deliver into the system that Ameren may not have access to, and downward price pressure on wholesale prices at the Ameren hubs due to multiple buyers and sellers utilizing those hubs. (RGS Ex. 3.0, at 27-28)

Finally, ICEA/RESA witness Teresa Ringenbach testified to the opportunity of customers to save money by purchasing their supply from AGS rather than utilities. In her rebuttal testimony to the supplemental direct testimony of Ameren, she testified that then current supplier offers in both Nicor Gas' and Peoples Gas' service territories were 10%-20% below those utilities' gas charges as of August 2014. (ICEA/RESA Ex. 3.0, pp. 9-10)

## B. THE ARGUMENTS THAT THE COMMISSION SHOULD REVERSE ITS APPROVAL OF THE SVT PROGRAM ARE WITHOUT MERIT.

### 1. Whether Ameren should be allowed to recover its cost overruns for the SVT Program is not the subject of this compliance proceeding.

Ameren witness Mr. Glaeser stated, "Should the Commission approve the updated estimates on cost and implementation timeline and then decide that SVT is ultimately a desirable initiative irrespective of the concerns outlined above, AIC is prepared to undertake Phase 2 and seek recovery in a future rate case." (AIC Ex. 4.0, p. 21) To the extent that AIC is asking for preapproval of costs in this proceeding, that is not appropriate. Ameren is currently collecting costs in its rates to perform the SVT improvements necessary to launch the program. Mr. Glaeser has explained that Ameren has undertaken many general IT system improvements, which cost $11.6 million, yet were not described in Mr. Colyer's testimony in the last base rate case.

In AIC's last gas rate case, the Company witness for plant additions was Mr. Colyer and his testimony, Exhibit 7.0 and Exhibit 7.1 addressed the SVT system improvements which at the time were planned to cost $7.009 million. In the description of the SVT additions it is difficult to find any part of the description that matches the seven programs or functionalities, Mr. Glaeser describes as SVT Phase 1, which appears to simply be general system enhancements which Mr. Glaeser states provide benefits for all customers in absence of SVT. (RGS Ex. 3.0, p. 17) Based on the information above, Ameren appears to have taken the money approved for SVT and instead used it for non-SVT related items outside of the Commission's Order and is now asking for more money to delay or disallow the SVT Program. The Commission should order Ameren to implement the SVT Program using the funds Ameren was given in the last rate case. Any further funding needs should be addressed in a future rate case.

It is not clear what Ameren wants by way of assurance from the Commission regarding the additional expenses it must incur to perform the task the Company was directed to do in the Commission's Order but has not yet undertaken, however on one item Mr. Glaeser is correct -- Ameren must seek recovery in a future rate case. At that point, Ameren's investment will be reviewed and considered with other plant additions to its rate base. (RGS Ex. 3.0, pp. 19-20)

The cost of the SVT program constitutes a topic which has already been decided in a base rate proceeding in Docket 13-0192. In fact, Ameren is currently recovering as part of its rate base the start-up costs it identified at that time. ICEA and RESA and RGS do not object to Ameren recovering prudently incurred costs for implementing the SVT program not anticipated in Docket 13-0192. Ameren should move forward with the SVT implementation, and if Ameren incurs costs in excess of what was approved in the Docket 13-0192 proceeding, Ameren can seek recovery in its next base rate case. Ameren will need to show the prudence of its expenditures in its next rate case, but Ameren should not be allowed to raise the issues of SVT expenditures in this proceeding (RGS Ex. 3.0, pp. 6-7)

Moreover, this proceeding should not be viewed as any opportunity for Ameren to request that suppliers "chip in" to pay for its cost overruns. As Mr. Crist stated in confirming that Interstate Gas Supply of Illinois, Inc. is not willing to commit to paying any form of per-bill fee as part of the SVT Program, the "costs of the program already are in the rates, and the program implementation was ordered in the last case". (TR. 144)

If the Commission does consider Ameren's increase in estimated costs, it is important that the Commission only consider costs related to the SVT program. As demonstrated in Mr. Crist's Rebuttal to AIC's Supplemental Direct Testimony, Ameren has overstated the increased cost of the SVT program. Embedded in its $34 million forecast is over $10 million related non-SVT expenditures that Ameren intended to make regardless of the SVT program. Mr. Crist also addressed the remaining costs, which appear to be excessive. (RGS Ex. 3.0, p. 7)

Staff witness Dr. Rearden also testified that it is not appropriate in this case to determine whether Ameren's SVT projects are used and useful. The costs of such projects should be subject to litigation in Ameren's next rate case, not here, and the Commission should state in its order that it is not in any way approving or ruling on the justness or reasonableness of Ameren's costs. (Staff Ex. 3.0, p. 5)

In summary, Ameren's arguments regarding cost recovery are premature. They should be addressed in Ameren's next rate case. The record is clear that Ameren is using the approved SVT funding for non-SVT related projects and complaining about cost overruns without having done the approved work. Now Ameren is claiming that these cost overruns should prevent creation of an SVT Program. The Commission gave Ameren funds to create an SVT Program. If Ameren used those funds for non-SVT items or if there are costs overruns, those are properly dealt with in a rate case, not this proceeding. A tariff filing for an already approved program is not the proper venue. The Commission should order Ameren to do as directed and implement the approved SVT Program based on the years of work that led up to the Order in Docket 13-0192.

2. **To the extent that the Commission wants to consider Ameren's revised cost estimates, those estimates are overstated and suspect.**

a. **Ameren's increased costs estimates reflect its use of the $10.6 million approved by the Commission for the SVT Program for general transportation system improvements and its unilateral decision to convert the SVT Program approved by the Commission to the "most sophisticated" SVT Program in Illinois.**

In the first section of his Supplemental Direct Testimony (Ameren Exhibit 4.0), Mr. Glaeser explained the history of transportation services at Ameren. One notable point is that almost half the gas used on the Ameren system (47% or 84 Bcf) is provided by retail gas suppliers; although all of the Ameren customers that are currently "shopping" are non-residential end use customers. Ameren has been offering such service for the larger commercial and industrial customers since the mid-1980s. (RGS Ex. 3.0, p. 8)

Mr. Glaeser also discussed the development of the SVT program for residential and small commercial customers. Mr. Glaeser reviewed the key components of the proposed Ameren SVT program that were developed by input from the stakeholders including Ameren employees involved in the two series of workshops that had been held over the past two years. Mr. Glaeser noted that "[t]he SVT Program, as currently designed, fairly balances cost and responsibilities between Rider S, Rider T and Rider SVT customers while still allowing AIC to retain control over system operations and balancing." (AIC Ex. 4.0, pp. 6-7)

RGS, ICEA and RESA agree that the key components cited by Mr. Glaeser will allow for a successful SVT program. Each of those key components was the result of many discussions during the workshops where a variety of opinions and information was provided. The resultant

SVT program should allow for the Company to manage their system with the gas supplies provided by AGSs for those customers that elect to receive AGS gas. (RGS Ex. 3.0, pp 8-9)

Mr. Glaeser stated his belief that the SVT program design is more than adequate. Mr. Glaeser testified that the program "would be substantially similar to electric choice and would constitute the most sophisticated gas choice system for a Local Distribution Company ("LDC") operating in the state of Illinois." (id, 7:148-150). He did not cite exactly why he claims the Ameren SVT program would be the "most sophisticated" when compared to the programs of Nicor Gas, Peoples Gas, or North Shore Gas Company, or any other gas choice program in other states. Those companies have had choice programs for the residential and small commercial customers for a number of years and a number of AGSs participate in those programs. Moreover, with respect to other states, gas LDCs in Ohio, Pennsylvania and many other states have had choice programs for a number of years and there are dozens of gas suppliers in those markets that compete for the patronage of residential and small commercial customers. (RGS Ex. 3.0, pp. 9-10)

However, what apparently causes Mr. Glaeser to believe that Ameren's SVT Program is the most sophisticated are the "bells and whistles" added to the SVT Program approved by the Commission in Docket 13-0192, enhancements to the SVT Program that were demonstrated, by the rebuttal testimony of RGS' witness Mr. Crist and by cross-examination, to be unnecessary for the successful operation of an SVT program. Mr. Glaeser admitted, during cross-examination, that Ameren's revised SVT Program is more sophisticated than what Ameren proposed in Docket 13-0192 and the Commission ordered implemented. (TR. 212)

It is reasonable for Ameren to follow the directive of the Commission and implement its program so its residential and small commercial customers may have choices. *It is not* *reasonable for it to suddenly decide that it needs to implement the most sophisticated Choice program in the State and then unilaterally decide that the resulting increase in estimated costs are determined are too great, so it does not want to implement one at all.* (RGS Ex. 3.0., p. 10) Based on what appears to be AIC's position, Ameren has apparently designed the most sophisticated Choice Program that will never be implemented.[3]

Note that Ameren's position that the Commission should consider its increased cost estimate is also based on a misunderstanding of the Commission order in Docket 13-0192. Both Mr. Glaeser and Ms. Heger claim that the Commission's decision was based on a previous initial estimate that has proven to be substantially different than updated estimates based on more thorough defined detailed design criteria. (AIC Ex. 4.0, p. 18; AIC Ex. 5.0, p. 7) However, there is no statement in the Commission's Order in Docket 13-0192 that the Commission approved the SVT Program based on the estimated cost of the program, or that the Commission would reverse its decision if the estimated cost increased. The Commission's Order speaks for itself, but it discussed the benefits of an SVT Program and approved the SVT Program, without requiring a cost-benefit analysis. (Order in Docket 13-0192, p. 246) Moreover, considering the hours of time spent by the parties in working groups and cases, they should not be thrown out because of Ameren's cost overruns. There was much effort and time put into the approval of this program which did not hinge solely on Ameren's IT costs. [RESA Ex. 3.0, p. 11)

The Ameren SVT program, as approved in the Commission's Order in Docket 13-0192, was the product of much collaboration and compromise, and was structured very deliberately to

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[3] Note that Ameren's position as expressed in Mr. Glaeser's Supplemental Surrebuttal Testimony was contradictory and confusing. On page 2 of AIC Ex. 6.0, Mr. Glaeser claimed that Ameren continued to be neutral regarding implementation of the SVT Program, while on page 16 of AIC Ex. 6.0, he recommended that the Commission direct Ameren not to implement the program.

achieve a design supported by various stakeholders. During the development of the program, suppliers accepted certain compromises in the spirit of negotiation to move the program forward. While elements of the program are less than ideal, the proposed design set forth in Docket 13-0192 was certainly workable and compelling enough for suppliers to support the implementation of the program rather than continuing without an SVT program. (ICEA/RESA Ex. 3.0, p. 4)

#### i. Ameren's Phase 1 costs should not be attributed to the SVT Program.

In its last base rate case (Docket 13-0192) Ameren submitted testimony by Craig Nelson who summarized Ameren's plans to conduct two extensive IT projects related to its transportation service. Mr. Nelson testified that one project was need for the implementation of the SVT program and the other project was to upgrade the IT systems for the non-SVT gas transportation activity Ameren already provides (Exhibit 1.0, p. 7). In that testimony Mr. Nelson explained that "SVT enhancements to the gas management and billing systems are projected to cost $7.026 million." Mr. Nelson then described that "AIC plans to enhance its existing gas management and billing systems due to their limitations in supporting current and projected levels of non-SVT gas transportation activity by customers....and are projected to cost $6.046 million." What is critical is that Mr. Nelson testified that those costs were included in the future test year case in Docket 13-0192. Therefore, Ameren already has been collecting revenues from its customers for SVT implementation. (RGS Ex. 3.0, p. 11)

Moreover, after the initial testimony Ameren revised its estimate for SVT program costs. In July 2013 Ameren submitted testimony by Vonda Seckler stating (Docket 13-0192, Exhibit 26.0, pp. 28-29) that "the total expected cost to implement the SVT program is approximately $10.6 million." Ms. Seckler explained that the "original projection has been upgraded to ensure the complex systems needed in the compressed timeframe are ready by November 2014. The most recent estimates also include a forecasting and aggregation solution which is a critical component to the system since the electric settlement system did not include these components." Ms. Seckler emphasized that the increased estimate to $10.6 million would cover additional systems (forecasting and aggregation solution) that would "ensure the complex systems needed in the compressed timeframe are ready by November 2014. Those costs were included in the rate base and O&M expenses used to determine the rates currently charged to Ameren customers. Thus, Ameren was authorized, based upon a future test year, to spend a total of $16.6 million to implement enhancements to its gas management and billing system ($6 million) and to implement the SVT program ($10.6 million). (RGS Ex.3.0, pp. 11-12)

In the testimony filed in this proceeding Mr. Glaeser described the SVT work in two phases; however, there is no reference of this two phase approach made by Ameren in its previous base rate case. That said, Mr. Glaeser explained in his testimony that the Phase 1 SVT systems will go into service in 2014. (RGS Ex. 3.0, p.13) Phase 2 is on hold, pending the Commission's decision in this proceeding. (TR. 304)

Mr. Glaeser explained that there are two systems Ameren is installing for Phase 1- the Settlement Data System ("SDS") and the Gas Settlement System ("GSS"). Mr. Glaeser then describes several components of these systems which include: 1) daily load forecasts, 2) backcasting, 3) independent data source from CSS for Smart Meter applications, 4) gas load research, 5) hourly gas day data, 6) class load profiles and 7) gas utilization system replacement. In summary, Mr. Glaeser stated, "The Phase 1 implementation enables AIC to analyze customer demand and usage in a much more granular manner than is currently available and are improvements or replacements to existing, outdated technology serving as a catalyst to modernize the gas system infrastructure." (AIC Ex. 4.0, p. 10)

However, the improvements from the SDS and GSS systems are not necessary for Ameren to host a SVT program. While the Phase 1 systems may be said to benefit Ameren customers, they cannot reasonably be said to be upgrades made specifically for the SVT program.

- **Daily load forecasts** provide greater segmentation of data by allowing Ameren to review load by eight geographic weather zones. This may help Ameren better understand the usage of specific customers in different geographic areas but is not necessary for the implementation of a SVT program. Customers' usage patterns are not ordinarily materially affected by a change in their gas supplier (except when the customer chooses a time of use rate). If Ameren can currently provide gas supply service without reviewing load by eight geographic weather zones, then it can manage its system the same way when customers are obtaining gas from RGSs. Thus any benefit provided by the daily load forecasts would accrue to the entire system and is not required for a SVT program. (Id., p. 14)
- **Backcasting** provides the ability to apply actual weather to original load forecasts to determine the load difference due to temperature changes. The SDS/GSS systems will provide these analytical tools to be able to perform functions which AIC has never been able to do before. However Ameren does not do backcasting now to manage its system and therefore does not require it to manage its system after an SVT program has been initiated. (*Id.*)
- **Independent data source from CSS for Smart Meter applications** will provide hourly and daily interval data for better access to usage patterns. While it may be beneficial for Ameren to understand the granular usage patterns of all its

distribution customers, this data is not necessary for the provision of an SVT program. Most choice programs were initiated before smart meters were available and most are currently operating in environments that lack smart meters. (*Id*.) Moreover, to the extent that Ameren has expended funds to develop granular information and now proposes not to make it available to customers, Ameren is basically withholding from customers the value of using this information to their advantage, while simultaneously using this as an excuse not to implement a program where customers can choose.

- **Gas load research** enhances the ability to perform system studies and further integrate the three legacy gas systems (IP, CILCO & CIPS). While this might be desirable and an objective of Ameren's as it strives to unify its three zones into one system, it is not critical for offering choice. Rather the benefit of this functionality is better ascribed to Ameren's entire system. (*Id*., p. 15)
- **Hourly gas day data** where SDS converts meter reads to a new gas day that may be contemplated by FERC is clearly something that is prospective in nature and does not exist in other LDC systems that have been offering choice for years. It is not critical for offering choice. Further, if there is a new gas day implemented by FERC this upgrade will be required regardless of whether Ameren has an SVT program. (*Id.*)
- **Class load profiles** enable Ameren to better understand the system demand per customer class, but this information is customarily used to determine revenue allocations by customer class and distribution rate design. However, it would not be necessary for SVT offerings. (*Id*.)

- **The Gas Utilization System** replacement will help with the lost and unaccounted for gas calculation which is currently performed on a mainframe that is due for retirement. This upgrade may help Ameren more accurately calculate its gas costs, but this is something that will benefit the entire Ameren system and is not necessary for the purpose of an SVT program. Further, this is a replacement for an existing system that would be required regardless of whether an SVT program was implemented. (*Id*.)

In summary, none of the seven components or functionalities that Mr. Glaeser described are necessary for launching an SVT program. They are all system improvements that Ameren chose to do, apparently to generally upgrade its IT capabilities. Mr. Glaeser admitted in the responses to data requests RGS 3.11 and RGS 3.12 (Exhibit JC2) that "my position is that all customers benefit from Phase 1 even if a SVT program is not implemented" and "my position is Phase 1 should be completed even if the Commission does not direct AIC to implement an SVT program." Thus the $11.6 million that Ameren has spent on "Phase 1" was clearly not spent on the components necessary to launch a SVT program and the costs to develop those "Phase 1" improvements are not part of SVT program costs. Mr. Glaeser simply chose to place Phase 1 upgrades in the SVT program cost category**.** (RGS Ex. 3.0, p. 16) The fact that none of the seven components or functionalities are necessary for the SVT program, but simply system improvements, was also demonstrated in detail in the cross-examination of Mr. Glaeser. (TR-226-239)

The general system improvements that Mr. Glaeser has identified as Phase 1 are completed and are all live, according to Ameren Exhibit 5.3. That also means that the $11.6 million is a sunk cost. None of that cost is avoidable for it is already spent. (RGS Ex. 3.0, p. 16)

In conclusion, Ameren's Phase 1 system improvements appear to be almost entirely general IT system upgrades. The $11.6 million Ameren spent on IT system upgrades in Phase 1 should not be considered SVT costs. Even if Ameren's $21 million estimate for Phase 2 SVT spending is accurate or necessary, it cannot be said that the SVT implementation will be $21 million more than what the Commission approved in Ameren's last base rate case. In that case, the Commission approved recovery of $10.6 million for Ameren to implement the SVT program- but Ameren appears not yet even started making upgrades for the SVT program. Therefore, that $10.6 million should still be available for SVT implementation. (RGS Ex. 3.0, pp. 16-17) Thus, that portion of the $34 million estimated cost of the SVT Program should be disregarded as it is sunk cost on programs applicable to general system management. What is relevant is the current estimate of $21 million that Ms. Heger identifies as the remaining amount necessary to launch SVT. (RGS Ex. 3.0, p. 28)

#### ii. Ameren's estimates of Phase 2 costs are suspect.

Despite reviewing Ms. Heger's supplemental direct testimony and Ameren's responses to RESA data requests relating to the increased cost and the increased time estimate, ICEA/RESA's witness Ms. Ringenbach had trouble understanding exactly what went wrong and why the revised estimates are so far off from the estimates provided by Ameren in Docket 13-0192. Nevertheless, she encouraged Ameren and the Commission to implement an SVT Program with reasonable costs that are necessary to actually put the program in place. (TR. 84) Cross-examination of Ms. Heger, Ameren's Vice President of Information Technology, helped clarify but not justify the revised estimate.

Ms. Heger testified that Ameren originally determined a preliminary budget estimate of approximately $12 to $22 million to implement an SVT Program.[4] (AIC Ex. 5.0, p. 6) However, Ameren chose to include only $7 million in its test year in Docket 13-0192, calendar 2014, for the SVT Program, an amount which Ms. Heger described as the lower end of the range of cost estimates. (Later, this estimate was revised to $10.6 million, which is the amount approved by the Commission in Docket 13-0192 and currently being recovered through rates. (*Id*.)) Ms. Heger's only explanation for the use of $7 million in the rate case was that the "lower end of the range was chosen in recognition of the conservative nature of the ratemaking process." (*Id*., p. 7) However, Ms. Heger was unable to provide any other examples from Docket 13-0192 where Ameren used the lower end of a range in order to be conservative. (TR. 299) For example, she was not able to answer whether Ameren used the lower end of the range for purposes of requesting a return on common equity. (*Id*.) In fact, a review of the Commission's Order in Docket 13-0192 shows that Ameren's rate of return witness calculated a range of return on common equity of 10%% to 10.75%. However, rather than requesting the low end of that range to reflect "the conservative nature of ratemaking", Ameren requested a return of 10.4%, slightly above the midpoint of its range.. (Order in Docket 13-0192, p. 129) Ms. Heger agreed that had Ameren used $22 million in Docket 13-0192, the amount that would be an issue in this proceeding, in terms of increased IT costs, would be less, *i.e*. the difference between $16 million and $34 million would be around a 100% increase, rather than an increase of over 200% between $10.6 million and $34 million. (TR. 300-301)

Ms. Heger admitted that, in retrospect, the level of testing reflected in the $10.6 million approved for the SVT Program in Docket 13-0192 was inadequate and insufficient. (TR. 301-

[4] The $22 million estimate included $6 million in general enhancements to its gas billing system.

302, 304). If anything, that appears to be quite an understatement in that approximately $14.5 million of the $22 million costs for Phase 2 are for testing, as shown on AIC Ex. 5.4:

**Phase 2 Testing Costs**

| | |
|---|---|
| **Build/Test** | **$2.5 million** |
| **System Test** | **$2.0 million** |
| **Test Planning/Prep. Data Construction** | **$1.5 million** |
| **Integration Testing** | **$4.0 million** |
| **Regression Testing** | **$1.5 million** |
| **UAT Testing** | **$3.0 million** |
| **TOTAL** | **$14.5 million** |

Cross-examination of Ms. Heger demonstrated that Ameren's SVT Program appears to be unique in at least three respects. First, Ms. Heger was not aware of any other instances in which Ameren has experienced a substantial increase in an estimate for a budget project that resulted in Ameren asking the Commission to reevaluate the benefits of that project. (TR. 303) Second, Ms. Heger could not identify any Ameren IT projects, since 2009 when she became Vice President of IT, which required $14.5 million in testing. (TR. 314). Third, there have been no major IT projects (projects in excess of $10 million) at Ameren since 2009 that have experienced a 200% increase from the original budget to the final budget. (TR. 315)

In summary, Ameren's estimated costs for implementation of the SVT Program appear to be overstated in two ways. First, Ameren attributed costs to the SVT Program that were actually extended for general improvements to its existing transportation system. Second, Ameren's estimated costs appear overstated, especially its testing costs which, by themselves, far exceed the entire amount for which Ameren was granted recovery in Docket 13-0192.

### 3. Ameren's Revised Implementation Time Estimates do not justify the Commission reversing its approval of the SVT Program.

AIC's proposed schedule to launch its SVT Program is not reasonable. While Ms. Heger's schedule of launching in 2016 certainly should be achievable, it is not reasonable to allow Ameren to delay for that amount of time particularly since the original roll-out date is the fourth quarter of 2014. The Commission's Final Order in Docket 13-0192 anticipated "prompt implementation" of the SVT program and ICEA, RESA and RGS were satisfied with Ameren's projected rollout date of fourth quarter of 2014. While the Commission gave no firm date when it expected Ameren to implement an SVT program, Ameren's new proposed timetable appears to violate the spirit and the letter of the Final Order. The Commission should direct the Company to find ways to accelerate its timetable so it can avoid violating the Commission's directive. Even if Ameren's claim that it needs more time to fully implement the SVT program may have some basis in fact, that does not mean that Ameren's customers should have to wait until 2016 or even later to obtain the benefits of competition. (RGS Ex. 3.0, pp. 29-30) To that end, the Commission should consider ordering Ameren to implement the SVT program in phases.

ICEA, RESA and RGS are willing to work with Ameren to implement as much of the SVT program as possible while the Company continues to work on the systems necessary for a full roll out and avoid lengthy delay of implementation of the SVT program. The Commission should direct Ameren to focus its work on the essential SVT program requirements necessary for customers to choose an AGS and for that RGS to begin flowing gas. Ameren should be ordered to cease work on any of the non-SVT related components and functionalities which used up the approved budget and time without helping development of an SVT Program. If Ameren requires assistance in determining these essential SVT program requirements, it should look at its proposal in Docket 13-0192 which was approved by the Commission and which mandated this compliance tariff proceeding. The Commission should make it clear that Ameren must work with the parties to implement theose portions of the program that can be implemented and have customer choice available within one year after the Commission enters its order in this proceeding.

### 4. Ameren's arguments that natural gas markets have changed are without merit.

In an unsuccessful attempt to justify its reversal of position, Ameren claims that, "At the time the initial SVT program was contemplated, natural gas markets were much different than they are today." (AIC Ex. 4.0, p. 11) This argument is without merit. Ms. Ringenbach testified that the basic fundamentals of the gas market have not changed. The same processes employed by pipelines are still in place. The increase of shale supply is not a novel concept as the "boom" and its impact on gas markets started years ago – well before Ameren's first filing for approval of its SVT Program. In fact, putting aside that suppliers can offer dual fuel discounts and other valuable controls for customers control of their total bill, as this past winter has shown, natural gas remains a volatile commodity where customers benefit from the options of fixed prices. (ICEA/RESA Ex. 3.0, p. 5)

None of Mr. Glaeser's statements on natural gas markets reveal changes that have occurred or developed significantly in the time between the original Ameren SVT filing and today. Moreover, while Mr. Glaeser discusses a relatively lengthy period (the period during which RESA and RGS were working in good faith to develop a workable SVT Program), Mr. Glaeser's testimony begs the question of whether the alleged changes he discusses occurred during much shorter periods of time. For example, Ameren did not raise the issue of changed gas markets in its surrebuttal testimony in Docket 13-0192 (filed on August 26, 2013). Nor did

Ameren raise this issue during the briefing in Docket 13-0192, which concluded on November 27, 2013. Nor did Ameren challenge the Commission's finding that the SVT Program should be approved when it issued its final order on December 18, 2013. Nor did Ameren raise the issue of changed gas markets, when it filed its petition, tariffs and supporting testimony in this proceeding on January 31, 2014. Moreover, Ameren held its final workshop regarding implementation of the SVT Program on April 15, 2014, shortly before it filed its Motion to submit supplemental direct testimony (on April 28, 2014) and less than three months before Mr. Glaeser's supplemental direct testimony was filed. (*Id*., p. 6) Ameren did not raise the issue of changes in gas markets at that workshop.

According to Mr. Glaeser, "Low gas prices and low volatility reduces [sic] the ability of marketers to avail themselves of temporal price disparities with respect to commodity prices, futures and derivatives. Thus, there may be less of an ability on the part of marketers to take advantage of low price opportunities and entice customers to switch." (AIC Ex. 4.0, p. 12) On the contrary, suppliers offer many options to customers in terms of gas choice. The gas market pricing continues to change monthly and potentially more if Ameren is truly looking at hourly and daily reads. In addition, products such as a flat bill where a customer pays the same total amount regardless of usage, products designed to lower overall bill usage for savings, and dual fuel discounts are options to customers beyond relying on large market swings. (ICEA/RESA Ex. 3.0, pp. 6-7)

RGS also takes the position that, contrary to Mr. Glaeser's claims, there have not been changes in the natural gas industry since the Commission approved Ameren's SVT program that should cause the Commission to rethink whether an SVT program should be implemented. First, as a preliminary matter Mr. Glaeser does not recognize that natural gas choice is not exclusively about gas price. There are many economic and non-economic determinates of customer behavior, and many reasons why a customer may wish to patronize an RGS. Reasons such as a variety of products, or a delightful experience with customer service, or loyalty programs can all be compelling reasons to make a choice other than the status quo. (RGS Ex. 3.0, p. 20)

Staff Witness Dr. Rearden also disagreed with Mr. Glaeser. Dr. Rearden specifically disagreed with Mr. Glaeser's opinion that shale gas has reduced the ability of marketers to take advantage of low price opportunities and entice customers to switch, noting that both before and since the "shale gas revolution", the wholesale market has been and remains very liquid and very competitive. Moreover, Dr. Rearden stated that it is not clear why the change in volatility eliminates retail profit opportunities. Retail profit is the margin between the wholesale price and the retail price. That margin is a function of many variables. A lower wholesale cost does not, by itself, change the margin between wholesale and retail prices. Dr. Rearden concluded that while a more volatile wholesale market might generate high profit opportunities in the retail market, Mr. Glaeser does not provide any concrete evidence that gas retail market participation has fallen off.

(Staff Ex. 3.0, p. 3)

### a. The so-called shale gas "revolution" existed long before the Commission entered its Order approving the SVT Program in Docket 13-0192

Apparently, in its attempt to jettison the SVT Program, Ameren suddenly discovered in April 2014 that there is what Mr. Glaeser refers to as the "Shale Gas Revolution". However, Mr. Glaeser admitted during cross-examination that major impacts of the "Shale Gas Revolution" have been occurring since 2009, before an SVT Program was even proposed for Ameren and four years before the Commission approved the SVT Program in Docket 13-0192. (TR. 215)

The impacts of the "Shale Gas Revolution" have not been felt by Ameren's own Rider T customers. Ameren has 6,339 large-volume customers enrolled in Rider T, Ameren's large volume gas transportation program. Those customers are responsible for 47% of Ameren's annual throughput. (AIC Ex. 4.0, p. 5) Mr. Glaeser admits that he does not expect that those customers will return to Ameren for supply service because of the "Shale Gas Revolution". (TR. 211)

Moreover, other markets with gas choice programs have not seen a decline in switching despite any impact that shale gas has had on volatility. Gas choice programs in Ohio and Pennsylvania have not declined since 2012. (ICEA/RESA Ex. 3.0, p. 7) In states with gas choice where POR has been included, the switching levels are much higher and have remained consistent. Here in Illinois, Nicor Gas' Customer Select program increased to the current customer count of over 260,000 from approximately 200,000 in 2007. (*Id.*)

ICEA and RESA also take issue with Mr. Glaeser statement that, "Additional dry shale production capacity emerges at prices greater than $6 effectively becoming a ceiling to long-term prices." (AIC Ex. 4.0, p. 12) ICEA and RESA are suspicious of any speculation of future market prices. The market rose much higher than $6 during the winter of 2013-2014 and only just came off days before NYMEX settlement. In addition, new EPA and FERC rules may increase the amount of gas fired generation potentially pushing prices higher. Finally, despite similar projections of a flat market this last year, Platts Inside FERC's Gas Market Report Chicago city-gates first of month indexes for last winter were as follows:

| | |
|---|---|
| Dec '13 | $ 3.90 |
| Jan ' 14 | $ 4.83 |
| Feb '14 | $ 8.12 |
| Mar '14 | $ 10.94 |

Mr. Crist also disputes Mr. Glaeser's opinion that increased production of shale gas will keep gas prices between $4 and $6 per mmBtu, which is the basis of his prediction that such prices will make it less enticing for customers to switch. (AIC Ex. 4.0, pp. 12-18) Mr. Glaeser's projections are based on where prices may be over the next six years, but Mr. Glaeser has absolutely no way of knowing the level of gas volatility over the next six years. (RGS Ex. 3.0, pp. 20-21) Contrary to the implications of Mr. Glaeser's testimony, he admitted, during cross-examination, that he is not the best absolute person in the market who can predict the lowest possible price that is going to be available to Ameren's customers. (TR. 254). And he also conceded that Ameren's own PGA has experienced meaningful price swings over the previous twelve months.[5]

ICEA and RESA, RGS and the Commission Staff all found Mr. Glaeser's graph on page 13 of his Supplemental Direct Testimony to be without any value. Ms. Ringenbach, referring to that graph, testified that Mr. Glaeser's own graph does not support his position that there will be no volatility in the price of gas over the 2015-2025 timeframe. On the contrary, his graph (since it was used in a November 2013 presentation) ignores the impact of the polar vortex last winter on prices. The graph also most definitely shows volatility for gas just at lower price points. Finally, the only portion of the graph that shows stability is the portion of the red line which is based on Ameren's estimates. (ICEA/RESA Ex. 3.0, p. 8)

Dr. Rearden noted the same problem with Mr. Glaeser's graph, stating that it could be misleading if not carefully interpreted for two reasons. First, the red line showing the NYMEX future prices beginning in the fall of 2013 appears to show price volatility that is much lower than observed prices. However, if one examines futures prices starting at almost any actual price

[5] *See* TR. at 258; RGS Ex. 1.

on the chart, futures prices generally look much less variable than actual prices. As evidence of this, Dr. Rearden attached page 28 from the FERC's Market Snapshot from July 2009 to his testimony. Page 28 is a graph that shows the NYMEX forward curves beginning on July 8, 2008; June 24, 2009; and July 8, 2009. An examination of that graph shows that forward curves exhibit much less volatility than actual prices even in the absence of the "shale gas revolution". Second, Dr. Rearden noted that Mr. Glaeser's actual price graph ends prior to the price spike that occurred during the winter of 2014. (Staff Ex. 3.0, p. 3)

Mr. Crist testified that NYMEX future prices are not an appropriate means of predicting gas volatility over the next six years. The chart on page 13 of Mr. Glaeser's testimony appears to be the NYMEX forward curve over the next 6 years and actual prices from the previous 14 years. Based on this graph, Mr. Glaeser claims this chart demonstrates that natural gas price volatility will dramatically decline in the future. However, while NYMEX future prices may be a means to estimate natural gas prices in the future, the NYMEX future curve is a very poor indicator of volatility. Futures curves for any commodity almost always show prices rising steadily, month over month, with very little volatility. That is simply the nature of a future curve. In real life commodity prices do not just increase in small increments month over month consistently over time. Commodity prices tend to have periods of rapid increase and rapid declines. (RGS Ex. 3.0, p. 21) The simple fact is that if you go back in time and attach a futures curve to any chart showing historic pricing, you will almost always see reduced volatility when you transition from historic pricing to futures pricing. (*Id.*)

To further make the point, Mr. Crist offered evidence of price volatility recently that is not identified in Mr. Glaeser's gas price predictions. A review of gas pricing of the past ten years shows a low near $2/mmBtu and a high near $15/mmBtu. On page 13 Mr. Glaeser included a natural gas price chart from the Commission's Winter Preparedness Policy Session and that chart indicates historic prices showing price spikes and a price prediction through 2020. In the same handout from the Winter Preparedness Policy Meeting, just two pages further, the complete version of the same chart titled "Natural Gas Price Uncertainty" shows the price forecast with the 95% confidence interval. The purpose of the 95% confidence interval is to illustrate the wide possible range of gas prices forecast through the year 2020. That slide, admitted into evidence as RGS Exhibit JC4, shows that the forecast confidence interval skyrockets over the next several years and that prices could be well over $12/mmBtu. AGSs provide pricing products that mitigate such volatility and such products are attractive to consumers. Mr. Glaeser's pricing predictions, as all gas price predictions, are subject to change. Even if Mr. Glaeser's prediction of prices ranging from $4 to $6/mmBtu were accurate and a customer wished to take advantage of a price he perceived to be low (e.g. $4/mmBtu) and purchase a multi-year fixed-price product, he could not do so from Ameren. Only AGSs package such innovative products and customers deserve access to them, yet Mr. Glaeser would have the Ameren customers be denied choice based on his ability to predict gas prices. (RGS Ex. 3.0, p. 22) Moreover, Mr. Glaeser ignored scenarios that could drive up future gas prices and future price volatility. Current gas prices have caused developers of power plants to choose natural gas as a primary fuel. This will result in an increased demand for natural gas, which may have an upward effect on price. Mr. Glaser feels that shale gas has created a fundamental change in the natural gas markets. However, possible changes in environmental regulations related to shale gas production could materially alter the future of shale gas and the pricing of shale gas once environmental issues are accounted for. Also, in the future, the United States may be exporting liquefied natural gas ("LNG") as construction of exporting capability is now underway. These are just a few of the contingencies for which Mr. Glaeser cannot know the future outcome. Thus, Mr. Glaeser's prediction of the future prices of natural gas should not be relied on. (RGS Ex. 3.0, p. 23)

The choice marketplace has been in place in Illinois since 1997 when small volume transportation programs were launched by Nicor Gas and Peoples Gas. Choice has been in existence in other states such as Ohio and Pennsylvania for years before that. The beauty of the free market is that RGSs make themselves available to customers when a framework for choice exists. If we were all to listen to Mr. Glaeser's forecast and advice, the marketers would all pack up and go home, and small customers of Ameren, and presumably the other gas utilities in Illinois, would not have a choice of suppliers and would remain as supply customers of the utilities. (*Id*., pp. 23-24)

In brief, Ameren's new found discovery of a shale gas "revolution" fails to justify its reversal of its position regarding the SVT Program. Ameren's arguments should be rejected.

**b. Ameren's claim that the electric retail market has reversed is inaccurate and, at any rate, would not impact natural gas markets**

AIC's bleak portrait of the future of the retail natural gas market also relies on Mr. Glaeser's claim that the trend in electric customer switching has reversed. (AIC Ex. 4.0, p.14) However, this is contradicted by the Commission's Office of Retail Market Development's ("ORMD") 2014 Annual Report (June 2014), which states in the Executive Summary (p. 3), "As of May 31, 2014, alternate retail electric suppliers provided more than 80% of the total electric usage in ComEd and Ameren Illinois service area, up slightly from last year." Referencing Ameren specifically on p. 19, "the biggest increases in switching occurred in Ameren Illinois' area. The number of Ameren Illinois' residential customers on competitive supply increased from 562,905 in May 2013 to 671,601 as of May 2014, an increase of about 109,000 customers." Thus, the data show that Mr. Glaeser's claim is untrue. (RGS Ex. 3.0, p. 24, RGS Ex. JC5)

Ameren also ignores the fact that it is a dual fuel utility with many customers who are now familiar with choice and will likely exercise the option on the gas side as they do with electricity. As Mr. Crist pointed out during cross-examination, there are roughly three-quarters of a million customers on electric choice and there is a high probability that a large number of these customers who have already availed themselves of electric choice will be approached with offers from their current suppliers for gas choice products. Thus, there could be several hundred thousand Ameren customers that would be participating in both electric and gas choice programs. (TR. 198)

If Ameren truly implements a correctly run program with the addition of POR, it should expect significant customer participation as has been seen in other gas markets with POR. Experience in the retail electric markets do not support Ameren's arguments.

**c. Municipal aggregation for natural gas is not "dead" in Illinois, but, at any rate, is not necessary for a robust SVT Program.**

Ameren's apparent belief that implementation of an SVT Program in Docket 13-0192 requires municipal aggregation legislation (AIC Ex. 4.0, p. 13) is absolutely without merit. First, there is no language in the Commission's Order in Docket 13-0192 that tied its approval of an SVT Program to the passage of gas municipal aggregation language.

Moreover, AIC's belief that a Choice Program cannot survive without municipal aggregation is without merit. First, the record shows that recent growth in the retail electric market in Illinois has not come from municipal aggregation, but from organic growth, *i.e.* one-on-one marketing. The 2014 ORMD report indicates that in May 2013 close to 78% of ARES customers were aggregation customers, but that in May 2014 73% of ARES customers are aggregation customers. Mr. Crist testified that if the residential aggregation percentage dropped from 78% to 73% and there has been growth in the market, all that growth came from organic growth. These are customers availing themselves of choice. Mr. Crist concluded that you can get substantial customer choice without municipal aggregation programs. (TR. 197)

Second, as with any piece of legislation, the passage or movement of a bill is not the only indicator of legislative momentum or of interest in a particular subject area or initiative. Mr. Glaeser fails to account for the ongoing negotiations on gas municipal aggregation legislation. The parties have made significant progress on various issues. And, contrary to Mr. Glaeser's comments, there remains strong interest from a wide variety of stakeholders in developing gas choice further by passing legislation authorizing municipal aggregation for gas. Parties are continuing to work to find the best approach. (ICEA/RESA Ex. 3.0, p. 9)

Dr. Rearden also disagrees with Mr. Glaeser's analysis of the impact of municipal aggregation, stating that he is somewhat skeptical of Mr. Glaeser's apparent conclusion that municipal aggregation is a necessary condition for a viable retail market. Although municipal aggregation is more likely to "jump start" the market, he noted that none of the other gas SVT programs in Illinois rely upon it. While it is impossible to predict the course that retail market penetration will take, it is certainly possible to have an active market without municipal aggregation. (Staff Ex. 3.0, p. 4) For example, Pennsylvania, New York and Maryland have vibrant retail electricity and gas markets without municipal aggregation.

In summary, no party agrees with Mr. Glaeser's opinion that the current absence of gas municipal aggregation language is a serious impediment to a successful SVT Program in Ameren's service territory.

5. **Ameren's cost-benefit analysis is flawed and self-serving.**

Mr. Glaeser sponsored AIC Exhibit 4.1, which purports to be a cost-benefit analysis of the SVT Program. Before addressing the flaws of AIC Exhibit 4.1, we note that, in Docket 13-0192, CUB took the position that a cost-benefit analysis was needed for the Commission to approve the SVT Program. The Commission disagreed with CUB and ordered Ameren to implement the SVT Program. (Order in Docket 13-0192, pp. 245-246)

Mr. Glaeser acknowledges that there may be non-financial benefits to SVT participation, but states that "the costs as they exist today pose a significant hurdle for enabling customers to save more money from third party choice than they incrementally spend as a result of the impact of SVT implementation". (AIC Ex. 4.0, p. 15)

Mr. Glaser based his assumptions on a certain level of participation initially and ignores potential savings and benefits in later years once the program is fully paid for. Mr. Glaser also ignores that current offers in both Nicor Gas Company and The Peoples Gas Light and Coke Company's service territories are 10% - 20% below those utilities' gas charges as of August 2014. (ICEA/RESA Ex. 3.0, pp. 9-10)

In addition, Mr. Glaeser's numbers would change dramatically if an amortization period longer than five years were used. For example, the Commission approved a ten-year amortization period for IT programming costs for ComEd when its POR program was put in place. (Order in Docket 10-0138, December 15, 2010, pp. 5-6) While Ameren's POR/UCB case, Dockets 08-0619 *et al.*, resulted in the use of a five-year amortization for UCB/POR start-up costs, the Commission's order did not foreclose the use of a longer amortization period. Five years was proposed by Staff witness Torsten Clausen and accepted by Ameren. However, Mr. Clausen also proposed a seven-year amortization period for UCB systems enhancement costs, which Ameren objected to. It appears that the Commission utilized a five-year amortization period for both UCB/POR start-up costs and UCB systems enhancement costs, but the Commission did state, in coming to its conclusion, that "the Commission considered AIU's argument that the typical book accounting life for IT investments is five years, but does not consider it definitive.” (Order in Docket 08-0619, dated August 19, 2009, p. 35)

The fact that Ameren is putting in place a total Choice program (not just adding a POR/UCB component to an existing Choice Program) should allow for some flexibility in the term for recovery considering the Commission utilized a ten year amortization period for ComEd on just the POR/UCB program. (*Id*., p. 10) Moreover, while five years may have been appropriate based on AIC’s original cost estimates, given AIC’s revised estimates, an increase of more than 200% over the amount included in AIC’s last gas rate case, a longer amortization period would be appropriate. In this regard, cross-examination of Mr. Glaeser showed that Ameren assigns depreciation periods to its transmission lines based on their useful lives, but did not follow the same practice with respect to the SVT Program. For the SVT Program, Ameren has assigned a five-year depreciation period, even though it does not expect that the SVT Program would terminate in five years. (TR. 213-214)

Mr. Glaeser concludes from his Exhibit 4.1 that “It is clear from the information provided that the potential for gas cost savings to AIC’s customers is called into question and those potential gas cost savings completely disappear once you add in the cost to recover the additional $21 million Phase 2 cost of the SVT program.” (AIC Ex. 4.0, p. 17) However, Mr. Glaeser’s statement appears to be based upon Ameren’s estimates of future gas prices. As has been seen in other gas service territories savings are currently being achieved. In addition, many offers in the past have provided savings. (ICEA/RESA Ex. 3.0, p.11)

Mr. Glaeser's attempt at a cost-benefit analysis is also flawed because Mr. Glaeser's analysis incorrectly assumes that customers will benefit from the SVT program only if they take service from a retail supplier. Mr. Glaeser's analysis fails to acknowledge that choice is, in itself, a benefit for all customers. Thus, a more appropriate analysis would divide the total cost of SVT implementation over all Ameren customers, as was done in Docket 13-0192. After reframing Mr. Glaeser's analysis, it is apparent that the cost impact of the SVT program on customers is negligible compared to the benefit of customer choice. (RGS Ex. 3.0, pp. 24-25)

Besides understating the population that benefits from retail choice, there were several other flaws, which Mr. Crist corrected in his RGS Exhibit JC6. First, Mr. Glaeser is proposing to spend $21 million on the SVT program. Such costs are extraordinarily high compared to the original estimate of $7.0 million or the estimate revised by Ms. Seckler of $10.6 million, which is the figure Mr. Crist used in his analysis.[6] Mr. Glaeser also amortizes the investment on what will be a new and sophisticated IT system over a very short 5-year period. One would hope that the Company is not planning on abandoning its SVT program after five years. Indeed some of the IT systems in place at the Company are still functioning much longer than that, such as the GUS system referred to by Mr. Glaeser that was still operating on a mainframe. Mr. Crist's analysis amortized the $10.6 million cost over a 10-year period. (RGS Ex. 3.0, p. 25)

While RGS Ex. JC6 only assigned costs to SVT customers (in order to track Mr. Glaeser's Ex. 4.1), if those costs were spread over all eligible customers, recovering $10.6 million from the approximately 800,000 Ameren customers over 10 years would only add approximately $1.30 per year to each customer's bill. Indeed, when asked on cross-examination if he believed that $1 per year was significant, Mr. Glaeser responded, stating "I wouldn't

[6] Note again that the $10.6 million should still be available for the SVT Program because none of Ameren's Phase I costs should be attributable to the SVT Program since they were incurred for general transportation system improvements.

consider it a meaningful or significant amount." (TR. at 248). Thus, the investment necessary to provide customers the option of taking service from a retail supplier is quite reasonable. (RGS Ex. 3.0, p. 26)

Other components of the self-serving nature of Exhibit 4.1 were demonstrated on cross-examination. Mr. Glaeser agreed that increasing the depreciation period would decrease the annual revenue requirement. (TR. 219) He also agreed that assuming all Ameren's residential and small commercial customers would participate in the program would decrease the annual revenue requirement. (TR. 219-220) He also agreed that if Exhibit 4.1 were based on the annual consumption of small commercial customers instead of just residential customers, the annual revenue requirement would decrease. (TR. 220-221) He also admitted that his cost-benefit analysis would not reflect benefits from bundled products that do not directly affect the commodity price. (TR. 198-199)

During redirect examination, Mr. Glaeser attempted to rehabilitate his Exhibit 4.1 by making the outrageous suggestion that not one customer would participate in Ameren's SVT Program. (TR. 280) In support of his position, he referenced a report which indicated that Wisconsin and Minnesota had no residential customers on choice programs. However, he admitted on cross-examination that he does not have any knowledge of Wisconsin or Minnesota gas utilities offering choice programs; how many customers are eligible for such programs in either state (including whether residential customers are eligible to shop in the first instance); what the rules would be which would govern such programs in those states. (TR. 286-287, 291) In fact, Wisconsin and Minnesota residential customers are eligible for choice programs only to the extent that they are eligible to participate in the transportation programs for large commercial and industrial customers. There are no small volume choice programs in Wisconsin or

Minnesota similar to those offered by Nicor Gas, Peoples Gas and North Shore in Illinois, nor that filed by Ameren in this proceeding. By way of analogy, Ameren could simply open up its Rider T to residential customers and say it had a residential choice program. Mr. Glaeser further admitted that, in Illinois, Nicor Gas had approximately 250,000 to 260,000 customers participating in its choice program and Peoples Gas had something less than 100,000 participating in its choice program. This was true even though, unlike Ameren's proposed SVT Program, neither of those two gas utilities' choice programs has a purchase of receivables component. (TR. 288) Moreover, despite the fact that he was willing to claim that no customers would participate in Ameren's SVT Program, he did not believe that Nicor Gas' and Peoples Gas' choice customer would return to their gas utilities for supply. (TR. 289-290)

In short, Mr. Glaeser's claim that no customers would participate in Ameren's SVT Program lacks any factual basis and has no credibility whatsoever. As stated by Mr. Crist, who has two decades of experience in choice programs across the country, he has never seen a choice program where absolutely no one chooses choice. (TR. 194)

6. **Ameren's Gas Price Choice Program is not a real Choice program and is not an acceptable alternative to the SVT Program approved by the Commission in Docket 13-0192.**

The Gas Price Choice ("GPC") program described by Mr. Glaeser (AIC Ex. 4.0, pp. 19-21) is not an acceptable alternative to the SVT Program approved by the Commission in Docket 13-0192. Ameren's proposed GPC Program was criticized and rejected by ICEA and RESA, RGS and the Commission Staff.

The Gas Price Choice program is simply the utility attempting to maintain its supplier role. There is no reason for this program. The suppliers in this case are experienced and reliable. RESA and ICEA members have been in business for more than twenty years offering gas supply. Many are already the upstream counter parties to existing utilities and some are the asset managers to utilities in other states. In addition, as Mr. Glaeser points out, retail suppliers' expertise is offering new and innovative products to customers – the very heart of robust choice programs. The Gas Price Choice program eliminates the possibility of suppliers bringing customers new and innovative options for their gas pricing and appears to be another way for Ameren instead to maintain assets but forcing them onto all customers. The Commission should ignore any attempts by Ameren to imply a Choice program isn't needed while at the same time saying a version of a Choice program that only offers utility supply is needed. (ICEA/RESA Ex. 3.0, p. 12)

RGS also rejected AIC's proposed GPC program, stating that AIC appears to simply want to maintain the days where the Company is the only entity that can procure gas supply for small customers, thus denying them the ability to choose. Under his proposed GPC Ameren still would purchase the gas needed by the customers at an index rate and charge the customer that rate. An AGS would then have to persuade the customer to purchase a financial product from a AGS, then allow them to bill some incremental amount that would be a contracted price, In proposing the GPC program, Mr. Glaeser implied that the gas supply professionals employed by the AGSs supply all their customers' gas through index purchases. This proposed program does not allow RGSs to take advantage of any of their gas procurement expertise. AGSs are very capable of managing gas assets, purchasing commodity gas supplies, and meeting balancing requirements including during periods of extreme weather such as last winter. Indeed, AGSs rely on their skills in those areas to put together competitive gas pricing offers to obtain the patronage of customers who have many choices. (RGS Ex.3.0, p. 26)

Moreover, the GPC would severely restrict the diversity in pricing available to customers. A supplier's pricing has significantly more pricing components than just the indexed price plus a commodities derivative. With the GPC program a supplier would not have the flexibility to offer customers different prices, because there would be fewer aspects of the cost component the supplier could control. Further, there would be less ability of the supplier to become more efficient by differentiating itself in the market through controlling costs or procuring natural gas more efficiently. AGSs would be selling term pricing (fixed price) to customers but have a requirement to buy supply from AIC at some unknown Index, which was not described. An AGS could not forecast and manage the supply cost. All AGSs would have the same cost basis (the GPC price) and be unable to obtain a competitive supply sourcing advantage or leverage their existing customer base across the United States for "bulk purchases". That would result in a less competitive offer to customers. (*Id*., pp. 26-27)

In addition, the GPC Program would restrict product innovation. Beyond the limited pricing mechanics there would be product design limitations. With the GPC, AGSs would only able to offer fixed prices. However, there are significantly more products AGSs offer customers including green products, variable caps, products bundled with energy efficiency, smart thermostats, to name a few. The GPC would effectively neuter any product innovation or development in the Ameren market. (*Id*., p. 27)

Furthermore, the GPC Program would be difficult for customers. As described, "AIC would purchase gas supplies and bill enrolled GPC customers at an index rate and the supplier would bill/credit each GPC customer that they have enrolled for the difference between the index price and their individually contracted price". For the customer, receiving two separate bills is very confusing and not desired by choice customers. (*Id*., p. 27-28)

Finally, all the wholesale benefits gained from choice would be lost with the GPC. Those include increased liquidity at the Ameren trading hubs because multiple suppliers are buying and selling at those hubs, greater reliability because suppliers have intrastate pipeline assets that can be utilized to deliver into the system that Ameren may not have access to, and downward price pressure on wholesale prices at the Ameren hubs due to multiple buyers and sellers utilizing those hubs. (*Id.*, p. 28)

Dr. Rearden also recommends that the Commission reject Ameren's GPC Program. Noting that there is nothing in the record that could justify approving the proposal, he concluded that the Commission has few options in this docket besides rejection. (Staff Ex. 3.0, p. 6)

In summary, Mr. Glaeser's idea for the GPC is not a substitution for offering a real Choice program, in particular, the SVT Program approved by the Commission in Docket 13-0192.

7. **CUB's arguments add nothing of merit to those of Ameren to justify the Commission's reversal of its approval of the SVT Program.**

CUB offered the Supplemental Rebuttal Testimony of Bryan McDaniel in support of Ameren's position that it should not be required to implement the SVT Program, as ordered by the Commission in Docket 13-0192. However, Mr. McDaniel relies on the following arguments of Mr. Glaeser: there is a $21 million increase in the cost of SVT Program implementation, there has been a shale gas "revolution" that fundamentally changes gas retail gas markets, and Ameren Exhibit 5.1, Mr. Glaeser's cost-benefit analysis, does not support an SVT Program. (CUB Ex. 2.0). However, as already demonstrated in this Initial Brief, those arguments of Mr. Glaeser have no merit and CUB's support of those arguments does not provide them with merit.

## IV. SVT PROGRAMMATIC PROPOSALS

### D. Uncontested Issues

#### 1. Uncontested Tariff Proposals by AIC

2. **Definition of Weighted Average Cost of Gas ("WACOG") to be Used in Rider GTA**

3. **Calculation of Inventory Sales Price**

4. **Price to Compare ("PTC")**

5. **Legal Ownership Concerns**

E. **Contested Issues**

1. **Display of Price-to-Compare ("PTC") on SVT Customer Bills and Tariff Language Regarding Notification of PTC—CUB's proposals should be rejected.**

**a. CUB position**

CUB proposes that Ameren's "Customers Terms and Conditions" in its tariff, be revised to require Ameren to include the applicable Purchased Gas Adjustment ("PGA") on Ameren's consolidated bill "as a notification to customers of suppliers of the rate they would be paying if they were a utility customer." (*CUB Ex. 1.0*, pp. 5-7)

**b. ICEA/RESA position**

ICEA and RESA disagree with CUB's proposal. The PGA is a variable price, changing monthly and subject to an annual reconciliation. Adding this to a customer's bill is not an accurate comparison for future PGAs nor would it highlight for customers where to find other options in the market. In addition, customers would not be able to switch in time to take advantage of the PGA listed on their bill, instead they would be moving back to the utility at an unknown rate. The winter of 2013-2014 made it very clear that consumers need to be educated on the risks of a variable price and how quickly they can move if their variable price increases. This applies to the PGA similarly as it does to a retail supplier's variable price product. RESA/ICEA support providing customers with information to find all of their options and would encourage the Commission to instead require information on how to find pricing on the ICC website be provided on Ameren consolidated bills. Providing a PGA that is not what the customer would pay the following month or by the time an actual switch occurs, and without clearly explaining that the PGA changes monthly, would be misleading. The ICC website provides detailed and accurate information for customers to be fully informed and is the best place for a customer to be directed. (ICEA/RESA Ex. 2.0, pp. 7-8)

**c. RGS position**

RGS also opposes CUB's recommendation that AIC amend its tariff to include language mandating that the PGA be presented on every bill of customers obtaining gas supply services from an alternate supplier. (CUB Ex. 1.0, p. 5) According to RGS, this would cause confusion and create an un-level playing field in the competitive market. (RGS Ex. 2.0, p. 1)

The confusion would result from the fact that many of the products offered by suppliers may be fixed price products that mitigate price variance risk for customers. On any given month that fixed price may be higher or lower than the variable price charged by AIC. A customer seeing both the supplier's price and AIC's price (the PGA) presented on the bill may believe they represent the same type of supply product. This could lead to increased phone calls to AIC's call center and to the supplier's call center and require time and resources to clarify the difference. (*Id.*, p. 2)

In addition, CUB's recommendation would create an un-level playing field. In customer choice programs, it is important that the incumbent utility be indifferent to the selection of supplier by a customer. The PGA is a product that is competing against all other products in the market place. The PGA would have advertising advantage over all other competitive products in the market if AIC were to display its PGA price on the bill and were not to display prices of every other potential supplier on the same bill, with the same prominence. If customers wish to shop on a monthly basis they may certainly do so, and all the suppliers' prices, including AIC's PGA price, may be found on the suppliers' website and the PGA may be found on AIC's website. The information is easily accessible by customers. Mandating that AIC place the PGA on every bill every month, however, clearly provides an advantage to the PGA and disadvantages the suppliers. (*Id*.)

### 2. Rescission Period for Non-Residential Customers with Annual Usage >5,000 Therms—The 10 day rescission period should be limited to residential and small commercial customers.

#### a. Ameren position

Ameren proposes to use the same rescission period for all gas transportation customers regardless of annual usage, in both the SVT and Rider T – Transportation Service ("Rider T") programs, and that period is 10 days. Ameren changed the rescission period for Rider T customers in October 2013 when the period was changed from none at all to 10 days.

Ameren's primary concern appears to be protecting customers from unauthorized switching. (AIC Ex. 3.0, p. 3) Another concern appears to be the cost having different rescission periods for Rider T and Rider SVT. (*Id*., p. 9)

#### b. RGS position

RGS disagrees with Ameren's imposing a 10-day rescission period on large (>5,000 therm) customers. (RGS Ex. 1.0, p. 8) Prior to Ameren's change in October 2013, the large customers taking service under Rider T had no rescission period. Most gas distribution companies do not impose a rescission period on large customers. When a supplier and a larger customer make such an agreement on a price, it is common business practice for the supplier to hedge or "lock in" the price almost immediately by making procurement commitments. Once contractually committed, the supplier may be harmed if the customer rescinds its agreement. If large customers have a 10-day rescission period that may lead to some customers gaming the system and rescinding an agreement with a supplier within the 10-day period if the customer observes a drop in prices after the supplier has already bought the gas for the customer. To protect themselves financially a supplier working in a jurisdiction that had such a lengthy rescission period would adjust its price upward to allow for the risk of rescission. Customers would end up facing higher prices. Thus, lengthy rescission periods are not good for either the customer or the supplier. (*Id*., pp.8-9)

In contrast, RGS does not disagree with having a 10-day rescission period for residential and small (<5,000 therms) customers, which is required by statute. The Illinois Public Utilities Act specifically allows residential and small commercial customers that obtain service from alternative natural gas suppliers to terminate an agreement without penalty within 10 business days after the first bill is issued. 220 ILCS 19-115(g)(5)(B). Because suppliers are not likely to hedge gas for residential customers on an individual basis (unlike larger customers), they are less likely to be harmed when a residential customer rescinds within the 10 day period. (RGS Ex. 1.0, p. 9)

**c. ICEA/RESA position**

ICEA and RESA believe that the ten day rescission period should be limited to residential and small commercial customers (those with annual usage of 5,000 therms or less) as contemplated by Section 19-115 of the Public Utilities Act. ICEA and RESA offered a simple solution if Ameren's concern is the ability to identify small commercial customers, a solution that would require no additional programming. Ameren can simply add language to the letter they send to customers informing them of their enrollment and rescission indicating the rescission period only applies to a customer with annual usage of 5,000 therms or less. In fact, Commonwealth Edison Company ("ComEd") had a similar issue on the electric side and simply changed the language of its enrollment/rescission letter. A copy of that letter was admitted into evidence as ICEA/RESA Ex. 1.1.

While rescission language identical to Ameren's proposal in this proceeding was approved for Rider T customers by the Commission in October 2013, the revision to Rider T resulted from the Commission not suspending a tariff filing by Ameren. There was no proceeding and the Commission did not enter any order addressing the merits of that change.

For AGS, this is not just a matter of administrative convenience. There are serious consequences with Ameren's allowing larger commercial customers to have the same rescission period as that statutorily mandated for residential and small commercial customers. When a customer enters into a contract with a supplier that triggers a supply purchase of gas. Typically larger customers have a trigger clause if they lock in their price. This allows the supplier and customer to work together to purchase gas at a given point in the market. Because the 10 day rescission does not kick in until an enrollment has been sent, a supplier must procure supply to be ready to serve and cannot wait for the 10 days to end before incurring costs for large amounts of gas. If the customer rescinds the supplier will have incurred costs for the gas purchased. In the case of large transportation customers, there could be a cost of potentially millions of dollars for a single rescission.

Moreover, there is no reason why a commercial customer larger than 5,000 therms would need a rescission period. These customers actively negotiate and understand their contracts. These are large users who are market savvy. The purpose of the rescission period is to allow smaller, less sophisticated customers to understand they are about to enroll and have a breather to change their mind, not for a large business which had lawyers going back and forth in negotiations to rescind.

Finally, while Ameren claimed that a change to rescission periods would increase its costs and delay implementation of the SVT program, Ameren never provided any calculation of such costs, nor impacts of such a change on the timing of implementing the SVT Program. (TR. 101)

With respect to Ameren's concerns about unauthorized switching, the problem is that Ameren's rescission period does not just apply to unauthorized switching, whether purposeful or inadvertent. It allows customers to rescind for any reason whatsoever. (TR. 380) Moreover, Ameren's witness, Mr. Millburg, admitted that Ameren does not know how many customers have been switched to suppliers as a result of some unintended error or unauthorized action because Ameren does not track such information. (TR. 379) He also admitted that, as a non-lawyer, he did not have an opinion as to whether a customer who had been switched without authorization would be able to remedy the situation, even without a rescission period. (TR. 378) Finally, while Ameren professed concerns regarding the cost of changing from its current rescission period, Ameren has not calculated the costs associated with such a change. (TR. 381)

While ICEA and RESA agree with Ameren that there should not be separate rescission periods for Rider T and Rider SVT, they disagree on the solution. ICEA and RESA recommend that Rider T and proposed Rider SVT should be revised to limit the ten-day rescission period to residential and small commercial customers per the statutory requirements.

#### d. Staff Position

Staff witness Dr. Rearden agreed with the positions of ICEA, RESA and RGS. He testified that larger customers are typically more sophisticated and generally need less protection in the marketplace. He also testified that, to his knowledge, no other gas utilities have rescission periods in their large customer transportation tariffs. Dr. Rearden noted that while Section 19-115 of the Public Utilities Act requires an AGS to provide a ten business day rescission period for residential and small commercial customer, the Public Utilities Act does not have similar requirements for marketers selling to larger customers. Dr. Rearden recommends that the Commission reject Ameren's proposal to have identical rescission periods for large and small volume customers, noting that large volume customers have the ability to protect their interests without a mandatory rescission period. In addition, he testified that it does not seem likely that the reasons that Ameren offers for its proposal amount to significant costs. Furthermore, the absence of imposed rescission windows for large customers in other utilities does not seem to have confused those utility customers or imposed high costs on the utilities. Dr. Rearden concluded that it seems that Ameren may not need to include rescission periods for larger customers in its tariffs at all. (Staff Ex. 1.0, pp. 8-9; Staff Ex. 2.0, pp. 3-4)

In summary, ICEA and RESA, RGS and the Commission Staff all agree that Ameren should be required to limit the ten-day rescission period to residential and small commercial customers.

3. **Nomination Schedules-ICEA/RESA's and RGS' proposed revisions to Ameren's nomination schedules should be accepted.**

**a. Ameren position**

Ameren states that the nomination schedule was changed to match the SVT nomination schedule due to the relationship in the programs and the fact that the same suppliers may serve customers in both programs. (AIC Ex. 1.0, p.8)

**b. ICEA/RESA Position**

Ameren's proposed revision to the existing nomination schedule for Rider T eliminates the ability of suppliers to propose same day nomination changes, which creates serious problems for suppliers. First, same day nominations were created by FERC to allow the pipeline system to function properly. If one area of the pipeline is cut there is an opportunity to allow suppliers and schedulers to adjust in order to avoid any interruption of service or reliability. Using the FERC intra-day nomination standards, should be required.

While RESA and ICEA agree that the nomination schedule should be the same for both Rider T and Rider SVT, the standard should be that used by all suppliers using the pipelines coming into Ameren. Ameren's proposal will in fact create a different requirement for the utility program than that used by the pipelines feeding into the utility. Ameren is in fact actually creating a difference and not a similarity. ICEA and RESA propose that Ameren follow the NAESB standards for intraday nominations, which were admitted into evidence as ICEA/RESA Ex. 1.2. These are industry wide and FERC accepted standards.

**c. RGS Position**

Ameren's proposed tariffs (Ameren Exhibit 1.2, Page 12 of 32) state "For the months of May, June, July, and August the most recent (three days') estimated Delivery Profiles will be used as Delivery Requirements for weekends and holidays". Mr. Crist agrees with that procedure. However, for the other eight months of the year Ameren requires suppliers to complete the nominations process to match the Delivery Requirement every day, and this is unnecessary. In most other choice programs the weekend and holiday nominations are submitted as part of a three-day nomination. Suppliers would find it difficult to purchase small amounts of gas on a weekend. (RGS Ex. 1.0, p. 13)

Most gas utilities do not require daily nominations on weekends or holidays. In Illinois both Nicor Gas and Peoples Gas accept a three-day nomination. Similar examples of multiple-day nominations from other states would be Dominion East Ohio and Columbia of Ohio in Ohio and Peoples Natural Gas and Equitable Gas in Pennsylvania. (*Id*.)

RGS agrees with RESA that same-day nominations in Rider T should not be eliminated. Same day nominations should be allowed as they are an important method for suppliers to cure imbalances. (RGS Ex. 2.0, p. 7)

**d. Staff position**

Dr. Rearden agrees that it is convenient for suppliers and Ameren to use the same nomination schedule for both Rider T and Rider SVT, noting that the current language for Rider T suppliers is that Ameren will accept nominations on a "best efforts" basis. While he stated that he has no opinion about whether it should be tied to the FERC standards as proposed by ICEA and RESA, if the "best efforts" language is not used for both riders, then there should be some more formal provision for intraday nominations in the tariff. (Staff Ex. 2.0, pp. 6-7)

4. **200% Penalty for Non-Delivery-Ameren's 200% penalty for non-delivery should be rejected.**

**a. Ameren position**

The SVT Supplier Terms and Conditions contain the following provision: By 8 a.m. Central prevailing time the day of gas flow, the Company shall match the Delivery Requirement to the Pipelines final DCN. If the Pipelines final DCN is less than the Delivery Requirement, the Supplier shall be charged 200% of the Chicago Citygate Price for the Nomination shortfall. (Ameren Ex.1.3, page 14)

**b. ICEA/RESA position**

ICEA and RESA object to this 200% charge. Ameren's proposed penalty could result in suppliers being subject to a penalty that Ameren itself is not subject to. There are many things that happen in the pipes that could not only impact a supplier but also Ameren in the exact same manner. It is extremely common for shippers (and this includes the utility as we are all the same upstream) to be cut in evening cycle. A supplier under normal circumstances could use the

Intraday Day schedule opportunity to shift load from one contract to another in order to ensure gas flows in the same amount. However, under Ameren's tariff that supplier would be charged a 200% penalty even though there was absolutely no impact to reliability and the supplier was never short.

It is possible that a problem on the pipeline would impact all shippers, however despite Ameren having the same problem, it could use its right to an intraday nomination to fix the problem so there would be no penalty on the utility. The result is that a supplier and therefore its customers would have a 200% penalty while the utility in the exact same situation would have no penalty.

The penalty is not necessary in its current form. There are intraday periods for a reason, to allow shippers to flow gas in the event of unforeseen circumstances. If a supplier does not meet its gas flow then ICEA and RESA agree that a penalty should apply, however Ameren's proposed penalty occurs before there is any ability to cure. This penalty would create a large risk and cost for suppliers on the program which is not only unnecessary but would not apply to the utility which is operating on the exact same systems as suppliers.

ICEA and RESA are not aware of any utility with a penalty of this type that occurs before intraday. Most other utilities allow for an intraday nomination before a penalty would be applied or, if there is a limit, it is only that intraday cannot be used to increase amounts but only to ensure the nominated amount is matched. The purpose of this seems to be that due to the number of suppliers anticipated Ameren would prefer not to have to deal with intraday in order to simplify processes for their own employees. Intraday exists for a reason and imposing a penalty when a mismatch can be fixed and the action would have absolutely no impact on the system simply places excessive costs on customers who choose to shop. If the Commission does not want to match the full NAESB intraday standards, at a minimum the ICC should require that this penalty may only be applied if the nominations do not match after Intraday 1 cycle with a 10 a.m. deadline, as set forth in ICEA/RESA Ex. 1.2. ICEA/RESA Ex. 1.3 set forth an example of the impact that the 200% penalty would have on suppliers based on January Chicago index assuming a fairly small number of customers. While a supplier would typically have a much higher load, this example shows that even a small amount of load is excessively impacted.

**c. RGS position**

RGS also takes the position that Ameren's penalty charges of 200% (Ameren Ex. 1.2, page 14 of 31) for non-delivery are excessive and not appropriate. The purpose of imposing a penalty is to provide compensation for replacement gas—penalties should not be adopted for the purpose of raising revenues or harming suppliers for unintentional mistakes. Ameren should adopt the same penalty schedule as its interstate pipeline suppliers have which is to charge a supplier the costs of replacing any supply deficiencies, not 200% of the cost of such deficiencies. The 200% penalty should be eliminated. (RGS Ex. 2.0., pp. 13-14)

**d. Staff position**

Dr. Rearden testified that he agreed with ICEA and RESA and RGS that a penalty should not be imposed until the supplier has a chance to remedy a shortfall, but that it may be appropriate to charge a penalty if the shortfall remains after suppliers have a chance to correct it. He notes, as an example, that Nicor Gas uses the higher of the market price and the PGA rate to charge for unauthorized use of gas. (Staff Ex. 2.0, pp. 7-8)

5. **Calculating the Cost for Capacity Release-RGS' position on calculating the cost for capacity release should be accepted.**

### a. Ameren position

Ameren's SVT Supplier Terms and Conditions (Ameren Exhibit 1.3, Page 10 of 32) states, "The release price for both allocation periods will be the weighted average of all Pipeline capacity associated with the SVT Group based on the cost of the Company's assets."

### b. RGS position

Mr. Crist testified that this method is less desirable than Ameren assigning pipeline specific costs for those assets that are released. Ameren can release an applicable pro-rata share of its capacity holdings to suppliers by posting those assets on the pipeline electronic bulletin boards ("EBB") via a pre-arranged capacity release and the suppliers can pay the pipeline directly for the released capacity. This is administratively easy and many choice programs have pro-rata releases of capacity. (RGS Ex. 1.0, p. 10; TR. 141)

RGS generally agrees that Ameren's SVT program should have mandatory capacity release where suppliers are required to accept released capacity; however for small releases less than 100 MDQ the supplier should have the ability to reject that capacity and Ameren would then release it to the marketplace. The supplier would be charged the price of the capacity, and not "be charged two times the release price" (*Id*.) The supplier would also be credited with any revenues received by Ameren for the released capacity that is picked up by the market. This is fairer to suppliers. (*Id*.)

There are several reasons why a supplier might not wish to have mandatory assignment of capacity, all related to providing competitive service to customers. In some areas, the MDQ assigned might be too small to provide any useful benefit and the supplier would never schedule any gas to flow on that capacity. Such capacity would simply be useless. There may be a credit issue between a supplier and a pipeline company, such as the supplier not wishing to establish credit with particular pipelines that might involve administrative efforts or tie up working capital. Most importantly, a supplier may have located a better way to provide gas to that delivery point such as a third party supply arrangement via different capacity assets. Suppliers might have a portfolio of assets to use and would not want the assignment of other capacity. If suppliers are permitted to be resourceful in how they will meet the customers' gas supply needs there could be cost benefits to the customer. (*Id*., p. 11)

### 6. Asset Allocation Periods-RGS' proposal for monthly asset allocations should be accepted.

#### a. Ameren position

Ameren proposes to handle a supplier's growth by providing system gas to the supplier and charging the supplier the PGA price. Ameren objects to RGS' proposal to allow for monthly allocations of capacity. (AIC Ex. 2.0, pp. 12-14)

#### b. RGS position

In those cases where there is market growth above the suppliers' allocated MDQ, having Ameren force suppliers to purchase the extra gas needed at the PGA price is a barrier to supplier participation and could create a situation where suppliers are subsidizing system supply customers. Other Choice programs have a threshold for Supplier growth that would trigger a monthly re-allocation of capacity. For example, if an AGS's Choice Average Day (summer) or Peak Day (winter) increases or decreases by +/- 10%; Ameren could recall current capacity and re-release based on the new MDQ. Another alternative would be to make any incremental capacity that is needed outside of the allocation period the responsibility of the supplier. Suppliers have no idea what the PGA price could be; it could possibly be an uncompetitive price and the supplier would not able to be hedged to manage risk. If Ameren wishes to recall capacity in the summer when suppliers may see a decrease in their customer count, then monthly capacity allocation would be optimal. Suppliers must preserve their options. Ameren's method has the potential to create cross-subsidies of the PGA by suppliers and that is not desirable. Further, it could also harm PGA customers if the market price for gas is higher than the PGA at the time Ameren buys gas for SVT customers. Thus it is much cleaner, and decreases the chances of subsidies flowing from SVT customers to PGA customers, and vice-a-versa, if suppliers are simply allowed to procure gas for their incremental load at the suppliers' own costs and not at the cost of the PGA. (RGS Ex. 1.0, pp. 11-12)

Moreover, such a system would not pose an administrative burden on Ameren. In its SVT Supplier Terms & Conditions Ameren states that should there be a service point decrease, it will recall the capacity and not wait until its next asset allocation date of May 1 or November 1. <u>If Ameren is capable of recalling capacity each month if the suppliers customer count drops then it is capable of reallocating capacity each month in the cases where the suppliers customer count increases.</u> (*Id*., p. 12) While Ameren suggests that there would be some incremental costs associated with monthly asset allocation, RGS' witness testified that he had not seen any data which supports that suggestion. (TR. 140)

Ameren should conduct asset allocations in its SVT Program on a monthly basis and suppliers would view that as an improvement. Neighboring utility NIPSCO is similar to Ameren in that it is served by the same pipeline companies and is a multizonal system. NIPSCO reallocates capacity on a monthly basis, not twice a year as Ameren has proposed. (*Id*., pp. 12-13)

**c. Commission Staff**

The Commission Staff agrees with RGS, noting that Ameren's tariffs, as currently written, only allow capacity reallocations once a year, in November, and that this seems overly restrictive since other gas utilities can provide reallocations more frequently without serious consequences. Furthermore, Dr. Rearden noted that early in the SVT Program, market shares might change relatively rapidly, which could exacerbate any mismatch between original allocations and MDQs over time. (Staff Ex. 2.0, pp. 9-10)

7. **Combined Billing / Billing Agents Receiving Gas/Electric Information- Ameren should be required to revert to its former practice of sending out bills for gas service to the customer's AGS and bills for electric service to the customer's ARES.**

**a. Ameren position**

Previously, if an Ameren customer were buying gas supply from an AGS and electric supply from an ARES and those suppliers were billing the customer, Ameren would send the bill for gas supply to the AGS and the bill for electric supply to the ARES. Ameren changed this practice and sends only a combination bill.

**b. ICEA/RESA position**

Ameren's practice results in customers only being able to choose their AGS or ARES for a single bill but not two separate bills. Customers must then choose who will bill them their AGS or their ARES., but not both. This has serious market repercussions. First many AGS are also ARES and vice versa. This change means competing ARES and AGS doing supplier consolidated billing behind Ameren will have visibility into their competitors' prices. In addition, one reason AGS and ARES offer supplier consolidated billing services to their customers is to allow for different payment terms which are more flexible in order to win a customer's business and to design products that are not typically billable on a utility system.

Ameren's change limits the ability for suppliers to offer additional product offers to customers and exposes confidential pricing to a competitor. For example, both Direct Energy and Constellation sell gas and electricity behind Ameren. Assume that both Constellation and Direct Energy bid for Customer A's electricity and natural gas contracts. Assume Customer A chooses Direct Energy for electricity and Constellation for gas. Also, assume that the customer's terms with Direct Energy require they use Direct Energy as agent for billing because the product chosen can only be broken out on a Direct Energy bill system. The customer must now also agree that Direct Energy will bill for Constellation's gas charges. This will now offer Direct Energy a glimpse into its competitor's contract with the customer, often confidential information.

Assume that to receive the preferred offer from Constellation for gas that Constellation requires they be the agent for billing. Under Ameren's proposal the customer must now choose between their preferred gas offer or risk losing their preferred electricity offer. The ultimate result of Ameren's change is to reduce the options of large commercial customers in the market and expose competitive and proprietary information among competitive suppliers. The former practice should not have been changed to this more complicated version.

**c. RGS position**

RGS agrees with ICEA and RESA regarding the provision of combined bills to customers' billing agents. One supplier should not be permitted to see the sensitive pricing information of another supplier, and the proposed billing process of AIC would allow this to happen. AIC's process should be modified to protect the confidential pricing information of the suppliers. (RGS Ex. 2.0, p. 7)

**d. Staff position**

Dr. Rearden agrees with ICEA's and RESA's concerns about Ameren insisting that only one bill be sent to a customer buying electric commodity from an ARES and gas commodity from a gas marketers. He concluded that there does not seem to be a strong reason why each supplier cannot send its own bill. (Staff Ex. 2.0, pp. 8-9)

### 8. Customer Complaint Tracking and Reporting-CUB's proposals for the tracking and reporting of complaints should be rejected.

#### a. CUB position

CUB proposes to add a requirement that Ameren advise the Commission if it observes high levels of customer complaints about a particular supplier or if it observes a pattern of customer complaints from a particular supplier relating to a specific issue." (CUB Ex. 1.0., p, 8)

#### b. Staff position

Staff's witness does not oppose CUB's suggestion, stating that customers can benefit when the utility is informing the Commission of problems that customers are experiencing with suppliers. On the other hand, he states that it is not clear that tariffs are required to induce Ameren to convey information about problems in the market to the Commission or its Staff. (Staff Ex. 2.0, pp. 5-6)

#### c. Ameren position

Ameren disagrees with CUB's proposal for a number of reasons, including the understanding that retail gas suppliers are basically self-policing. (AIC Ex. 3.0, pp. 15-17)

#### d. RGS position

RGS opposes CUB's recommendation. AIC should not be responsible for the additional items suggested by CUB. AIC already has appropriate complaint procedures in place. The current complaint procedures require that AIC determine if the cause of the customer call is usage related or price related. If the call is price related then AIC must refer the customer to the supplier and also provide the contact information to the ICC's Consumer Services Division

("CSD") and tell the customer that if they cannot resolve their dispute with the supplier they may contact the ICC's CSD. After that point AIC has no additional interaction with customer with respect to the customer's initial call, and does not know how many of the disputes are quickly resolved or end up with the customer calling the CSD. Any data AIC has concerning the number of customer complaints is lacking in important detail which only the CSD would have when and if they are contacted by the customers. Asking AIC to make some reporting of call statistics is meaningless as the CSD would have much more detailed and pertinent data. AIC should not be required to put CUB's additional language into its tariff. (RGS Ex. 2.0, pp. 3-4)

Moreover, the Commission already has a mechanism that allows customers to evaluate suppliers' complaint history. The Commission web site provides the *Alternative Gas Supplier Complaint Summary*, which contains complaint statistics that are updated quarterly. Given that this data has been compiled by the CSD which has the aforementioned benefit of having access to the nature of complaints and their resolution, this provides a far more accurate measure of supplier performance. (*Id*., p. 4)

**e. ICEA/RESA position**

On the electric side, the utilities send both the supplier and the Commission's Office of Retail Market Development ("ORMD") a tracking report of complaints. This helps suppliers to address issues where a customer may not call the supplier directly and also keeps the utility as a neutral party in discussions. ICEA and RESA propose that CUB's request be modified to instead require, if Ameren is capable, a monthly report to be provided to ORMD and the supplier to ensure that if there are issues they can be corrected as quickly as possible. ICEA/RESA Ex. 2.0, p. 8)

9. **Inclusion of Consumer Protections in Contract Offers-CUB's proposal on including customer protections in contract offers should be rejected or modified.**

**a. CUB position**

With respect to the issue of how consumer protection adopted in the Commission's Order in Docket 13-0192 should be enforced, Mr. McDaniel states that there is no reason why these consumer protections need to be included in Ameren's tariff. (CUB Ex. 1.0, p. 4) Instead, he proposes that marketers include language in their contract offers that enumerate these protections to consumers. (*Id.*, pp. 4-5)

**b. Staff position**

Dr. Rearden agrees with CUB's suggestion, stating that the supplier is likely the best way to inform customers of the protections in that the supplier has the most direct contact with its customers and is best positioned to inform them of these rights. (Staff Ex. 2.0, pp. 4-5)

**c. RGS position**

RGS disagrees with CUB's position. The only authority CUB claims for the Commission taking the extraordinary step of mandating the inclusion of CUB's three requirements into contracts is "satisfying the disclosure requirement in the PUA, (220 ILCS 5/19-115(g)(5)(B)" (CUB Ex. 1.0, p. 4). However, the plain, clear language of that provision of the Public Utilities Act ("PUA") does not grant the Commission such authority. More specifically it explicitly states that suppliers must disclose the statutory 10 day rescission period:

> In any agreement that contains an early termination clause, an alternative gas supplier shall provide the customer the opportunity to terminate the agreement without any termination fee or penalty within 10 business days after the date of the first bill issued to the customer for products or services provided by the alternative gas supplier. The agreement shall disclose the opportunity and provide a toll-free phone number that the customer may call in order to terminate the agreement.
>
> 220 ILCS 5/19 115(g)(5)(B)

The first two requirements change the rescission period from the statutory 10 day period. However, Section 19-115 does not give the Commission the authority to require suppliers to violate that section of the PUA by disclosing a different rescission period, whether it is longer or shorter than 10 business days. The third CUB requirement has nothing to do with the rescission period that is the subject of the PUA provision but instead establishes mandated price comparisons. Section 19-115 does not even mentions price comparisons or give the Commission authority to mandate price comparisons. (RGS Ex.2.0, p. 5)

In addition, CUB fails to mention that the Order in Case 13-0192 has been appealed. *See Ameren Illinois Company v. Illinois Commerce Commission et al*. Docket Nos. 4-14-0173 and 4-14-0182. While suppliers will follow the Order; unless it is reversed, placing such language in a contract would then require a revision if the decision of the Appellate Court upholds the clear 10-day rescission period language of the PUA statute. Having different language in the suppliers' contracts would be an administrative burden for suppliers and customers, for it would require rewriting many such contracts.

**d. ICEA/RESA position**

ICEA and RESA agree that the consumer protections do not need to be included in Ameren's tariff. If the Appellate Court reverses the Commission's Order in Docket 13-0192 regarding the consumer protections, Ameren would have to make a filing to eliminate any tariff language regarding consumer protections if they were included in the tariff.

However, ICEA and RESA do not completely agree with CUB's proposal that certain language should be included in suppliers' contracts with their customers. (CUB Ex. 1.0, pp. 4-

5) RESA and ICEA believe that suppliers, with respect to contracts containing termination fees, would include items 1 and 2 regarding waiver of termination fees *(Id*., pp 1-2) in their contracts regardless so ICEA and RESA would have no concern with the requirement should these protections be maintained on appeal. However, ICEA and RESA would oppose prescriptive language or mandating that these be included if the contract contains no termination fees. If a contract does not contain termination fees it seems confusing to add this language and overly complicates the contract with irrelevant information. (ICEA/RESA Ex. 2.0, pp. 6-7)

### 10. Requirement to File Tariff Allowing Alternative Gas Suppliers ("AGS") to Issue Single Bills

ICEA and RESA recommend that Ameren be required to file a tariff allowing AGS to issue single bills. However, this should not delay implementation of the SVT Program. Supplier billing can bring new products to the market without the need for additional programming by the utility as markets and products develop.

### 11. Other

## V. CONCLUSION

In conclusion, the Commission should direct Ameren to implement the SVT Program that the Commission approved in Docket 13-0192 as economically and as quickly as possible. None of the arguments raised by Ameren in its attempt to get the Commission to reverse its approval has any merit.

With respect to the issues regarding specific parameters of the SVT Program, ICEA, RESA and RGS recommend that the Commission adopt their recommendations as set forth in Section IV of this Initial Brief.

Respectfully submitted,

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**NOTICE OF FILING**

Please take note that on January 7, 2015, I caused to be filed via e-docket with the Chief Clerk of the Illinois Commerce Commission, the attached Initial Brief of the Illinois Competitive Energy Association, the Retail Energy Supply Association and the Retail Gas Suppliers in this proceeding.

*/s/GERARD T. FOX*
Gerard T. Fox

**CERTIFICATE OF SERVICE**

I, Gerard T. Fox, certify that I caused to be served copies of the foregoing Initial Brief of the Illinois Competitive Energy Association, the Retail Energy Supply Association and the Retail Gas Suppliers upon the parties on the service list maintained on the Illinois Commerce Commission's eDocket system for Ill. C. C. Docket 14-0097 via electronic delivery on January 7, 2015.

*/s/ GERARD T. FOX*
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