

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

Ameren Illinois Company :
d/b/a Ameren Illinois : 15-0142
 :
Proposed general increase in gas :
Delivery service rates and revisions :
To other terms and conditions of service :

REBUTTAL TESTIMONY OF
JOSEPH CLARK ON BEHALF OF
THE ILLINOIS COMPETITIVE ENERGY ASSOCIATION AND
THE RETAIL ENERGY SUPPLY ASSOCIATION

1 I. BACKGROUND

2 Q. Please state your name and business address.

3 A. My name is Joseph Clark. My business address is 21 East State Street, 19th Floor,
4 Columbus, Ohio 43215.

5 Q. Are you the same Joseph Clark who sponsored Direct Testimony on behalf of
6 the the Illinois Competitive Energy Association (“ICEA”) and the Retail
7 Energy Supply Association (“RESA”).¹

8 A. Yes.

9 Q. What is the purpose of your rebuttal testimony in this proceeding?

¹ The comments expressed in this filing represent the position of the Retail Energy Supply Association (RESA) as an organization but may not represent the views of any particular member of the Association. Founded in 1990, RESA is a broad and diverse group of more than twenty retail energy suppliers dedicated to promoting efficient, sustainable and customer-oriented competitive retail energy markets. RESA members operate throughout the United States delivering value-added electricity and natural gas service at retail to residential, commercial and industrial energy customers. More information on RESA can be found at www.resausa.org.

10 A. In my Direct Testimony I addressed four issues. First, ICEA and RESA
11 recommend that Ameren’s use of a ten-day rescission period for all gas transportation
12 customers be limited to residential and small commercial customers. Second, ICEA and
13 RESA recommend that Ameren’s practice of sending combined bills to electric suppliers
14 and gas suppliers be stopped and Ameren ordered to return to its previous practice of
15 sending separate bills when there are different third party suppliers for gas and electric
16 service—electric suppliers would only receive information about electric usage and gas
17 suppliers would only receive information about gas usage. Third, ICEA and RESA
18 recommend that the Commission order Ameren to complete SVT program
19 implementation within nine months from the final order in Ill. C.C. Docket 14-0097.²
20 Fourth, ICEA and RESA have concerns about a worsening in Ameren’s meter reading
21 and billing practices.

22 Ameren responded to my Direct Testimony by offering the Rebuttal Testimony of
23 Peter J. Millburg (Ameren Ex. 19.0). In my Rebuttal Testimony, I respond to Mr.
24 Millburg’s Rebuttal Testimony.

25 **II. RESCISSION PERIOD**

26 **Q. In support of Ameren’s practice with respect to a rescission period in its**
27 **Rider T Program, Mr. Millburg states that the purpose of the rescission period “is**
28 **to provide a uniform period of time for customers to correct a mistaken, errant, or**
29 **unauthorized switch on their account”. (Ameren. Ex. 19.0, p. 3, lines 47-48) Would**
30 **you please comment on Mr. Millburg’s statement?**

² On July 8, 2015, the Commission entered an order in Docket 14-0097, directing Ameren to stop implementation of the SVT Program. On August 5, 2015, ICEA, RESA, and the Retail Gas Suppliers filed a Petition for Rehearing of that Order.

31 A. There are two problems with Mr. Millburg’s statement. First, Ameren’s
32 rescission provision goes far beyond allowing a period of time to correct a “mistaken,
33 errant or unauthorized” switch of a customer. In fact, Ameren’s rescission period allows a
34 customer to rescind its enrollment for any reason whatsoever. Second, if an enrollment is
35 mistaken, errant or unauthorized, the switch can always be reversed, even beyond
36 Ameren’s ten-day period

37 **Q. Can you provide an example of why a customer might rescind the enrollment**
38 **if it is not mistaken, errant or unauthorized?**

39 A. Yes. If a customer entered into a long-term supply contract with a gas supplier
40 and the market price of gas fell during the ten-day rescission period, the customer could
41 rescind the enrollment.

42 **Q. Mr. Millburg states that an enrollment rescission is different from a supply**
43 **rescission and does “not directly involve any underlying supply contract”. (*Id.*, p. 3,**
44 **lines 53-54) Do you agree?**

45 A. No. While Mr. Millburg may be legally correct³ that a customer exercising a
46 rescission right under the tariff only relates to the enrollment, the enrollment rescission
47 likely also effectively triggers a rescission of the supply contract. The rescission of the
48 enrollment leaves the supplier with no opportunity to provide the customer with gas
49 under the underlying supply contract. Further, a customer is likely to believe contacting
50 Ameren and rescinding ends its obligation as it relates to cancelling the contract and
51 would not also contact the supplier to effectuate a supply contract rescission as well.

³ I am not testifying in this case as a lawyer, but RESA/ICEA do not concede this point and will cover in their briefs in this proceeding, if necessary.

52 Moreover, the supply contract may or may not contain a liquidated damages clause or
53 early termination provision. As a practical matter, bringing suit in state court to enforce a
54 liquidated damages provision simply adds risk that increases prices. Finally, even if the
55 supply contract contained a liquidated damages clause or an early termination provision
56 which made the supplier “whole”, the supplier still has an obligation for what potentially
57 may be a large amount of natural gas supply for a long period of time that it needs to
58 dispose of in the market.

59 **Q. Mr. Millburg provides an example of a customer who could “suddenly find**
60 **him or herself without any ability to rescind an errant enrollment even if his**
61 **account was ‘slammed’ or switched without authorization”?** (*Id.*, p. 7, lines 136-
62 **137) Do you agree?**

63 A. No, as I stated previously, a customer whose switch was unauthorized can always
64 reverse the switch. Both Section EE of the Consumer Fraud and Deceptive Business
65 Practices Act and 83 Ill. Admin. Code Part 412, Obligations of Retail Electric Suppliers,
66 set forth requirements for a lawful switch for a customer of electricity. Any switch which
67 does not comply with those requirements is invalid and does not bind the customer.
68 Additionally, Mr. Millburg provides no examples or statistics to back up his claim.

69

70 **Q. Mr. Millburg raises concerns about the ability to identify small commercial**
71 **customers eligible for the statutory rescission period (page 6 at lines 120-127). Does**
72 **RESA/ICEA have a suggestion to mitigate this concern?**

73 A. If Ameren’s concern is the ability to identify small commercial customers,
74 RESA/ICEA proffers a solution that would require no additional programming. Ameren

75 can simply add language to the letter it sends to customers informing them of their
76 enrollment and rescission options indicating the rescission period only applies to a
77 customer with annual usage of 5,000 therms or less. In fact, Commonwealth Edison
78 Company (“ComEd”) had a similar issue on the electric side and simply changed the
79 language of its enrollment/rescission letter. An example of the letter is attached as
80 ICEA/RESA Ex. 2.1. A very similar situation existed like this in ComEd and this is how
81 the issue was resolved. Like the ComEd letter, the revised Ameren letter could remind
82 the customer there may be ramifications to rescission if the customer is not covered by
83 the statutory rescission right. I think it would be a safe assumption that changing the
84 verbiage in the enrollment/rescission letter would be simpler and a fraction of the cost of
85 programming changes for Ameren’s information technology systems.

86 **Q. Mr. Millburg (page 7, lines 138-149) attempts to dispute your testimony**
87 **about industry practices to “buy forward” natural gas and again distinguish an**
88 **enrollment rescission from a supply contract rescission. Do you agree with Mr.**
89 **Millburg?**

90 A. No. As explained above, the distinction between enrollment and supply
91 rescissions is a distinction without a difference. Ameren’s rescission of the enrollment
92 makes it impossible for the gas supplier to fulfill the supply contract. The Commission
93 should not permit Ameren to hide behind this illusory distinction. There are serious
94 consequences with Ameren’s allowing larger commercial customers to have the same
95 rescission period as that statutorily mandated for residential and small commercial
96 customers. When a customer enters into a contract with a supplier that triggers a supply
97 purchase of gas. Typically larger customers have a trigger clause if they lock in their

98 price. This allows the supplier and customer to work together to purchase gas at a given
99 point in the market. Because the 10 day rescission does not kick in until an enrollment
100 has been sent, a supplier must procure supply to be ready to serve on the day the contract
101 is executed and cannot wait for the 10 days to end before incurring costs for large
102 amounts of gas. If the customer rescinds the supplier will have incurred costs for the gas
103 purchased. In the case of large transportation customers, there could be a cost of
104 potentially millions of dollars for a single rescission.

105 **Q. Mr. Millburg also worries about manual intervention and retroactive**
106 **correction by Company personnel if the Commission grants RESA/ICEA's requests**
107 **to apply the rescission period to non-residential customers using 5,000 therms or**
108 **less per year (page 8 lines 152-174). Do you agree?**

109 A. No. Mr. Millburg has not provided any real life examples of the difficulties he
110 describes in his testimony. Additionally, the concerns Mr. Millburg raises about
111 determining whether a non-residential customer is covered by the statutory rescission
112 right did not seem to muddy the waters to the extent that necessitated the tariff filing by
113 Ameren in 2013. The statute went into effect in 2008; further the definition of small
114 commercial is not something new. The revision to Rider T resulted from the
115 Commission not suspending a tariff filing by Ameren. There was no proceeding and the
116 Commission did not enter any order addressing the merits of that change. If the
117 Commission is also concerned about these alleged unknowns, it should specifically
118 address these concerns as part of the Ameren tariff approval to implement its Order in
119 this case. This would allow Ameren to propose a solution while also ensuring Ameren
120 properly implements a Commission decision adopting RESA/ICEA's request to apply a

121 rescission right to only those customers required to have such a right by Section 19-
122 115(g)(7).

123 **Q. Can RESA/ICEA provide any specific examples of a non-residential**
124 **customer gaming the 10 day rescission period (Rebuttal Testimony of Peter**
125 **Millburg at page 9, lines 175-184)?**

126 A. RESA/ICEA cannot provide any specific examples. However non-misuse of the
127 tariff optionality misses the point. The fact that a customer could game the system in this
128 way causes harm to the market. Even if customers have not taken advantage of market
129 swings the mere fact that a customer is explicitly empowered to take such action under
130 Ameren's tariff creates unnecessary risk for gas suppliers. In turn, gas suppliers would
131 have to reflect this unnecessary risk in their pricing to protect themselves. Of course the
132 more market volatility in the price of natural gas, the greater the risk of customers
133 rescinding agreements with a supplier simply to take advantage of changing gas prices.

134 **Q. Mr. Millburg provides examples of types of customers that might have usage**
135 **in excess of 5,000 therms annually, and thus are not considered small commercial**
136 **customers, and states that it appears “questionable how much time or expertise such**
137 **customers have to conduct sophisticated analyses of their energy supply needs”.**

138 **(Id., p. 9, lines 188-195) Please comment.**

139 A. Without agreeing with Mr. Millburg's opinion, I would note that if he is correct
140 Ameren's practice creates a problem for such customers. If they are unsophisticated,
141 they may not understand the difference between the rescission of the enrollment and
142 rescission of the supply contract. They may think that by rescinding the enrollment, they

143 have also rescinded the underlying supply without consequence. Consequently, they may
144 expose themselves to an early termination fee or a liquidated damages provision.

145 **Q. Does Mr. Millburg’s Rebuttal Testimony cause you to revise ICEA’s and**
146 **RESA’s proposal with respect to rescission periods in this proceeding?**

147 A. No. Rider T should be revised to limit the ten-day rescission period to residential
148 and small commercial customers in line with the statutory requirements. The
149 Commission should not interfere with customer contracts above the statutory rescission
150 right threshold.

151 **III. COMBINED BILLING/SINGLE BILL OPTION (“SBO”)**

152 **Q. Mr. Millburg states, “Both electric and gas suppliers are able to include the**
153 **Company’s delivery service charges on their bills.” (*Id.*, p. 10, lines 212-213) Please**
154 **comment.**

155 A. His answer masks the problem I raise for the Commission’s consideration. The
156 problem is not that Ameren took away the ability generally for a supplier to elect SBO
157 and include the utility’s delivery service charges on their supplier SBO bills. Mr.
158 Millburg correctly identifies the problem that needs to be addressed – “splitting” of
159 accounts and the constraint on separate suppliers related to SBO for natural gas and
160 electricity. (Millburg page 11-12)

161 **Q. Mr. Millburg states that “if the customer designates an electric supplier as its**
162 **Billing Agent, and subsequently designates a gas supplier as their Billing Agent, the**
163 **Company would recognize the gas supplier as the customer’s Billing Agent”. (*Id.*, p.**
164 **12, lines 249-251) What is the impact of this practice on customers?**

165 A. Mr. Millburg provides no evidence that customers understand that designating the
166 last-in supplier for the customer's commodity service might negate their previous (and
167 perhaps preferred) billing service agent selection for separate SBO for their electric and
168 natural gas commodity service.

169 **Q. Mr. Millburg explains that Ameren “does not include third party supply**
170 **charges on any of its bills for gas service, regardless of whether service is rendered**
171 **to a combination customer or a gas delivery-service-only customer”. (Id., p. 13,**
172 **lines 262-266) Is that your understanding?**

173 A. Mr. Millburg's question and explanation (page 13, lines 258-273) confuse the
174 point I am trying to make. I agree that Ameren does not include any third party supply
175 charges to a supplier performing SBO; it only knows its own charges that need to go on
176 an SBO bill. However, Ameren's tariff prohibits a customer's electric supplier from
177 receiving Ameren's electric distribution service charges for SBO option and a customer's
178 natural gas supplier (different than the customer's electric supplier) from separately
179 receiving the natural gas distribution service charges for SBO option. Only one supplier
180 can receive Ameren's distribution service charges. Ameren's tariff forces a customer to
181 pick which one of its suppliers is the primary billing agent. In practice, this means that
182 the supplier (not Ameren) who is not the primary billing agent would have to turn over its
183 confidential pricing information to the primary billing agent for billing and collection in
184 order to provide the customer the convenience of the single bill option. This outcome is
185 untenable, especially when considering that the primary billing agent would assumedly
186 be taking on payment/collection responsibility for a competitor's charges. Otherwise, the
187 non-primary billing agent would simply dual bill the customer for its supply charges for

188 that commodity, possibly confusing the customer and taking away the customer's ability
189 to receive all of its supply and distribution charges for specific commodities on a single
190 bill.

191 **IV. METER READING AND BILLING**

192 **Q. On pages 15-16, lines 284-314, of his Direct Testimony, Mr. Millburg**
193 **explains that delays in final billing data relate to group balancing and infers that the**
194 **number of customers some suppliers are putting into balancing groups is affecting**
195 **timing of final meter reads because bills are issued only after the Company secures**
196 **actual usage data for all customers within the balancing group. Can you comment**
197 **on Mr. Millburg's explanation?**

198 A. RESA/ICEA members experience these delays even for small numbers of
199 customers in balancing groups (much less than the 1,200 number included by Mr.
200 Millburg for dramatic effect).⁴ Additionally, RESA/ICEA members have not found a
201 consistent reason (among the list provided by Mr. Millburg at lines 315-322 or otherwise)
202 to pinpoint why Ameren is consistently late. The reasons seem to vary; a pattern has yet
203 to emerge.

204 **Q. On page 16, lines 331-333, of his Direct Testimony, Mr. Millburg claims that**
205 **Ameren aims to have its bills for transportation customers issued to suppliers by the**
206 **fifth business day of the month and that it typically achieves that goal for all**
207 **transportation accounts including group balanced accounts. Please comment.**

⁴ Moreover, Ameren's response to RESA Data Request No. 3.09 indicates that only one pool group falls in the 1151-1200 account range and 48 of the 51 monthly balanced pool groups fall in the 300 or less category.

208 A. Ameren may achieve this for daily balanced customers but not for monthly
209 balanced transportation customers. Mr. Millburg's workpaper demonstrates that for the
210 period of January through June 2015, on average 68% of bills to monthly balanced
211 customers were issued by the fifth business day.

212 **Q. On page 18, lines 358-373, of his Direct Testimony, Mr. Millburg states that**
213 **Ameren already provides suppliers with a standard notice reflecting any usage**
214 **revisions that affect billing and balancing charges. Is this accurate?**

215 A. This is technically true. Ameren provides all usage using their EDI system. The
216 problem lies in the format, mainly because there isn't a way to readily identify "normal"
217 usage from "revised" usage. Suppliers obtain usage from a different source (a usage
218 report on Ameren's website portal) and then compare that information to a secondary
219 report which identifies revised usage (a billing report on Ameren's website portal) in
220 order to identify "revised" usage.

221 In most cases a supplier can figure out the usage revisions and tie this back to Ameren's
222 storage reports, but there are instances where RESA/ICEA members have had to get the
223 utility involved in order to determine the correct value. Even Ameren employees are at
224 times stumped as to what happened and why usage reports don't tie to storage reports in
225 Ameren's systems. If Ameren notifies suppliers of revisions RESA/ICEA is hopeful this
226 process would require Ameren to first ensure their own usage and storage systems tie out
227 to each other and that Ameren would identify and resolve discrepancies before the
228 revision information is provided to suppliers. Otherwise suppliers must diagnose and
229 attempt to figure out revisions made by Ameren in Ameren's own system, when it is
230 more effective for Ameren to take responsibility for its own actions and systems.

231 **V. SVT PROGRAM IMPLEMENTATION**

232 **Q. On page 20, lines 407-410, of his Direct Testimony, Mr. Millburg states that**
233 **Ameren will need an incremental 21-24 months from a final order in Docket 14-**
234 **0097 to implement the SVT program. Please comment.**

235 **A.** I find it hard to believe that, if the Commission ordered Ameren to implement an
236 SVT Program in less than 24 months, Ameren would not comply, for example, by
237 devoting additional internal or contractor labor to the project or by eliminating some of
238 the extremely lengthy and costly testing Ameren added to the SVT Program after the
239 Commission approved it in its Order in Docket 13-0192.

240 **Q. Does this conclude your rebuttal testimony?**

241 **A.** Yes, it does. However, I reserve the right to supplement my testimony as
242 subsequent information becomes available.

243

NOTICE OF FILING

Please take note that on August 5, 2015, I caused to be filed via e-docket with the Chief Clerk of the Illinois Commerce Commission, the attached Rebuttal Testimony of Joseph Clark on behalf of the Illinois Competitive Energy Association and the Retail Energy Supply Association 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 Rebuttal Testimony of Joseph Clark on behalf of the Illinois Competitive Energy Association and the Retail Energy Supply Association upon the parties on the service list maintained on the Illinois Commerce Commission's eDocket system for Ill. C. C. Docket 15-0142 via electronic delivery on August 5, 2015.

/s/GERARD T. FOX

Gerard T. Fox