STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

Ameren Illinois Company d/b/a Ameren Illinois	)	
Proposed general increase in Gas rates	)	Docket No. 13-0192

BRIEF ON EXCEPTIONS OF
THE ILLINOIS COMPETITIVE ENERGY ASSOCIATION
AND THE RETAIL ENERGY SUPPLY ASSOCIATION

I. INTRODUCTION

Pursuant to 83 Ill. Admin. Code Section 200.830 and the schedule established by the Administrative Law Judge ("ALJ"), the Illinois Competitive Energy Association ("ICEA")[1] and the Retail Energy Supply Association ("RESA")[2] submit their Brief on Exceptions to the ALJ's Proposed Order ("ALJPO") in this proceeding. The only matter addressed in this Brief on Exceptions is the Small Volume Transportation Program ("SVT Program" or "Choice Program") for Ameren Illinois Company ("AIC"). ICEA

[1] ICEA's members include Champion Energy, LLC; Constellation NewEnergy Inc.; Direct Energy Services, LLC; FirstEnergy Solutions Corp.; Homefield Energy; Integrys Energy Services, Inc.; MC2 Energy Services, LLC; Nordic Energy Services, LLC; NRG Retail; and Verde Energy USA Illinois, LLC. The views expressed in this filing represent the position of ICEA as an organization but may not represent the views of any particular member of ICEA.

[2] RESA's members include AEP Energy, Inc.; Champion Energy Services, LLC; ConEdison *Solutions*; Constellation NewEnergy, Inc.; Direct Energy Services, LLC; Energetix, Inc.; GDF SUEZ Energy Resources NA, Inc.; Hess Corporation; Homefield Energy; IDT Energy, Inc.; Integrys Energy Services, Inc.; Just Energy; Liberty Power; MC Squared Energy Services, LLC; Mint Energy, LLC; NextEra Energy Services; Noble Americas Energy Solutions LLC; NRG, 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.

and RESA support the ALJPO's conclusion that "it is in the public interest to order AIC to implement an SVT program at this time". (ALJPO, p. 236) The ALJPO carefully analyzes the positions of all the parties and comes to the correct conclusion that approval of an SVT program is in the public interest.

II. EXCEPTIONS

ICEA's and RESA's Brief on Exceptions is limited to the following matters. First, while the ALJPO approves AIC's SVT Program, subject to working out details in a subsequent proceeding, it does not set out the framework for that proceeding. The ALJPO should be revised to set forth the basic framework for the tariff proceeding, as proposed by AIC, in order to ensure that AIC will be able to implement the SVT Program in the fourth quarter of 2014.

Second, while rejecting the Citizens Utility Board's ("CUB") notion that the SVT Program is an experimental program and rejecting its proposal for a review of the program after a 24-month period, the ALJPO accepts CUB's recommended reporting requirements. However, those recommended reporting requirements were first addressed in CUB's witness' rebuttal testimony and ICEA and RESA did not have the opportunity to respond in evidence. At most, CUB's recommended reporting requirements should be addressed in the Rider SVT tariff proceeding.

Third, the ALJPO notes that to the extent issues are identified as "resolved", but are actually in dispute, such issues can be addressed in the tariff proceeding. ICEA and RESA agree with this approach, but want to point out one specific "resolved" issue that appears to be ambiguous and is, therefore, not resolved.

Fourth, the ALJPO attributes some positions to ICEA and RESA that were their original positions, but which changed during the course of the proceeding, or fails to acknowledge ICEA/RESA's position on an issue. ICEA and RESA offer some proposed language to reflect their positions on these matters.

Pursuant to 83 Ill. Admin. Code Section 200.830, ICEA and RESA offer proposed revised language with respect to each of the above matters following the discussion thereof.

1. EXCEPTION 1: THE ALJPO SHOULD BE REVISED TO SET OUT A BASIC FRAMEWORK FOR THE SUBSEQUENT TARIFF PROCEEDING.

While the ALJPO approves AIC's SVT Program, subject to working out details in a subsequent tariff proceeding, it does not set out the framework for that proceeding. The ALJPO should be revised to set forth a basic framework for the tariff proceeding in order to ensure that AIC will be able to implement the SVT Program in the fourth quarter of 2014, as proposed by AIC's witness, Mr. Craig Nelson. (AIC Ex. 16, pp. 14-15) Specifically, AIC should be directed to file SVT Program tariffs within 45 days from the date of the Commission's Order. There should be an expedited schedule for the subsequent proceeding that allows a final order to be issued within 150 days after the tariff filing so that the SVT Program can begin in the fourth quarter of 2014. This exception can be accomplished by making the following revisions. First, revise the first paragraph on page 241 of the ALJPO to add the following sentences:

> Specifically, AIC shall file SVT Program tariffs no later than 45 days after the date of this Order. The Commission expects the parties to propose an expedited schedule in the resulting proceeding that allows a final order to be issued within

150 days after the filing so that the SVT Program can begin in the fourth quarter of 2014.

Second, a Finding (13) should be added to page 243 of the ALJPO (and current Finding (13) renumbered to be Finding (14)), to read:

(13) AIC shall file SVT Program tariffs no later than 45 days after the date of this Order; the Commission expects the parties to adopt an expedited schedule in the resulting proceeding that allows a final order to be issued within 150 days after the filing so that the SVT Program can begin in the fourth quarter of 2014;

Third, an additional ordering paragraph should be added after the third ordering paragraph on page 243 of the ALJPO, which would read:

IT IS FURTHER ORDERED that Ameren Illinois Company shall file tariffs for its SVT Program consistent with Finding (13) of this Order.

2. EXCEPTION 2: THE ALJPO SHOULD BE REVISED TO ELIMINATE THE ACCEPTANCE OF CUB'S REPORTING REQUIREMENTS.

The ALJPO notes that CUB proposed certain reporting requirements and annual reports by the Commission's Office of Retail Market Development ("ORMD") on the theory that AIC's SVT Program would be an "experimental program" so that "its results over time should be carefully scrutinized". (ALJPO, p. 238) For that same reason, CUB recommended that the Order include a Commission review of the SVT Program after 24 months. (*Id.*) Interestingly, after rejecting CUB's notion that the SVT Program is "experimental", the ALJPO nevertheless adopts CUB's recommendations for the ORMD to track and report on AIC's SVT Program. (*Id.*, p. 239)

However, CUB's proposed reporting requirements suffer the same infirmity as CUB's proposal for additional consumer protections, which was rejected by the ALJPO.

(*Id*., p. 237-238) CUB proposed the reporting requirements in its witness rebuttal testimony. (CUB Ex. 2.0, pp. 8-9) Thus, just as in the case of CUB's proposed consumer protections, ICEA and RESA did not have an opportunity to offer evidence against the proposed reporting requirements. The ALJPO should be revised to treat CUB's untimely proposed reporting requirements consistently with its untimely proposed consumer protections, leaving open the possibility that they can be addressed in the tariff proceeding.

To accomplish this, the first full paragraph on page 239 of the ALJPO should be revised as follows:

> In reviewing CUB's recommendations, the Commission notes that it is approving the implementation of an SVT Program for AIC and it is not an experimental program. Additionally, ~~given that OMRD will be tracking and reporting to the Commission on an annual basis,~~ the Commission believes there is no need to schedule a Commission review of the SVT Program after 24 months of operation. In the event and to the extent changes in the ~~SCT~~ SVT Program or even termination of it are warranted, these are actions that the Commission may take at any appropriate time. With regard to the remainder of CUB's recommendations for ORMD to track and report on AIC's SVT program, the Commission finds ~~them to be reasonable and they are hereby adopted.~~that because they were not made until the rebuttal stage of the proceeding, they should not be adopted at this time. Whether or to what extent they could be addressed in an SVT tariff proceeding is an issue not reached in this Order.

3. EXCEPTION 3: THE ALJPO SHOULD BE REVISED TO CLARIFY THAT THE ISSUE OF "RESCISSION PERIODS" IS NOT A RESOLVED ISSUE.

Third, the ALJPO notes that to the extent issues are identified as "resolved", but are actually in dispute, such issues can be addressed in the tariff proceeding. (*Id*., p 240)

ICEA and RESA agree with this approach, but want to point out one specific "resolved" issue that appears to be ambiguous and is, therefore, not resolved

While the issue of rescission periods is listed as one of the "Resolved Issues", ICEA and RESA are concerned about the ambiguity of Ameren's position which suggests that Ameren agrees "in principle" with ICEA and RESA regarding customers to whom the rescission period applies, but that it will use the Commission-approved switching rules for non-SVT eligible customers at the time the SVT tariffs are filed. (*Id*., p. 204) ICEA and RESA believe that the rescission period should apply to residential and small commercial customers (defined as customers having annual usage of 5,000 therms or less), consistent with the provisions in the Public Utilities Act. The SVT Program is available to non-residential customers larger than small commercial customers, but the same rescission periods should not apply to those larger customers. ICEA and RESA recommend that this ambiguity be clarified during the subsequent proceeding regarding SVT tariffs.

Consequently, ICEA and RESA recommend that the ALJPO be modified as follows to reflect this exception. Revise the fourth paragraph on page 204 of the ALJPO to read:

> ICEA/RESA and RGS believe the addition of a rescission period for customers with greater than 5,000 therms consumption is unnecessary and inappropriate. AIC agrees in principle that SVT switching rules apply to customers eligible for SVT service. AIC says it will use the Commission-approved rules for non-SVT eligible customers at the time SVT tariffs are filed. AIC believes this issue is resolved. (AIC IB at 147, RB at 88). <u>However, ICEA and RESA point out in their Brief on Exceptions that some commercial customers with consumption greater than 5,000 therms are eligible for the SVT program and argue that rescission periods should not apply to such customers. (ICEA/RESA BOE, p. 6) Thus, it appears that this issue is not resolved and should be addressed in the SVT tariff proceeding.</u>

4. EXCEPTION 4: THE ALJPO SHOULD BE REVISE TO CLARIFY ICEA/RESA'S POSITIONS ON CERTAIN ISSUES.

Fourth, the ALJPO attributes some positions to ICEA and RESA that were their original positions, but which changed during the course of the proceeding, or fails to acknowledge ICEA/RESA's position on an issue. ICEA and RESA offer proposed language to reflect their positions on these matters.

a. RIDER GTA

While ICEA and RESA originally proposed that transportation customers be subject to Rider GTA for one month (ICEA/RESA Ex. 2.0, pp. 11-12), ICEA and RESA withdrew this proposal in rebuttal testimony and agreed to the three-year sunset provision proposed by AIC. (ICEA/RESA Ex. 4.0, p. 19) The ALJPO contains language that does not reflect ICEA's and RESA's change in position. To accomplish this, the following revisions should be made to the ALJPO. First, the first full paragraph on page 205 of the ALJPO should be revised by adding the following sentence.

ICEA/RESA also agreed to the three-year sunset proposal for Rider GTA. (ICEA/RESA Ex. 4.0, p. 19)

Second, the second to last paragraph on page 239 of the ALJPO should be deleted and the final paragraph on page 239 of the ALJPO should be revised as follows:

> Having found that Rider GTA is necessary and should be implemented, the Commission ~~rejects ICEA/RESA's proposal and~~ adopts AIC's proposed three-year sunset provision beginning with the start of the SVT program. Again, to the extent Rider GTA needs to be revisited or becomes unnecessary, that situation can be addressed in the future.

b. PURCHASE OF RECEIVABLES

The ALJPO correctly points out that AIC and the Retail Gas Suppliers objected to CUB's suggestion that the need for a Purchase of Receivables ("POR") component to the SVT Program needs to be revisited. However, ICEA and RESA also made the same objection, as noted elsewhere in the ALJPO. (ALJPO, p. 234) The ALJPO should be revised as follows to indicate this fact. Revise the last sentence of the second full paragraph on page 238 of the ALJPO to read as follows:

> ~~Both~~ AIC, ICEA/RESA and RGS object to CUB's suggestion that the need for a POR needs to be revisited.

c. DISCOUNT RATE

The ALJPO correctly points out that ICEA and RESA believe that there should be separate discount rates for Rider SVT customers, under the POR component of the SVT Program, than for AIC's sales customers, but that ICEA and RESA conceded to using a single rate at the beginning of the program, as proposed by AIC, subject to later review when SVT program participation reaches 20% of eligible customers. (*Id*., p. 238) However, subsequently the ALJPO attributes the proposed single discount rate to ICEA and RESA. This should be corrected by revising the carryover paragraph on pages 238-239 of the ALJPO as follows:

> The Commission concludes that the record supports a finding that a POR program should be implemented in addition to the SVT program. The Commission believes there is ample evidence that a POR program enhances the success of a successful competitive program. With respect to the discount rate, the Commission finds that at the present time, the position of AIC, as agreed to by ICEA/RESA, to use a single rate for both customer classes at the startup of the POR program is reasonable. To the extent that issue needs to be revisited in the future, the Commission will do so.

III. CONCLUSION

ICEA and RESA appreciate the thoughtful analysis and conclusions of the ALJPO on the subject of AIC's SVT Program and urge the Commission to approve the SVT Program in this proceeding. ICEA and RESA also request that the Commission make the following revisions to the ALJPO set forth in this Brief on Exceptions. First, the ALJPO should be revised to set forth a basic framework for the tariff proceeding in order to ensure that AIC will be able to implement the SVT Program in the fourth quarter of 2014. Second, CUB's recommended reporting requirements should be rejected and, at most, could be addressed in the Rider SVT tariff proceeding. Third, the ALJPO should be revised to clarify that the issue of rescission periods is not "resolved", but should be addressed in the tariff proceeding. Fourth, the ALJPO attributes some positions to ICEA and RESA that were their original positions, but which changed during the course of the proceeding, or fails to acknowledge ICEA/RESA's position on an issue; the ALJPO should be revised to reflect ICEA's and RESA's positions on these matters.

Respectfully submitted,
Illinois Competitive Energy Association
Retail Energy Supply Association

By: /s/GERARD T. FOX
Gerard T. Fox

Law Offices of Gerard T. Fox
Two Prudential Plaza
180 N. Stetson
Suite 3500
Chicago, IL 60601
(312) 909-5583
gerardtfox@aol.com

NOTICE OF FILING

Please take note that on November 22, 2013, I caused to be filed via e-docket with the Chief Clerk of the Illinois Commerce Commission, the attached Brief on Exceptions of the Illinois Competitive Energy Association and the Retail Energy Supply Association in this proceeding.

Dated: November 22, 2013

/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 Brief on Exceptions 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 13-0192 via electronic delivery on November 22, 2013.

/s/ GERARD T. FOX
Gerard T. Fox