**STATE OF ILLINOIS**
**ILLINOIS COMMERCE COMMISSION**

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

**REPLY BRIEF OF**
**THE ILLINOIS COMPETITIVE ENERGY ASSOCIATION**
**AND THE RETAIL ENERGY SUPPLY ASSOCIATION**

## I. INTRODUCTION

Pursuant to 83 Ill. Admin. Code Section 200.800 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 Reply Brief in this proceeding. The following other parties submitted Initial Briefs addressing a Small Volume Transportation Program ("SVT Program" or "Choice Program"), the only issue addressed by ICEA and RESA in their Initial Brief: Ameren Illinois Company

[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.

("AIC" or "Ameren"), the Citizens Utility Board ("CUB"), the Illinois Commerce Commission ("Commission") Staff ("Staff"), and the Retail Gas Suppliers ("RGS"). For the reasons stated in ICEA/RESA's Initial Brief and this Reply Brief, the Commission should approve the implementation by Ameren of an SVT Program, subject to establishing specific tariff provisions for the SVT Program in an expedited proceeding subsequent to the Commission's entry of a final order in this proceeding. This Reply Brief follows the agreed-upon outline approved by the ALJ in this proceeding.

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## VIII. SVT PROGRAM--THE COMMISSION SHOULD APPROVE THE IMPLEMENTATION OF AN SVT PROGRAM BY AMEREN SUBJECT TO WORKING OUT THE DETAILS OF TARIFFS IN A SUBSEQUENT PROCEEDING.

### A. RESOLVED ISSUES

#### 1. SVT PROGRAM SEPARATE PROCEEDING

Both Ameren and Staff addressed this resolved issue in their Initial Briefs. While Ameren stated that it would propose an expedited schedule for the subsequent proceeding and request a final order 150 days after the filing to allow for the SVT Program to begin in the fourth quarter of 2014 (AIC In. Br., pp. 145-146), the Commission Staff did not mention the expedited schedule. ICEA and RESA believe that it is extremely important that an expedited schedule be established for the subsequent proceeding so that the SVT Program can begin operation in the fourth quarter of 2014.

#### 2. BUDGET BILLING FOR SVT CUSTOMERS

ICEA and RESA confirm Ameren's representation that the explanation by Ameren's witness, Ms. Vonda Seckler, satisfied ICEA's and RESA's concerns regarding budget billing for Rider SVT customers. (AIC In. Br., p. 146)

**3. RIDER SVT**

**a. ASSESSMENT OF PIPELINE PENALTIES**

There appears to be some confusion regarding this issue, which is contained in the section of "Resolved Issues". Staff notes AIC's rebuttal testimony which acknowledges the concerns of ICEA and RESA, on the one hand, and the Commission Staff, on the other hand, but leaves the decision to the Commission. Staff states that it remains concerned with how pipeline penalties are allocated between customers and how SVT customers are assessed any penalties. (Staff In. Br., p. 75) AIC addresses the issue by adding a subsection to the section of "Contested Issues", stating that both Staff and ICEA and RESA make valid points regarding the assessment of pipeline penalties and will leave it to the Commission to decide. (AIC In. Br., pp. 160-162)

In ICEA's and RESA's opinion, the assessment of pipeline penalties is a "Resolved Issue" in the sense that it will be handled in the separate proceeding on SVT Program tariffs. The Commission need not decide the issue in its final order in this proceeding.

**b. UTILITY CONSOLIDATED BILLING**

**c. STAKEHOLDER MEETINGS**

**d. RESCISSION PERIOD**

While this 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. (AIC In. Br., p. 147) 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.

While the SVT Program is available to non-residential customers larger than small commercial customers, the same rescission periods should not apply to those larger customers. However, ICEA and RESA recommend that this ambiguity be clarified during the subsequent proceeding regarding SVT tariffs.

**e. TARIFF LANGUAGE CHANGES**

Staff recommends ICEA's and RESA's proposal for a monthly allocation of assets be considered later based upon Ameren's experience in administering the SVT Program. (Staff In. Br., pp. 76-77) ICEA and RESA are basically in agreement with Staff. Specifically, ICEA and RESA recommend that Ameren continue to look for resources to implement monthly reallocation when the SVT Program has grown to at least 20% switching. (ICEA/RESA Ex. 4.0, pp. 17-18)

**4. RIDER GTA**
- **a. SUNSET PROVISION**
- **b. USE OF SYSTEM WEIGHTED AVERAGE COST OF GAS**
- **c. TARIFF LANGUAGE CHANGES**

**5. RIDER GSIC**
- **a. IDENTIFICATION OF COSTS TO BE RECOVERED**
- **b. STORAGE INVENTORY TRANSACTIONS**
- **c. TARIFF LANGUAGE CHANGES**

**6. PRICE TO COMPARE**

**B. CONTESTED ISSUES**

**1. APPROVAL OF SVT**

**a. ICEA/RESA POSITION**

In their Initial Brief at pages 4-10, ICEA and RESA demonstrated why the Commission should approve the implementation of an SVT Program in this proceeding, subject to working out the details of SVT tariffs in a subsequent proceeding.

**b. RGS POSITION**

RGS also supports the Commission's entry of an order directing Ameren to implement the SVT Program. On pages 8-13 of its Initial Brief, RGS sets forth the many benefits of an SVT Program.

### c. POSITION OF COMMISSION STAFF

Staff does not oppose an SVT Program for AIC, stating that the Commission has already indicated that it favors retail competition and quoting from the Commission's final order in Ill. C. C. Docket 11-0282, in which the Commission found that customers would benefit from a well-designed SVT Program. Staff concludes that based on the work that interested parties have done in the workshops and in this proceeding, and the work that can take place in the separate docket recommended by Staff to consider just the SVT tariffs, the resulting tariffs will be well designed. (Staff In. Br., pp. 85-87)

### d. POSITION OF AMEREN

Ameren does not oppose an SVT Program and is ready to implement an SVT Program if the Commission so directs and approves recovery of related costs. (AIC In. Br., pp. 151-152) Ameren agrees with Staff's recommendation to address the operational issues and tariff design issues, and other related issues associated with an SVT Program, in another proceeding. Assuming the Commission directs Ameren to implement an SVT Program, Ameren is prepared to file a petition, supporting testimony and exhibits, including tariffs in support of the SVT Program, within 45 days after the date of the Commission's order in this proceeding. Ameren will propose an expedited schedule for that proceeding and request a final order 150 days after the filing so that the SVT Program can be implemented by the fourth quarter of 2014. (*Id*., p. 145-146)

### e. POSITION OF CUB

Only CUB takes the position that the Commission should not necessarily direct Ameren to implement an SVT Program in its final order in this proceeding. While agreeing that the detailed tariffs for an SVT Program should be worked out in a subsequent proceeding, CUB takes the position that the Commission should not approve the SVT Program until it determines that the benefits of the program outweigh the costs. (CUB In. Br., p. 29) In this regard, CUB claims that failure to conduct a cost benefit analysis of the SVT Program would "not be consistent with the Commission's own directive in Docket No. 11-0282 to consider 'whether there would be any benefit to customers from such a program'".

However, what CUB neglects to mention is that this language from the Commission's order is directed to the workshops that the Commission ordered to be held on whether an SVT Program is appropriate for the AIC service territories. As pointed out by RGS in its Initial Brief, "the examination of the costs and benefits of a customer choice program is exactly what the Commission directed the parties to address in the workshop". (RGS In. Br., p. 10) RGS then correctly points out that no party to the workshops found that discussion to be lacking or this issue to be unresolved in the confidential surveys submitted at the conclusion of the workshops. (*Id*.)

At any rate, the record is full of evidence regarding the benefits of SVT Programs. Mr. Wright testified that recent events in the competitive retail electric market and increases in gas supply have changed the retail gas market to the point where AIC customers would see benefits from multiple supplier offers. Suppliers who currently offer electric service in AIC's service territory may be able to offer "multi-product"

discounts for natural gas in combination with electricity offerings. AGS can not only offer customers savings but other value-added services that include the ability to set a fixed price for a set number of years or more innovative service offerings that could fuel a natural gas vehicle or provide free gas with installation of a fuel efficient furnace. Unlike Ameren, AGS are not limited to the PGA supply option, and AGS can offer fixed price products, fixed bill products, variable rate offers, and multiple products to customers. Mr. Wright provided examples of each. (ICEA/RESA Ex. 1.0, pp. 5-9)

In reply to Mr. Wright's detailed explanation of the benefits of SVT Programs, CUB's response is to claim that it is "theoretical" and that no RGS or ICEA/RESA witness was able to provide any specific plans or commitments to make such offers. (CUB In. Br., p. 33) CUB's response makes no sense whatsoever. One would hardly expect AGS to make specific offers during this proceeding when the SVT Program has not been approved and, even when approved, won't be implemented until over a year from now, in the fourth quarter of 2014.

CUB also argues that the Commission should reference the experience with SVT Programs in the service territories of Northern Illinois Gas Company ("Nicor Gas"), The Peoples Gas Light and Coke Company ("Peoples Gas"), and North Shore Gas Company ("North Shore") to determine whether to approve a program in Ameren's service territory, claiming that the experience in Ohio testified to by ICEA/RESA witness Mr. Puican was not relevant, nor was the experience on the electric side in the service territory of Ameren. (CUB In. Br., pp. 34-35) While ICEA and RESA suspect that CUB would probably argue that evidence regarding the programs of the northern gas utilities, if in the record of this proceeding, would be equally irrelevant to Ameren's situation,

there is evidence regarding the experience of the northern gas utilities in the record. Mr. Wright testified that based on calendar year 2011 data, Nicor Gas had approximately 203,760 residential and 32,700 non-residential customers in its Customer Select Program, Peoples Gas had approximately 67,900 residential customers and 10,500 non-residential customers in its Choices for You Program and North Shore had approximately 13,500 residential customers and 1,200 non-residential customers in its Choices for You Program. (ICEA/RESA Ex. 1.0, p. 9) Clearly, this level of participation demonstrates that customers are having a positive experience with SVT Programs in the northern part of Illinois. In contrast, CUB offers nothing of merit that suggests that customers are **currently** having any negative experience with such SVT Programs.[3]

CUB also argues that the costs of the SVT Program are real and significant. ICEA and RESA anticipated this argument and already rebutted it in their Initial Brief at pages 15-16. However, briefly, ICEA/RESA witness Mr. Puican calculated the annual cost of the SVT Program, on a per therm basis, as $0.00292 per therm. (ICEA/RESA Ex. 4.0, p. 9) In contrast, he compared the historical differences between the NYMEX natural gas settlement price and Ohio's Gas Cost Recovery rate (Ohio's equivalent to the PGA) and the difference between the NYMEX and the current auction based Retail Price Adjustments for three Ohio utilities, expressed in dollars per therm to be $0.1845 for Dominion East Ohio, $0.1272 for Vectren Energy Delivery of Ohio, and $0.1718 for Columbia Gas Ohio. Mr. Puican concluded that comparing those historical differences with the $0.00292 per therm incremental costs of the SVT Program demonstrates a

[3] In Section VIII (B) (3), infra, ICEA and RESA demonstrate that CUB's dated evidence regarding the Choice Programs of the northern gas utilities has no relevance to Ameren's SVT Program.

significant likelihood that the benefits of the SVT Program will exceed the costs. (*Id*., p. 10)

CUB also argues that inherent market challenges make it difficult for AGS to offer savings to customers. ICEA and RESA anticipated this argument as well and rebutted it in their Initial Brief at page 16. Briefly, the above historical analysis illustrates that competitive suppliers can offer prices lower than utilities. The PGA incentive structure discourages risk taking by retroactively penalizing decisions that don't work out while good decisions are unrewarded. Consequently, utilities do not have the same financial incentives as competitive suppliers to minimize gas supply costs. (ICEA/RESA Ex. 4.0, p. 11)

In conclusion, the overwhelming weight of the evidence in the proceeding demonstrates that Ameren's residential and small commercial customers will benefit from a well-designed SVT Program. The Commission should approve an SVT Program for Ameren, subject to working out detailed tariffs in a subsequent proceeding, conducted in a manner which allows implementation of the SVT Program in the fourth quarter of 2014.

**2. Purchase of Receivables**

CUB admits that its witness did not testify regarding the POR component of the SVT tariff and that it did not review POR in this proceeding. Nevertheless, CUB states that the issue of POR should be further explored in the tariff proceeding that is filed subsequent to a Commission determination to go forward with an SVT Program for Ameren. (CUB In. Br., pp. 38-39).

The evidentiary record is unrebutted that POR is a necessary component of the SVT Program. (ICEA/RESA In. Br., pp.17-19) Consequently, that is not a proper issue for the subsequent tariff proceeding. However, if parties, including CUB, want to propose "tweaks" to the POR component of the SVT program, that would be within the scope of the tariff proceeding.

**3. Consumer Protections**

CUB states that to address the problems seen in other Illinois retail gas marketing programs, three specific consumer protections should be ordered by the Commission if it decides to go forward with implementation of an SVT Program for Ameren:

- Customers shall be absolved from paying any termination fee if, prior to the due date of their first bill, they notify the supplier that they are terminating the contract.
- When a customer has accepted service from a supplier after solicitation by a door-to-door salesperson, there shall be no termination fees assessed if the customer terminates during the first six billing cycles.
- If a supplier's marketing materials include a price comparison of the supplier rate and the gas utility rate, the depiction of such comparison shall display at least three years of data in no greater than quarterly increments and shall also display the supplier's offered price for the same or equivalent product(s) or service(s) for each of the same increments.

(CUB In. Br., pp. 39-41) These proposals were raised for the first time not in the workshops ordered by the Commission in Docket 12-0282, nor in Mr. Cohen's Direct Testimony. Rather, they were raised in Mr. Cohen's Rebuttal Testimony. Moreover, in

support of the three proposals, which appear arbitrary on their faces, Mr. Cohen stated simply that they would "address the well-documented problems of misleading marketing seen in Northern Illinois gas choice programs, which were described in my Direct Testimony". (CUB Ex. 2.0, pp. 9-10)

There are a number of problems with Mr. Cohen's proposals. These problems were demonstrated at length in ICEA/RESA's Initial Brief and will not be repeated, in detail, in this Reply Brief.

First, they are untimely. They should have been brought up during the SVT Program workshops that were held after the Commission's Order in Docket 12-0282. In fact, the first item of the Staff's agenda for the first workshop was: "What consumer protections are needed?". (RESA Ex. 3.0, p. 7) Mr. Crist, on behalf of RGS, testified, at length, about CUB's lack of participation in the workshops. He testified that consumer protection issues were discussed several times during the workshops. Mr. Crist concluded that Mr. Cohen's testimony on issues that could have been discussed at the workshops should be disregarded. (RGS Ex. 2.0, pp. 1-5)

Second, Mr. Cohen's proposals ignore the fact that there are significant consumer protections contained in the Public Utilities Act. Section 19-115 of the Public Utilities Act contains extensive consumer protections, including important provisions relating to matters such as customer switching, customer complaints, marketing, early termination fees, and rescission rights. (ICEA/RESA Ex. 3.0, p. 6)

Third, the problems described in Mr. Cohen's Direct Testimony are stale and predate the consumer protections added to the Public Utilities Act after the Commission proceedings mentioned by Mr. Cohen in his direct testimony. The most recent statistics

available, from CUB itself, do not demonstrate the need for CUB's proposals. During calendar year 2013—through August 19, 2013—CUB has received the following total number of inquiries and complaints against all alternative gas suppliers: 20 relating to Nicor Gas' Customer Select Program, 16 relating to The Peoples Gas Light and Coke Company's Choices for You Program, and 0 relating to North Shore Gas Company's Choices for You Program. (RESA Ex. 7.0, last page) To put these numbers in perspective, there were a total of 26 complaints and inquiries to CUB, compared to a total of approximately 320,000 residential and small commercial customers participating in Choice Programs for these three gas utilities. (ICEA/RESA Ex. 1.0, p. 9) Thus, CUB's proposals appear to be a solution in search of a problem.

4.**DISCOUNT RATE FOR SVT AND UCB/POR CUSTOMERS**

Staff states that it disagrees that SVT customers should necessarily have different discount/uncollectible percentages from sales customers and that, at a minimum, there should be sufficient time to evaluate the experience with uncollectibles before amending the POR component of the SVT Program. (Staff In. Br., p. 88) ICEA and RESA are not in disagreement with Staff. ICEA and RESA propose that this issue be reevaluated when the SVT Program has reached a participation rate of 20%. (ICEA/RESA Ex. 4.0, pp. 12-13)

**5.RIDER GTA**

Staff recommends that the Commission reject ICEA/RESA's proposal that transportation customers be subject to Rider GTA for only one month. (Staff In. Br., p. 88) However, that was not ICEA's and RESA's final proposal relating to Rider GTA. ICEA and RESA agreed to Ameren's proposed Rider GTA subject to its having a three-

year sunset and that only costs related to contracts in effect at the time the SVT Program is approved would be eligible for inclusion in Rider GTA. (ICEA/RESA Ex. 4.0, p. 19) For this reason, ICEA and RESA do not consider this to be a contested issue.

**6.RIDER GSIC**

**7.RIDER PGA**

**CONCLUSION**

In conclusion, the Commission, in its final order in this proceeding, should approve implementation of an SVT Program in Ameren's service territory and direct Ameren to file tariffs within 45 days after the Commission's final order to implement that program. The Commission should also direct that the proceeding resulting from that tariff filing will be conducted in a timely fashion that allows the SVT Program to be implemented by the fourth quarter of 2014.

CUB's opposition to approval of an SVT Program is without merit and should be rejected. Similarly, CUB's proposed consumer protections should be rejected for the reasons set forth in ICEA/RESA's Initial Brief and this Reply Brief.

Respectfully submitted,
Illinois Competitive Energy Association
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## NOTICE OF FILING

Please take note that on October 4, 2013, I caused to be filed via e-docket with the Chief Clerk of the Illinois Commerce Commission, the attached Reply Brief of the Illinois Competitive Energy Association and the Retail Energy Supply Association in this proceeding.

Dated: October 4, 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 Reply Brief 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 October 4, 2013.

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