STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

Ameren Illinois Company d/b/a Ameren Illinois	)	
	)	
Proposed clarification of natural gas tariffs,	)	Docket 15-0439
Particularly sections related to transportation of	)	
Customer-owned natural gas	)	

REPLY BRIEF OF
THE RETAIL ENERGY SUPPLY ASSOCIATION

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THE RETAIL ENERGY SUPPLY ASSOCIATION

Pursuant to Section 200.800 of the Rules of Practice of the Illinois Commerce Commission ("Commission") and the Administrative Law Judge's Ruling, The Retail Energy Supply Association ("RESA")[1] files this Reply Brief in this proceeding. This proceeding involves the suspended tariff filing of Ameren Illinois Company d/b/a Ameren Illinois ("Ameren") which sought to make changes in Rider T, Transportation Service.

I. INTRODUCTION

On June 12, 2015, Ameren made a tariff filing to make certain revisions to its Rider T, Transportation Service. On July 28, 2015, the Commission suspended that filing and instituted this proceeding. While Ameren's tariff filing contained a number of revisions to Rider T, RESA only opposes the proposed revisions to the cash-out provisions of Rider T, specifically Ameren's proposals to eliminate the tolerance bands in those provisions and to change from market prices

[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.

in the determination of the cash-out payments/charges to amounts based on the greater of market prices or Ameren's Purchased Gas Adjustment ("PGA") prices (in the case of under deliveries of natural gas by suppliers or customers) and based on the lesser of market prices or PGA prices (in the case of over deliveries).

On January 27, 2015, Initial Briefs were filed by Ameren, the Commission Staff, the Illinois Energy Consumers ("IIEC"), and RESA. Only Ameren supports its proposed revisions to the cash-out provisions of Rider T. However, for the most part, Ameren's arguments were anticipated in the Initial Briefs of the Commission Staff, IIEC, and RESA. While the Staff suggested that Ameren consider other templates for cash-out provisions and IIEC and RESA offered an alternative, the imposition of an Economic Operational Flow Order ("EOFO"), Ameren persists in refusing all reasonable alternatives and continues to advocate its ill-advised revisions to the cash-out provisions of Rider T, revisions which are unnecessarily adverse to transportation customers and suppliers and which are not supported by the evidence in this proceeding. Those revisions do not meet the "just and reasonable" standard required for the Commission to approve them.

II. RESPONSE TO COMMISSION STAFF

Staff sponsored the Direct Testimony of Dr. David Rearden. Dr. Rearden disagreed with Ameren's proposed revisions to the cash-out provisions of Rider T. (Staff In. Br., p. 3) While Dr. Rearden generally agreed with Ameren's goals, its proposed changes would accomplish this objective at the risk of unfairness to suppliers and customers. Other cash-out methods can accomplish Ameren's goals using methods that are based solely on market prices rather than the PGA and would eliminate or at least minimize the potential inequity to suppliers and customers. (*Id*., p. 4) According to Staff, the Chicago Citygate price, currently used in Ameren's cash-out

provisions, represents the current market value of gas and is a more equitable method of determining rates to balance Ameren's system than utilizing Ameren's PGA. (*Id*., p. 7)

Staff concludes that Ameren's proposed changes to cash-out provisions should be rejected. Instead the Commission should adopt Staff's alternative language, as set forth in Staff Exhibit 2.0, which was provided in response to the Administrative Law Judge's Ruling requesting Staff and Parties' recommended revisions to Ameren's proposed tariff changes. (*Id*., p. 11) In Staff Exhibit 2.0, Staff strikes Ameren's proposed cash-out provisions and re-instates the currently effective provisions which include both the tolerance bands and the use of the Daily Chicago Citygate Price to determine cash-out payments/charges. RESA agrees with Staff's Position. RESA's Exhibit 2.0, also provided in response to the Administrative Law Judge's Ruling, adopts Staff's position as RESA's primary position in this proceeding.

III. RESPONSE TO IIEC

IIEC recommends that the Commission should reject Ameren's proposal to modify the tolerance bands and to include its PGA in the cash-out provisions of Rider T. In the alternative, IIEC recommends that Ameren should be allowed to modify Rider T to include an Economic Operational Flow Order. In a further alternative, IIEC recommends that the Commission should direct Ameren to propose modifications to Rider T in the context of its next gas rate case, where alternative proposals can be presented and considered by the Commission. (IIEC In. Br., p. 9) RESA agrees with IIEC's recommendations, which are similar to those proposed by RESA in its Initial Brief.

III. RESPONSE TO AMEREN

A. Ameren's "Procedural History" ignores the Commission proceedings leading up to this proceeding.

Ameren's "Procedural History" starts with Ameren's June 12, 2015 tariff filing, which was suspended and resulted in the initiation of this proceeding. However, there is a long history of the Commission's rejection of Ameren's prior attempts to revise the cash-out provisions of Rider T along the lines it proposes in this proceeding. This history is set forth at pages 3-7 of RESA's Initial Brief. The following brief summary should be useful:

- In Consolidated Dockets 07-0585 *et al.*, Ameren, in response to Staff's objections, withdrew a proposal similar to its proposal in the instant proceeding and offered its proposal that both daily and monthly imbalances be cashed out at the Chicago City gate price, as is the case in Ameren's current Rider T. In its final order, the Commission found that this cash-out mechanism was acceptable and directed that it be reflected in Ameren's compliance filing. (Order in Consolidated Dockets 07-0385 *et al*., p. 285).

- In its next rate case, Consolidated Dockets 09-0306, Ameren did not propose any changes to its cash-out provisions.

- In Docket 11-0282, Ameren, making basically the same arguments it makes in the instant proceeding, proposed to modify its Rider T cash-out provisions to charge transportation customers the higher of market prices or the PGA for under deliveries and to pay transportation customers the lower of market prices or the PGA for over deliveries. In Docket 11-0282, the Commission Staff noted that Ameren made the same proposal in its 2007 rate case, which Staff opposed in that case and rebutted Ameren's arguments. In its final order, the Commission rejected Ameren's proposed revisions to its Rider T cash-out provisions, finding that there was insufficient evidence to demonstrate the negative consequences

alleged by Ameren due to its then effective cash-out provisions. While the Commission "invited" Ameren to revisit this issue in future rate cases, it stated that it expected a "more extensive analysis" from Ameren. The Commission concluded that Ameren's current cash-out provisions (*i.e.* those in effect today) are sufficient and its proposed cash-out proposals should be rejected. (Order, p. 185)

- Despite the Commission's invitation in Docket 11-0282, Ameren did not propose any revisions to its cash-out provisions for Rider T in Docket 13-0192, its 2013 gas rate case.

- Ameren's most recent gas rate case was filed on January 23, 2015. The Commission entered its final order in that proceeding on December 16, 2015. Again, despite the Commission's invitation in Docket 11-0282 and despite the fact that the alleged arbitrage activity occurred during January through March 2014 (which appears to be the primary basis for Ameren's proposal in the instant proceeding), Ameren did not propose any revisions to its cash-out provisions for Rider T in Docket 15-0142.

B. Ameren misstates the record regarding the record regarding the existence of arbitrage on Ameren's system.

Ameren claims, without any record support, that "there have been instances of arbitrage against PGA customers by third party suppliers in both small and large amounts". (Ameren In. Br., p. 2) Ameren goes on to say, again without record support, that it proposed modifying its cash-out provisions for Rider T in "light of the opportunities for suppliers to engage in arbitrage,

and the fact that they have engaged in such activities in the recent past". (*Id.*, p. 9) On the contrary, Ameren alleged arbitrage activity by a single supplier during a single period of time, January to March 2014. (Ameren Ex. 1.0, pp. 13-19)

Ameren's own evidence shows that this extreme situation, which allowed the arbitrage opportunity, has only occurred one time since 2009 when the current cash-out provisions were put in place. (TR. 44, 46) Moreover, the application of Ameren's existing cash-out periods during the period of time during which the alleged arbitrage activity occurred still resulted in an overall credit to PGA customers of $2.1 million. (IIEC/RESA Ex. 1.0, p. 13; IIEC/RESA Ex. 1.1)

In addition, Ameren's proposed solution would not have eliminated the arbitrage situation. IIEC/RESA witness Mr. Collins explained that under Ameren's proposal, the supplier engaged in the alleged arbitrage would have been refunded $890,711. However, other transportation customers not engaged in arbitrage behavior would have paid an additional $955,984 in imbalance charges to the benefit of PGA customers, for a total payment of $6.3 million from these customers that benefits PGA customers. Thus, as a result of Ameren Illinois' proposed cash-out revisions, these transportation customers would have paid almost $1 million above market prices for their imbalances as compared to charges under Ameren's existing market based balancing provisions. (IIEC/RESA Ex. 1.0, p. 13)

As discussed more fully in Section IV (E), *infra*, IIEC and RESA offered an alternative proposal, an EOFO. Unlike Ameren's proposal, which would put the burden on all transportation customers to solve the problem of one supplier engaging in financial arbitrage, IIEC/RESA's alternative solution would give Ameren the authority to act only in instances where financial arbitrage occurs and would result in no impacts to those suppliers acting

properly; only the entity that is acting improperly will be punished with financial penalties under the EOFO alternative. (*Id*., pp. 18-20)

In conclusion, Ameren's proposed solution is an extreme response to a situation involving a single supplier and would impact the entire transportation system in an unfair manner.

C. Ameren continues to ignore the diversity factor—requiring customers to participate in Rider TBS is not a solution.

As demonstrated in detail in RESA's Initial Brief at pages 9-10, Ameren's proposal would ignore one major way in which imbalances are minimized at no cost to Ameren—the diversity of transportation customers. Basically, to the extent that one customer over delivers on a given day, another customer on that same system may under deliver, thereby either offsetting or at least minimizing the imbalance.

Under Ameren's proposal, transportation customers will lose the benefit of diversity. To the extent that diversity on the system operates to maintain balance at the system level, under Ameren's proposal, charges for individual customer imbalances represent "recovery" of costs that Ameren does not actually incur. (IIEC/RESA Ex. 1.0., p. 14)

Mr. Collins provided an example in IIEC/RESA Ex. 1.2 which demonstrates the impact on two accounts belonging to the same transportation customer under Ameren's existing cash-out provisions and also under its proposed cash-out provisions. As shown in the example, under Ameren's existing cash-out provisions, the imbalances of the customer's two accounts are within Ameren's existing tolerance bands and would cancel out each other and result in no additional cost or credit to its' PGA cost. However, under Ameren's proposed cash-out provisions, the

customer who under delivered would receive the lower of the market price or the PGA, while the customer who over delivered would pay the higher of the market price or the PGA. The end result would be a credit to PGA customers, even though the two imbalances physically cancelled each other out and are well within a reasonable tolerance range. In each scenario, the transportation customer would provide a subsidy to Ameren's PGA customers. Even though the Company incurred no additional cost for these individual account imbalances, Ameren recovers a credit from the customer owning the two accounts that benefits its PGA customers. As a result, this transportation customer loses the benefit of diversity between its own two accounts. This result under Ameren's proposal is unreasonable. (*Id.*, p. 15)

In its Initial Brief, Ameren points to its own Exhibit 2.5, which uses IIEC/RESA Exhibit 1.2 as a starting point and then revises it under the assumption that the customer subscribes to Rider TBS, Transportation Balancing Service. According to Ameren, its exhibit shows that the transportation customer would not be impacted by its proposed cash-out provisions if it had elected service under Rider TBS. (Ameren In. Br., p. 11) Ameren's argument makes no sense. If a customer has two meters and one experiences a 1000 therm over delivery on a given day and another meter, possibly just across the street, experiences a 1000 therm under delivery on the same day, requiring that customer to pay for service under Rider TBS is not a solution. On the contrary, the customer is providing diversity to help balance Ameren's system, as well as paying for service under Rider TBS.[2]

D. Ameren's arguments regarding system integrity are not supported by the record.

[2] In its Initial Brief, Ameren attempts to minimize the importance of diversity by indicating that Ameren does not have an integrated distribution system so if over deliveries are not in the same geographic area as the under deliveries, then they can not balance each other. (Ameren In. Br., p. 12) However, Ameren has approximately 6800 Rider T customers; it does not have 6800 independent systems. In fact, there are 17 delivery points. (TR. 80)

In addressing Staff's position in this proceeding, Ameren states that system integrity was not directly addressed in Staff's testimony and that system integrity is "of utmost importance" to Ameren. (Ameren In. Br., p. 12) However, the reason for Staff not addressing system integrity is that the existing cash-out provisions of Rider T do not threaten the integrity of Ameren's system.

Mr. Collins testified that Ameren's proposal does not address any claimed operational harm being experienced by the Ameren Illinois system. Rather, Ameren's proposal addresses alleged financial harm to PGA customers caused by a single supplier who has allegedly engaged in arbitrage behavior. (*Id*., p. 6) In addition, Ameren claims more generally that PGA customers are paying to balance the system for transportation customers, thereby creating a subsidy. Thus, the thrust of Ameren's arguments for its proposed revisions to Rider T cash-out provisions in this proceeding has been financial, not operational.

In the context of the gas industry, imbalances refer to the difference between the gas being consumed and the gas being provided. Imbalances have always been present in the gas industry. (*Id*., p-7-8) The record shows that Ameren has a number of methods available to address imbalances. The most basic method by which imbalances may be accommodated is by line pack, the ability of the utility's system of mains to act as a buffer by holding a little more or a little less gas from day-to-day. In this regard, transportation customers pay a share of the costs of Ameren's transmission and distribution system, and therefore pay for line pack. (Tr. 60) (IIEC/RESA Ex. 1.0, pp. 8-9) Another important method, as discussed previously, is the diversity of transportation customers. Other methods were covered by Ameren. (Ameren Ex. 1.0, p. 6) The fact that Ameren has to manage imbalances is simply a role of a gas utility; handling imbalances does not equate to a threat to the integrity of a gas system.

In conclusion, at no time during this proceeding has Ameren alleged that its current cash-out provisions threaten the integrity of Ameren's system. Given that those provisions have been in effect for nine years, Ameren's claim regarding system integrity should be given no weight.

E. The Commission should reject Ameren's "strawman" argument that IIEC and RESA propose a "net harm" legal standard.

Because Ameren cannot rebut IIEC's and RESA's evidence in this proceeding, Ameren resorts to a "strawman" argument. Ameren claims that IIEC and RESA have argued that Ameren needs to show "net harm" to its PGA customers in order for the Commission to adopt its proposed revisions to its Rider T cash-out provisions and that their "made-up standard places an inappropriate hurdle in the path of Ameren Illinois' proposed revisions". (Ameren In. Br., pp. 16-17)

IIEC and RESA have never argued that Ameren must pass a "net harm" test. In fact, RESA acknowledges that Ameren's filing was made pursuant to Section 9-201 of the Public Utilities Act and agrees with Ameren's statement of the legal standard on page 5 of its Initial Brief. The Commission suspended Ameren's filing, using its authority under that section, and in its order in this proceeding "shall establish the rates or other charges, classifications, contracts, practices, rules or regulations proposed, in whole or in part, or others in lieu thereof, which it shall find to be just and reasonable".

The problem for Ameren is not that it cannot pass a "net harm" test. The problem for Ameren is that it cannot meet the just and reasonable standard.

First, Ameren is proposing to revise the cash-out provisions for Rider T which were found to be just and reasonable by the Commission in its Order in Docket 07-0385 and which

have been in effect since then, despite Ameren's attempts to revise it since then. The Commission rejected Ameren's evidence before and its evidence in this proceeding is essentially no different.

Second, Ameren's proposals to eliminate its existing +/-20% balancing tolerance band and also to eliminate its market based pricing for all imbalances included in its existing Rider T cash-out provisions are an asymmetric methodology designed to work to the maximum detriment of transportation customers and which unfairly advantages PGA customers. These changes would adversely impact all transportation customers, approximately 7,000 customers, not just the one supplier the company noted engaged in arbitrage. (IIEC/RESA Ex. 1.0., p. 5) Ameren's proposed solution is drastic and penalizes the vast majority of transportation customers and suppliers who don't arbitrage and need this transportation service as it currently exists and is priced.

Third, Ameren did not calculate the net impact of all imbalances in 2014 on PGA customers nor demonstrate that the 2014 net impact of all cash-out transactions occurring under its existing tariffs resulted in financial harm to its PGA customers. Instead, Ameren Illinois provided examples of alleged short term arbitrage behavior of one supplier that occurred in January to March of 2014, an atypical period of time. Ameren did not provide evidence of alleged similar activity in the 2014-2015 heating season. (*Id*., pp. 12-13) Moreover, while the supplier engaged in the alleged arbitrage behavior was refunded $3.2 million, other customers paid $5.3 million to Ameren for their imbalances, resulting in a net benefit to the PGA customers of $2.1 million. (IIEC/RESA Ex. 1.0, p. 13; IIEC/RESA Ex. 1.1) While IIEC and RESA are not proposing a "net harm" legal standard, the fact that there was no net harm to customers is certainly one of the reasons why Ameren's proposal is unreasonable. RESA notes that the

Commission itself, in rejecting Ameren's similar proposal in Docket 11-0282, stated that Ameren failed to demonstrate "negative consequences". (Order in Docket 11-0282, p. 185)

Fourth, Ameren's proposal for PGA based imbalance pricing results in a barrier to market based pricing for transportation customers. Under Ameren Illinois' existing rates, the cost of Ameren Illinois purchased gas has been unbundled from transportation rates. Ameren Illinois' proposal to price transportation imbalances at PGA pricing now links Ameren Illinois' cost of gas to transportation rates and is unreasonable. (*Id.*, p. 16) This problem is exacerbated by the fact that Ameren's PGA price has historically been higher than market prices. (IIEC/RESA Exhibit 1.3) The result is, that under Ameren's proposal to price negative imbalances at the higher of PGA or market pricing, transportation customers will likely pay costs higher than market for all under deliveries. Correspondingly, under the Company's proposal for the lower of PGA or market for pricing over-delivery cash-outs, transportation customers at times will receive below market credit for their gas supply which benefits PGA customers. (IIEC/RESA Ex. 1.0, pp. 16-17)

F. Ameren's claims that solutions proposed by Staff and IIEC/RESA are unworkable simply reflect an unwillingness to compromise on Ameren's part.

IIEC/RESA witness Mr. Collins offered an alternative to Ameren's proposed cash-out provisions if the Commission believes the possibility of arbitrage should be addressed. Mr. Collins testified that a narrow and more balanced solution should be considered, one that focuses on the alleged arbitrage behavior that occurred under the Company's existing tariff. This alternative was for Ameren to include an Economic Operational Flow Order, or EOFO, in Rider T of its delivery service tariff that would apply to both daily and monthly balanced transportation

suppliers. As compared to Ameren's proposal, which puts the burden on all transportation customers to solve the problem of one supplier engaging in financial arbitrage, IIEC/RESA's alternative solution would give Ameren the authority to act only in instances where financial arbitrage occurs and would result in no impacts to those suppliers acting properly; only the entity that is acting improperly will be punished with financial penalties under this alternative proposal. (IIEC/RESA Ex. 1.0, pp. 18-20)

Ameren continues to argue that the EOFO alternative is impractical and unworkable for Ameren. (Ameren In. Br., pp. 17-21) As demonstrated in RESA's Initial Brief at pages 15-17, Ameren's purported problems with the EOFO appear to RESA to be an unwillingness to consider solutions other than its own, despite the fact that its proposal has been previously rejected, twice, by the Commission. It is hard to believe that if Ameren believes that the arbitrage situation, of which it offered only one example during the approximately nine-year period the cash-out provisions have been in existence, is serious, it cannot devise an EOFO that would work for it.

Similarly, Ameren argued that Staff's "solution" is unworkable. (Ameren In. Br., pp. 13-15) However, Staff pointed to the tariffs of Nicor Gas Company and The Peoples Gas Light and Coke Company as "templates", not "solutions". (Staff Ex. 1.0, pp. 9-10, 12) The basic point is that Ameren should use market prices, not its PGA, in its cash-out provisions. It is up to Ameren to propose a reasonable modification of its cash-out provisions, but still using market prices as the basis.

V. CONCLUSION

In conclusion, Ameren's Initial Brief does not add anything of merit to its proposal to revise its cash-out provisions in Rider T. RESA urges the Commission to reject Ameren's

proposed revisions to its Rider T cash-out provisions and accept the position of the Comission Staff, IIEC and RESA that the existing cash-out provisions, which were previously approved and re-approved by the Commission, should be retained.

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Respectfully submitted,

GERARD T. FOX
Gerard T. Fox
203 N. LaSalle Street, Suite 2100
Chicago, IL 60601
(312) 827-7986
gerardtfox@gerard tfoxlawoffices. com
An Attorney for the Retail Energy Supply Association

NOTICE OF FILING

Please take note that on February 9, 2016, I caused to be filed via e-docket with the Chief Clerk of the Illinois Commerce Commission, the attached Reply Brief of 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 Reply Brief of 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 15-0439 via electronic delivery on February 9, 2016.

/s/ GERARD T. FOX
Gerard T. Fox