STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

CENTRAL ILLINOIS LIGHT COMPANY d/b/a AmerenCILCO	)	
CENTRAL ILLINOIS PUBLIC SERVICE COMPANY d/b/a AmerenCIPS	)	Docket No. 10-0568
ILLINOIS POWER COMPANY d/b/a AmerenIP	)	
Approval of the Energy Efficiency and Demand-Response Plan	)	

INITIAL BRIEF OF THE NATURAL RESOURCES DEFENSE COUNCIL (NRDC) AND THE ENVIRONMENTAL LAW AND POLICY CENTER (ELPC)

I. Introduction

Ameren Illinois Utilities (hereinafter, "Ameren") seeks approval of its second three-year electric energy efficiency plan, which falls dramatically short of the statutory savings targets set forth by the General Assembly. Over the course of the three-year plan, Ameren's proposed programs would achieve just over half (56%) of the first-year savings envisioned by that statute. In doing so, Ameren stands in stark contrast with Commonwealth Edison, which, subject to identical standards, has entered into an agreement under which it will meet the statutory targets for the first two years of the three year plan, falling short only in the third year.[1]

[1] Pursuant to 83 IAC 200.640(a)(7), NRDC requests that the Commission take administrative notice of the settlement agreed to by Commonwealth Edison Company, Docket 10-0570, Joint Ex. 1.0, November 18, 2010. A copy of that settlement, which was not finalized and filed with the Commission until after the parties submitted evidence in this proceeding, is attached to this brief as Attachment 1. This document is not being offered to show that Ameren should accept an identical plan, but rather, to show that a similarly situated utility has agreed to meet its statutory target the first two years of its plan. Thus, this evidence is similar to benchmarking evidence submitted by the witnesses in this proceeding.

While Ameren argues that statutory rate impact caps preclude it from meeting the statutory targets or even coming closer to doing so, its evidence that this is true amounts to a thin reed of a “benchmarking” analysis performed by its witness, which, when examined closely, actually demonstrates that Ameren’s plan is to substantially underperform compared to similarly situated utilities. Moreover, expert testimony provides extensive evidence that Ameren could substantially increase its savings to meet statutory targets for the plan’s first two years, while coming much closer than proposed to meeting the target for the sixth program year. Intervenor witnesses have provided two kinds of evidence that Ameren’s plan is unacceptably weak: First, witnesses present compelling evidence that other similarly positioned utilities have met the same savings targets at costs that are consistent with Ameren’s budget constraints. Second, witnesses have offered nine distinct suggestions for ways in which Ameren could increase its savings without spending beyond the levels afforded under the rate impact caps.

Ameren also proposes gas savings programs that, while meeting the statutory targets, achieve far less savings than would be achievable if the company used more of the gas program dollars available to it. In several instances, increasing its gas program spending for joint gas and electric efficiency programs would allow Ameren to increase both gas and electricity savings without violating its electric efficiency budget caps.

NRDC and ELPC therefore urge the Commission to reject Ameren’s program plan, as is its duty under the law as described below. Further, NRDC and ELPC ask the Commission to require some specific program revisions, in particular with respect to Ameren’s proposed RES Home Energy Performance and RES Moderate Income Retrofit programs. Finally, NRDC and ELPC urge the Commission to impose appropriate limitations on Ameren’s use of deemed rather than evaluated values for measure savings, net-to-gross ratios and realization rates, and limitations on Ameren's flexibility to make mid-course program changes.

II. Procedural History

On September 30, 2010 Ameren filed an integrated gas and electric energy efficiency plan pursuant to the statutory requirements under sections 8-103 and 8-104 of the Illinois Public Utilities Act (220 ILCS 5/8-103 and 8-104). Staff and Intervenors, including the Natural Resources Defense Council (NRDC), the Environmental Law and Policy Center (ELPC), the Illinois Attorney General, the Citizens Utility Board (CUB), the Illinois Power Agency (IPA) and the Department of Commerce and Economic Opportunity (DCEO) filed direct testimony on November 5, 2010. Ameren waived cross examination of NRDC witness Jim Grevatt, and NRDC likewise waived cross examination of Ameren's witnesses, whereupon the parties engaged in an ultimately unsuccessful attempt to reach a settlement on the issues that comprise the subject of this brief.

III. Ameren Illinois' Integrated Energy Efficiency and Demand Response Plan

A. Electric Savings Goals

1. Statutory Language

The Illinois General Assembly promulgated an electric utility energy efficiency portfolio standard in 2007, setting energy efficiency targets for the state's two investor owned electric utilities, Commonwealth Edison and Ameren. In so doing, the General Assembly stated that, "Requiring investment in cost-effective energy efficiency and demand-response measures will reduce direct and indirect costs to consumers by decreasing environmental impacts and by avoiding or delaying the need for new generation, transmission, and distribution infrastructure."

Under this legislation Ameren filed in November, 2007 and gained approval in February 2008 for its first 3-year energy efficiency program under which it saved energy equivalent to 0.2% of its sales in program year 1, 0.4% of its sales in program year 2 and 0.6% of its sales in program year three. In its second three-year plan which is the subject of this proceeding, the statute requires Ameren to meet the following energy reduction targets:

- 0.8% of energy delivered in the year commencing June 1, 2011;
- 1.0% of energy delivered in the year commencing June 1, 2012; and
- 1.4% of energy delivered in the year commencing in 2013 (220 ILCS 5/8-103(b)).

The statute's sole condition under which the utility can gain approval for a plan that does not meet the targets is if it is necessary to avoid exceeding caps on the amount of ratepayer funds that can be used to meet the energy savings targets. 220 ILCS 5/8-103(d). Specifically, the statute requires Ameren to "reduce the amount of energy efficiency and demand-response measures implemented in any year by an amount necessary to limit the estimated average increase in the amounts paid by retail customers in connection with electric service due to the cost of those measures to: …(4) in 2011, the greater of an additional 0.5% of the amount paid per kilowatthour by those customer during the year ending May 31, 2010 or 2% of the amount paid per kilowatthour by those customers during the year ending May 31, 2007; and (5) thereafter, the amount of energy efficiency and demand-response measures implemented for any single year shall be reduced by an amount necessary to limit the estimated average net increase due to the cost of these measures included in the amounts paid by eligible retail customers in connection with electric service to no more than the greater of 2.015% of the amount paid per kilowatthour by those customers during the year ending May 31, 2007 or the incremental amount per kilowatthour paid for these measures in 2011." The Commission is to review this rate impact limit and report to the General Assembly whether the rate impact limit is “unduly constraining the procurement of energy efficiency and demand-response measures.” 220 ILCS 5/8-103(d). Contested in this proceeding is whether, in fact, Ameren has met its burden of demonstrating that it has maximized the amount of electricity savings it can achieve within these rate impact caps.

The statute requires each utility subject to the standards to file a plan every three years on October 1, demonstrating compliance with the targets, as modified by the rate impact caps where appropriate. 220 ILCS 5/8-103(f). It further requires the Commission to solicit public input and either approve or disapprove a utility’s plan within three months of its filing. Id. The Act specifically states “the utilities shall demonstrate that its proposed energy efficiency and demand-response measures will achieve the requirements that are identified in subsections (b) and (c) of this Section, as modified by subsections (d) and (e). 220ILCS 5/8-103 (b)(c)(d)(e).” Thus, Ameren has the burden of proof to show that it meets the standards or demonstrate why it cannot do so.

Finally, the 220 ILCS 5/8-103(f) provides that:

> If the Commission disapproves a plan, the Commission shall, within 30 days, describe in detail the reasons for the disapproval and describe a path by which the utility may file a revised draft of the plan to address the Commission's concerns satisfactorily. If the utility does not refile with the Commission within 60 days, the utility shall be subject to penalties at a rate of $100,000 per day until the plan is filed. This process shall continue, and penalties shall accrue, until the utility has successfully filed a portfolio of energy efficiency and demand-response measures. Penalties shall be deposited into the Energy Efficiency Trust Fund.

2. **Ameren Illinois' Plan**

a. **Ameren Illinois' Proposed Modified Goals**

(1) **Staff's Response to Ameren Illinois' Proposed Modified Goals**

(2) **Intervenors' Responses to Ameren Illinois' Proposed Modified Goals**

<u>Ameren has not met its burden of demonstrating that it cannot meet the statutory target of 0.8% of sales in program year four and 1.0% in program year five.</u>

Ameren's energy efficiency plan falls short of the statutory target for program year four (PY4) by 59,000 megawatt-hours (MWH) of potential savings, which represents roughly 20% of the savings that would be realized under the statutory target. Moreover, Ameren Illinois's energy efficiency plan falls even further short of the statutory target for program year five (PY5) by 154,000 MWH, or nearly 40%, and by program year 6 Ameren proposes to achieve less than half of the statutory goal, falling short by 334,000 MWH or 60% of the target. (Ameren Ex. 5.0 p. 2).

Ameren argues that it cannot reach the statutory target without exceeding the spending limit. However, Ameren fails to present sufficient evidence that its portfolio is maximized to achieve the highest level of savings achievable with the available funds. In fact, Ameren presents next only cursory programmatic evidence that even attempts to demonstrate that its programs are maximizing the savings achievable for each dollar spent. Instead, Ameren presents a thin reed of evidence that it cannot achieve higher savings – a "benchmarking" analysis performed for Ameren by its witness, Edward Weaver, the results of which are described with a wide variety of caveats by Mr. Weaver, and which in fact concludes that utilities have been known to achieve savings targets in the same range as the statutory targets Ameren faces, at costs that are consistent with the amounts Ameren may spend under the rate impact caps.

Evidence presented by NRDC Witness Grevatt, AG Witness Mosenthal and ELPC Witness Crandall, who each have extensive experience in designing, evaluating and administering energy efficiency programs, demonstrates that Ameren has substantially underestimated the level of savings it could achieve within the limited budgets. That evidence falls into two categories. First, there is benchmarking data in the form of both an independent benchmarking study by Navigant Consulting, showing that similarly situated utilities have been able to meet the same target while spending roughly the same amount per first-year kilowatt hour savings, and in the form of a critical look at the conclusions Ameren Witness Weaver's draws from analysis. Second, witnesses offer no fewer than nine distinct programmatic changes, evidently not considered by Ameren, each of which would increase Ameren's total savings within its allowed budget. Given the sheer number and variety of strategies that Ameren failed to consider before concluding that the targets were out of reach, the only appropriate response from the Commission would be to send the plan back to Ameren and required it to redesign its portfolio to achieve greater levels of savings.

Based on the evidence summarized below, NRDC and ELPC urge the Commission to reject Ameren Illinois's plan and require Ameren to submit a new plan that achieves the statutory target for PY4 and PY5, and that maximizes the PY6 savings achievable within that year's budget.

<u>Benchmarking studies:</u>

Two benchmarking studies - one analysis by Ameren Witness Weaver and one independent study -- were offered as evidence in the record, and despite Ameren Illinois's claims to the contrary, both studies demonstrate that the PY4 and PY5 target are within reach even under the existing rate impact caps.

First, Ameren Illinois's witness Edward Weaver presented in his direct testimony (Ameren Ex 5.0) a benchmarking analysis of the savings and budgets of 23 utility portfolios in 2008 and 2009. Mr. Weaver estimates that for Ameren to meet its statutory savings targets within its budget constraints, it would have to achieve savings at a cost of $0.19 per first-year kilowatt hour (kwh) for PY4, and $0.153 per first year kwh for PY5, in nominal dollars. (Ameren Ex 5.0 at p. 3). He then concludes from his benchmarking analysis that a small number of the portfolios achieved their savings at these costs. His data shows that 1 utility portfolio achieved savings equivalent to Ameren's PY6 target at costs within Ameren's budget. (Ameren Ex 5.0 at p. 5).

However, a closer look at this analysis demonstrates just the opposite with respect to PY4 and PY5. In fact, that study shows not only that the statutory goals are achievable, but that similar goals are being achieved by utilities at roughly the same cost per first-year kwh savings that Ameren has to spend within its rate impact caps.

As described by NRDC witness Jim Grevatt, it is not appropriate to compare, as Mr. Weaver does, the cost per unit savings for utilities that are achieving a substantially higher savings target as a percentage of sales, because the higher savings goals would tend to drive a different mix of programs that could increase their cost of first-year kwh savings. (NRDC Ex 1 at 9). If, instead, you compare only those portfolios analyzed in the benchmarking study that are achieving savings at levels closer to Ameren Illinois's PY4 statutory goal (i.e., between 0.8 percent of sales and 1.2 percent of sales) the average cost per first year kwh was $0.18, well within Mr. Weaver's estimated cost limit of $0.191 per first-year kwh. (NRDC Ex. 1 at p. 9). Moreover, if you look at only those portfolios that were achieving savings at a level closer to Ameren Illinois's PY5 target of 1.0% of sales, the average spending per first-year kwh was $0.15, within Mr. Weaver's estimated limit of $0.153. (Id.) These results are presented in Mr. Grevatt's Table 1, reproduced below.

Table 1:			
	2008	2009	2010
Savings between 0.8% and 1.2%			
Number	8	10	18
Number spending $0.19 or less	7	7	14
Average spending	$0.15	$0.20	$0.18
Savings between 1.0% and 1.2%			
Number	3	7	10
Number spending $0.15 or less	1	5	6
Average spending	$0.17	$0.15	$0.15

Mr. Weaver counters in his rebuttal testimony (Ameren Ex. 10) that witness Grevatt failed to adjust for inflation when making this comparison. However, Mr. Weaver offers no evidence that adjusting for inflation would result in a more accurate analysis. In fact, in Mr. Grevatt's response to Request No. AIC-JG 4.1, Mr. Grevatt demonstrates that there is little relationship between the costs of first year kwh savings and inflation. He states:

> …While some aspects of energy efficiency program costs, such as salaries, may respond to inflationary forces in a general way, in practice other costs such as incentives are often much more dependent on other factors. For example, a program might not adjust a $50 incentive for a given measure to $51.50 from one year to the next because of general inflation. Also, as technologies mature, the incremental cost of producing efficient products generally comes down, which might lead to lower incentive costs. But more importantly, Mr. Grevatt's review of the data provided by Mr. Weaver for portfolios where both 2008 and 2009 data are provided shows that there does not appear to be a discernable relationship between the change in portfolio costs from 2008 to 2009 and the inflation adjustments that Mr. Weaver suggests, as evidenced by Table 2 below. Of the 18 portfolios for which both 2008 and 2009 data were provided, 9 showed cost increases per MWh saved from 2008 to 2009 that far exceeded inflation, 4

> showed no change, and 5 showed cost decreases. Additionally, of the 9 that showed cost increases 6 showed that savings as a percent of deliveries also increased, while 3 showed notable decreases in the savings obtained despite significant cost increases. …These data don't show any apparent relationship between portfolio costs and inflation, but they clearly do show that if inflationary effects are present at all they are far overshadowed by the myriad other factors at play. ..

Mr. Grevatt also pointed out that at least two factors that should allow Ameren to achieve savings at a lower cost relative to similar utilities. First, Ameren is including significant savings from a relatively untested behavior modification program that has substantially lower first year savings costs than most programs and was not likely to be included in any of the portfolios analyzed in Mr. Weaver's benchmarking study. (NRDC Ex. 1 at p. 12). Second, Ameren has the advantage of offering combined gas and electric programs, which should reduce administrative costs relative to electric-only utilities. (NRDC Ex. 1 at 12-13).

Witness Grevatt also provided an independent benchmarking study as evidence that the PY4 and PY5 goals are well within Ameren's reach notwithstanding the budget limitations imposed by the statute. That analysis, conducted by Navigant Consulting found that of 27 portfolios, the median savings level was 1% of sales, while median spending for first year kwh was $0.18, again, within the $0.191 limit estimated by Mr. Weaver, and substantially less than the $0.23 and $0.25 per first-year kwh Ameren proposes to spend. (NRDC Ex 1 at 14).

While NRDC and ELPC concede that it is challenging to meet the increasingly aggressive targets with a static budget, and that both benchmarking exercises demonstrate that many utilities have higher budgets than Ameren has at its disposal. In fact, Witness Grevatt agrees that the target for PY6 is not within Ameren's reach without additional funds. However, for PY4 and PY5 the data provided by both Ameren Witness Weaver and NRDC Witness Grevatt demonstrates that it is not unheard of for utilities to have achieved similar savings targets within the allowed funding levels, and that Ameren's plan to fall dramatically short, achieving only 56% of the statutory target's savings over the three-year plan is unjustified. One conclusion to draw from the evidence is that the General Assembly set goals for PY4 and PY5 that were intended to drive Ameren to obtain energy savings in a highly cost-effective manner for its ratepayers.

<u>Recommended Portfolio Changes</u>

In addition to benchmarking evidence, Intervenor and staff witnesses made a total of nine separate recommendations for program design changes that could increase the amount of savings achieved within Ameren's energy efficiency rate impact limitations. While NRDC and ELPC are not asking the Commission to order Ameren to adopt a specific combination of these recommendations, we do think that these recommendations clearly show that Ameren has not met its burden to demonstrate that it has exhausted all opportunities for additional cost-effective savings and cannot meet its statutory targets. We therefore ask the Commission to order Ameren to submit a revised plan that achieves the PY4 and PY5 goals.

Specifically, the recommendations of the staff and Intervenor witnesses can be summarized as follows –

1. Greater reliance on standard spiral CFLs – Ameren proposes to dramatically cut (by 75%) the level of savings it derives from standard CFLs from PY3 to PY4 in response to federal lighting standards that may eventually reduce the savings attributable to CFL programs. (NRDC Ex. 1.0 at p. 16). Ameren proposes this dramatic reduction despite the company's apparent agreement[2] that these CFLs will continue to provide

[2] Ameren proposes a net-to-gross ratio for standard CFLs of 0.8 in PY4, and 0.6 in PY5.

substantial cost-effective savings opportunities in PY4 and PY5. NRDC witness Grevatt offers as evidence s study presented at the American Council for An Energy Efficient Economy's Summer Study on Energy Efficiency by Laura Moorefield of ECOS, which concludes that the federal lighting standards may well not transform the CFL market (NRDC Ex. 1.0 at pp. 16-17), and recommends a more gradual (25-30%) annual reduction in the reliance on CFL savings, which would make substantial additional savings possible within the proposed budgets. Witness Mosenthal also suggests that for PY4 and PY5 Ameren should shift some of its budget toward lower-cost measures including standard CFLs. (AG Ex. 1.0 at p. 16).

2. Promotion of specialty CFLs – Ameren proposes a very modest goal (118,000 in PY4) for promotion of specialty CFLs, which are not impacted by the above-referenced federal lighting standards. NRDC witness Grevatt recommends increasing this goal significantly. He opines that a goal of 500,000 would be more consistent with best practices and that increasing the goal to 500,000 would increase the portfolio savings by 13,000 MWh. (NRDC Ex. 1 at p. 18).
3. Promoting CFLs to hard-to-reach markets – Witness Grevatt recommends a program focused on targeting CFL savings in hard to reach markets such as non-English speaking communities and multi-family buildings, which would warrant a higher net-to-gross ratio. (NRDC Ex. 1 at p. 19).
4. Upstream commercial lighting – Witness Grevatt and witness Mosenthal both recommended that Ameren explore modifying its commercial lighting program to focus on lighting distributors, which would raise the savings per dollar spent on commercial lighting under Ameren's portfolio. (NRDC Ex 1.0 at p. 20, AG Ex. 1.0

at p. 18). Witness Mosenthal provides an estimate that such a change could reduce the cost per kwh to one-quarter to one-half the amount Ameren proposed to spend in its commercial lighting program. While Ameren argues in rebuttal testimony that it rejected this program idea due to the fact that its existing commercial lighting program was successful, it does not argue that the "success" of its current program included providing comparable savings per dollar spent as would an upstream program. (NRDC Cross Ex. 1.0 at p. 5).

5. Additional financing – Witness Mosenthal and ELPC Witness Geoff Crandall each point out Ameren's failure to assess its options for financing savings outside of the mechanism provided in 220 ILCS 5/8-104 for ratepayer financing. (AG Ex 1 at p. 9).

6. Reduction of portfolio-level administration costs – Ameren has not, in the opinion of Mr. Grevatt, demonstrated that its portfolio level administrative costs are justified, and are not duplicative of administrative costs already included in the individual program budgets. (NRDC Ex. 1 at 23-24). Moreover, NRDC data requests for detailed information about how the portfolio level administrative costs are additive and not duplicative of costs already covered under the program-level administrative budgets produced were answered with a thin recital of the general purpose of administrative costs, and a formulaic approach to establishing the budget levels, rather than a breakdown of how these funds will be used. (NRDC Cross Ex. 1.0 at pp. 1-2).

7. Increase spending of available gas program funds on programs that save both gas and electricity. Staff Witness Brightwell suggests that the commission should require Ameren to spend additional gas funds on programs that achieve both gas and electric

savings. (ICC Staff Ex. 2.0 at p. 8). This is consistent with NRDC Witness Grevatt's recommendation to increase gas program investment in the combined gas and electric programs. (NRDC Ex. 1.0 at pp. 24-25)

8. Maximize the savings from the Home Energy Performance and Residential Moderate-Income Direct Install programs. As described in greater detail in section V(E) below, Witness Grevatt demonstrates that Ameren's estimates for installation of durable measures such as insulation and air sealing are extremely low for these programs, estimated at less than one-half of one percent. He recommends that Ameren prioritize increasing that installation rate to 30% or better. (NRDC Ex 1, p. 28).
9. Eliminate the Voltage Optimization program and use the funds to achieve additional savings. Staff witness Hinman and ELPC witness Crandall each recommend elimination of the Voltage Optimization program, making additional funds available for energy saving programs. (ICC Staff Ex. 1.0 at lines 175-182, ELPC Ex. 1.0 at 10-12).

In regards to the failure to leverage money available in the gas programs Staff Witness Brightwell points out, "integrating both gas and electric programs reduces administrative costs (Ameren Ex. 3.0, p.4). The reduction in administrative costs means that more of the available funds can be spent on actual energy savings. If Mr. Weaver's group does not account for lower administrative costs on Ameren's part, one would expect the conclusion that Ameren faces a greater challenge to meet its electric standard than is actually the case." ICC Staff Ex. 2.0 at 8.

After further discussion regarding how gas savings are set on a cumulative basis, he explains:

> [T]he that many measures are dual savings means the Commission could increase the achievable electric savings by ordering Ameren to spend all available gas energy

> efficiency funds. By ordering Ameren to adjust its plan so that all available funds are used and that the gas funds in excess of what Ameren intended to spend in this plan are targeted towards measures with combined gas and electric savings, electric savings can be increased even if Ameren does not exceed the spending limits established in Section 8-103(d). Ameren further benefits because its cumulative incremental gas savings increase and these savings can be used to comply with the gas EE law's savings standards for future Plan Years.

Id.

Then Mr. Brightwell adds that he "recommends that Ameren, in its rebuttal testimony, estimate the additional MWhs that are achievable if it spends the additional $19 million of gas funds on measures that provide dual savings." *Id.* Nineteen million is a significant amount of money. Yet, despite Dr. Brightwell's recommendation, Ameren failed to do this analysis.

Intervenor witnesses are not able within the available time afforded by this process to redesign Ameren's portfolio to meet the statutory targets. Nor is it the responsibility of Intervenors to do so. However, evidence provided by witnesses for NRDC, ELPC, the Attorney General and staff demonstrates clearly that Ameren has failed to evaluate a large number of strategies that individually or in combination could result in a plan that achieves the statutory savings targets within the limits of the rate impact cap.

B. Gas Savings Goals

1. Statutory Language

2. Ameren Illinois' Plan

3. Natural Gas Spending Limit

4. Exclusion of Transportation Customers from Calculation of Natural Gas Savings Goals

IV. Evaluation, Measurement & Verification

A. EM&V Contractor Independence

B. **Evaluation Cycle**

Ameren witness Weaver suggests that only one process evaluation and one impact evaluation be conducted for each program during the 3-year plan cycle. (Ameren Ex. 5.0, lines 666-674). While NRDC and ELPC agree that limited evaluation dollars should be used conservatively and prioritized, NRDC and ELPC oppose arbitrarily deciding that every program should be evaluated only once over a three year period. For example, a program that Ameren relies upon for a large amount of savings, the impacts of which are not well understood or is subject to changing market conditions may warrant more frequent evaluation. We urge that the company engage stakeholders through the Statewide Advisory Group to develop a well-reasoned evaluation schedule for each program within the limitations of the evaluation budget. This recommendation is consistent with the views expressed by both NRDC Witness Grevatt (NRDC Ex. 1.0, p. 41) and AG Witness Mosenthal (AG Ex. 1.0 p, 30-31).

C. **Verified Participation**

D. **Fixed Values**

1. **Standard Measures**

NRDC and ELPC agree with Ameren that some deeming of gross measure savings is appropriate, and urges the Commission to adopt some reasonable limitations on doing so. Specifically, we believe there is substantial evidence in the record to support a conclusion that it is appropriate to deem the gross measure savings values for a set of standard measures where the unit savings are not large, do not vary significantly between installations and where the number of installations is large enough that the average savings values can be reasonably accurate in aggregate. However, we urge that the Commission require that the actual deemed values for these measures should be determined through a separate proceeding. Ameren has not made available the detailed assumptions behind the deemed measure savings values in its current plan, and the expedited nature of this proceeding does not afford adequate time for assessment of those values. NRDC and ELPC generally agree with the recommendations of both Witness Grevatt and Witness Mosenthal, who each urge a separate proceeding for the purpose of reaching agreement on deemed gross savings values, which may include an ongoing effort within the Stakeholder Advisory Process, and the development of a Technical Reference Manual which would document all of the assumptions underlying deemed savings values. ELPC Witness Crandall also argues for creating a statewide Technical Reference Manual, and describes both the purpose and content of the Manual, including allowing a transparent and well-vetted set of deemed savings values. (ELPC Ex. 1.0 p. 14). Notably, Ameren Witness Weaver agrees that a Technical Reference Manual is warranted, although he sees no role for the advisory group in developing it. (Ameren Ex. 10 at lines 614-615). NRDC and ELPC urge that the Commission acknowledge that it is important for the credibility of these programs that stakeholders have been engaged in the development of the assumptions upon which we rely to ensure that savings is real.

As described by Witness Grevatt, the specific measures that are appropriate for deeming the gross savings values are listed in Table 2 below:

Table 2:

PROGRAMS	**Measures Appropriate for Deemed Savings Values**
Residential Lighting	All
Residential Energy Efficient Products	All
Residential HVAC	All listed
Residential Appliance Recycling	All
Residential Home Energy Peformance	CFLs, Showerheads, fauce aerators, smart strips, water heater insulation water heater setback
Residential ENERGY STAR New Homes	All
Residential Multifamily	CFLs, showerheads and faucet aerators
Residential Behavior Modification	All
Residential Moderate Income	CFLs, showerheads, faucet aerators, smart strips, water heater insulation, water heater setback

Business Standard Incentive	HP T8 and other standard lighting
Business New Construction	HP T8 and T5 measures, CFLs and LEDs

2. Non-Standard Measures

Conversely, witnesses Grevatt and Mosenthal agree that for measures that are fewer in number, that will produce substantial changes and where the variations between installations will lead to very different results, the use of deemed savings values is inappropriate. Specific programs for which the measure savings should be measured rather than deemed include those listed in Table 3 below.

Table 3:	
PROGRAMS	**Measures Inappropriate for Deemed Savings Values**
Residental Home Energy Peformance	all measures not listed in Table 2
Residential Multifamily	all measures not listed in Table 2
Residental Moderate Income	all measures not listed in Table 2
Business Standard Incentive	all measures not listed in Table 2
Business Custom Incentive	No deemed savings
Business Retro-commissioning	No deemed savings
Business New Construction	all measures not listed in Table 2

3. NTG

Net-to-gross (NTG) ratios are factors applied to the gross savings values to ensure that Ameren's programs are not credited with savings that would have occurred anyway (free ridership savings) and to ensure that Ameren is credited with savings that would not have occurred absent its programs, but result from measures installed by non-participants (spillover savings). Ameren proposes deeming fixed NTG for entire 3-year plan.

NRDC and ELPC agree that some deeming of NTG values is warranted, but urges the Commission to apply appropriate limitations on deeming NTG values to ensure the integrity of the claimed savings. Deeming NTG values affords the utilities some insulation from undue risk, and avoids wasting evaluation dollars on performing evaluation activities that are not likely to result in significant changes in savings results. However, these benefits must be balanced against the need for accuracy so that the reported savings can be counted upon by regulators and customers.

Specifically, NRDC and ELPC urge the Commission to adopt the following limitations on the use of NTG radios:

1. For programs that have already been evaluated in Ameren's territory, it is appropriate to use the evaluated NTG ratios prospectively;

2. If the evaluation suggests a change in the NTG ratio is warranted, the new factor should be applied at the beginning of the next program year, rather than waiting for the next 3-year planning cycle.

3. For programs that are new or have undergone significant changes, or programs for which the market has changed significantly, the evaluated NTG ratios should be applied retroactively, unless –

    a. The program savings is not large enough to justify the evaluation dollars to assessing the NTG radios;

    b. The program design and market are understood sufficiently well that an accurate estimate of NTG can be determined in advance.

These conditions are consistent with the testimony of Witness Grevatt and Witness Mosenthal, and with the joint memorandum created as part of the stakeholder advisory process and submitted as evidence in this case (AG Ex. 1.2).

4. Timing for Updating Fixed Values

5. Realization Rates

While it is unclear based on the proposed plan whether or not Ameren is proposing to deem realization rates, it is abundantly clear that doing so would be highly inappropriate. Realization rates are within the control of the implementers, and are in fact partly a function of whether the company has done an adequate job implementing the program plans. Deeming these rates really relieves the company of its responsibility to do a good job, and creates a situation that is ripe for ratepayer money to be squandered. (NRDC Ex. 1.0, p. 39).

NRDC Witness Grevatt and AG Witness Mosenthal each strongly opposed deeming realization rates. Witness Mosenthal states: "In summary, my position is that it would be highly inappropriate to deem realization rates... In short, my recommendation is that all planning estimates of realization rates should be 1.0, and all actual evaluated realization rates should be applied retroactively except for any portion of a realization rate that is based on adjustments to already deemed measure savings values." (AG Ex. 1.0, p. 47). NRDC and ELPC are open to the method suggested by Ameren Witness Weaver in his rebuttal testimony (Ameren Ex. 10 at lines 544-601).

6. Other Issues

E. Technical Reference Manual

As stated above in section IV (D)(1), NRDC and ELPCsupport the recommendation made by ELPC witness Crandall and AG Witness Mosenthal for the development of a Technical Reference Manual. We urge the Commission to require as a condition of approval of deeming for measure savings values that the Statewide Advisory Group engage in the process of developing such a reference manual, for approval by the Commission in a separate docket.

Ameren witness Weaver supports the development of a TRM. (Ameren Ex. 10.0, p. 25). However, Mr. Weaver disagrees with Mr. Crandall that the SAG should take primary responsibility for developing one statewide TRM. Weaver's recommendation for a separate TRM for each utility fails to address Mr. Crandall's concerns about "lack of continuity regarding input assumptions, savings estimates and NTG factors for the EE&DR programs implemented throughout Illinois." (*See* ELPC Ex. 1.0, p. 14).

V. Program Issues

A. **Portfolio Flexibility**

While there is general agreement that Ameren should be afforded the flexibility it needs to make modifications to the programs to ensure the success of the portfolio, expert witnesses have suggested several limitations on this discretion. At such time as a revised three-year program plan is approved, NRDC and ELPC urge that the Commission allow Ameren flexibility to make changes in accordance with the limitations described below.

Ameren has requested that the Commission grant it the discretion to make extensive changes to its programs between plan filings, which may include such changes as shifting funds from one program to another, eliminating programs, adopting new programs, changing incentive levels or making other fundamental changes in program designs (Ameren Ex. 1.1 p. 18). NRDC and ELPC support flexibility with the following limitations:

1. The Commission should, for equity reasons, limit the amount of program funding that can be shifted from residential to commercial/industrial customers or the reverse. Witnesses Grevatt and Mosenthal both offered that such a limitation could be set at 10 percent of the total portfolio (NRDC Ex. 1.0 p. 40, AG Ex. 1.0 p. 26).

2. The Commission should require Ameren to consult with the Statewide Advisory Group (SAG) before making program changes that increase or decrease any program's budget by more than 20%. (AG Ex. 1.0 p. 25). While the company would still make this decision, it would do so having heard the concerns of stakeholders, and the SAG would have had a more meaningful opportunity to fulfill its role as advisor to the company on any matter impacting the success of the portfolio.
3. The Commission should discourage program changes that would result in greater reliance on the Residential Behavior Modification Program. NRDC Witness Grevatt AG Witness Mosenthal and ELPC Witness Crandall each express concern that this program results in savings may is not be persistent. In other words, the reports sent to households pursuant to this program will result in savings only so long as the people continue to engage in conservation behavior, while durable measures once installed will continue to provide savings for as long as the measure lasts. Thus, the behavior modification program is very cost-effective on a first year basis, but compares less favorably with other programs on a lifetime savings basis. (Ag Ex 1.0 p. 28). Moreover, Witness Grevatt points out that reliance on this program does not contribute to the development of "a robust energy efficiency delivery infrastructure in Illinois." (NRDC Ex. 1.0, p. 28). He explains that "Programs that promote durable, long-lived measures that provide economic value to contractors, distributors, and manufacturers in addition to homeowners can have beneficial effects in building a market infrastructure that values energy efficiency." Ameren already proposes relying upon its "pilot" behavior modification program for 6 percent of electric and 16 percent of gas savings. For the foregoing reasons, NRDC and ELPC urge that

Ameren's flexibility to make program changes should be limited such that no more than the proposed level of savings can come from behavior programs.

4. As discussed above with respect to the deeming of net-to-gross factors, NRDC and ELPC reiterate that substantial changes of program design during the plan period should result in a reassessment of deemed savings values (NRDC Ex. 1.0 p. 37, AG Ex 1.9 p. 26).

B. **Role of the Stakeholder Advisory Group**

C. **Banking Savings**

D. **Administrative and Marketing Costs**

E. **Program Recommendations and Concerns**

<u>Ameren Should Redesign the RES Home Energy Performance and RES Moderate Income Retrofit Programs</u>

Ameren offers two "whole-house" retrofit programs, but its program design assumes that the vast majority of the homes that undertake an audit will not actually install measures beyond CFLs and faucet aerators. As described briefly in above, Ameren is assuming that its RES Home Energy Performance and RES Moderate Income Retrofit Programs will leave substantial savings on the table that could be captured if the programs were redesigned to result in installation of wall insulation, air sealing and HVAC improvements. (NRDC Ex 1.0 p 28-33). Witness Grevatt estimates that under its current design, Ameren's whole-home programs will result in less than one percent of audited houses installing wall insulation, and less than 2% installing air sealing measures. This estimate was based on his assumption that the total number of audits would total at or near 6000. Subsequently, through a data request, the actual number of audits was ascertained to be nearly 7800 for the Residential Home Energy Performance Program and 4114 for the Moderate Income Retrofit program. (NRDC Cross Ex.1 at p.7). Therefore, an even smaller percentage of audited homes than was first estimated by Grevatt are projected by Ameren to install the durable measures recommended by the audit. He opines that "a combination of more aggressive incentives and attractive financing could reasonably be expected to increase these install rates to 30% or better." (NRDC Ex 1.0 at p. 30).

It is critical to understand the implications of a comprehensive whole-home audit program that fails to result in installation of the cost-effective measures. Fixed costs of the program that are associated with marketing and conducting the audits are spread across the resulting savings. If Ameren incurs these costs and achieves only the most cost-effective savings at each house, then the cost of marketing the same programs and returning to the same houses later to achieve the more durable savings may not pass the cost-effectiveness test. Moreover, once a customer has participated in a whole-home retrofit program once, he or she is likely to assume that they have taken all the actions that make sense economically, even if in fact they have not. Consequently, marketing efficiency programs to these households becomes more difficult and more costly.

Ameren answers NRDC Witness Grevatt's criticism of this program by stating that it is working with the Midwest Energy Efficiency Alliance to adapt the program to capture more comprehensive savings over time. However, it fails to state how the program will adapt over time, or why additional time is needed, or how it will address the lost opportunities created by its failure to optimize the program in this planning cycle. (See, NRDC Cross Ex. 1 at p 3-4). One is left to conclude that the failure of these whole-home programs to maximize the cost-effective savings it identifies through audits is, as Witness Grevatt said in his direct testimony, "simply not justifiable." (NRDC Ex 1, p 30).

NRDC and ELPC urge the Commission to require Ameren to modify both its RES Home Energy Performance and RES Moderate Income Retrofit Programs so that the programs result in substantial savings beyond just the projected CFL and faucet aerators including air sealing, insulation and HVAC improvements. Moreover, Witness Grevatt points out that Ameren could do so by increasing the proportion of the program budget and savings that would be attributed to the gas programs, to be more consistent with ComEd's joint home performance program for which an estimated 85% of the budget will come from the gas utility, compared to only 26% for Ameren. NRDC and ELPC urge the Commission to require Ameren to follow his recommendation that "Ameren should increase the natural gas funding for the program while holding the electric funding constant so as to match the ratio of natural gas customer to all electric heat customers in Ameren's service territory." NRDC Ex 1.0 p. 32.

VI. Proposed Rider EDR and GER

A. Appropriate Rate Groups for Cost Recovery

B. Reasonableness and Prudence Language in Riders EDR and GER

C. Incentive Compensation

VII. DCEO Plan

A. Statutory Language

B. DCEO Budget and Energy Savings Goals

C. EM&V

D. Proposed Programs

E. Staff and Intervenor Response

Sections 8-103 and 8-104 of the Illinois Public Utilities Act divide responsibility for implementing energy efficiency programs between the utilities and the Illinois Department of Commerce and Economic Opportunity (DCEO or the "Department"). The utilities are generally responsible for implementing and utilizing funding for 75% of the measures and DCEO the remaining 25%.

DCEO filed direct testimony of seven witnesses to present the portion of Ameren's plan that will be implemented by the Department. As will be described further below, the Department made several critical errors in its development of avoided costs that skew the costs, savings, and benefit-cost ratios for DCEO's programs. Given these errors, the Commission cannot reasonably determine whether DCEO's plan meets the statutory criteria in Section 8-103 of the Public Utilities Act.

<u>DCEO's Avoided Cost Calculations Are Flawed.</u>

Avoided costs are "the marginal costs for a public utility to produce one more unit of power." (DCEO Ex. 7.0, p. 9). Program evaluators must rely on accurate estimates of avoided costs in order to model the benefits and cost-effectiveness of energy efficiency measures. As explained by DCEO witness Stefano Galiasso, avoided costs "are necessary to evaluate the Net Present Value of the total benefits of the measures, and are therefore important to evaluate the TRC." (DCEO Ex. 7.0, p 9). TRC stands for "Total Resource Cost" and it is the primary benefit-cost screening measure that the legislature directed the Commission to apply when reviewing the energy efficiency programs under the Public Utilities Act. *See* 220 ILCS Sec. 5/8-103(f)(5). Thus, if avoided costs are not calculated accurately the Commission will not be able to determine if a utilities' portfolio of programs meets the requirements in the statute.

In this case, DCEO made several errors when calculating the avoided costs used by the Department to analyze and evaluate the various programs and measures in its portion of the plan. ELPC witness Geoff Crandall explains the problem in his testimony:

> The utilities' avoided costs as used by DCEO differed significantly, by a factor of nearly five in some time periods. This is not a logical result for two adjacent utilities operating in a well-interconnected system. One would expect the avoided costs to be more similar.
>
> I also noted that the escalation rates DCEO applied to the ComEd and Ameren avoided costs differed by a factor of 2.3. That also would not be logical for two adjacent utilities serving related markets.

(ELPC Ex. 1.0, p. 25). Ameren's response to ELPC's data request 1.10 highlights the wide variation between the utility avoided cost inputs and the weighted average values used by DCEO to develop its plan. (*See* ELPC Group Ex 1.0, p. 4-6 and Attachment 1).

As Crandall further explains, the flaws in DCEO's avoided costs could result in "measures and programs failing to pass, or passing with a lower benefit cost ratio, if the flawed avoided cost was lower than appropriate." (ELPC Ex. 1.0, p. 26). In addition, flawed inputs could corrupt the results from DCEO's screening model by understating or overstating the benefits of the screened measure or program. *Id.*

DCEO has the burden to demonstrate that its filed plan meets the requirements of the statute. However, DCEO did not file rebuttal testimony countering or explaining the discrepancies with its presentation of avoided costs. Therefore, witness Crandall's testimony stands unrebutted.

220 ILCS Sec. 5/8-103(f)(5) requires utilities and the Department to:

> Demonstrate that its overall portfolio of energy efficiency and demand‑response measures, not including programs covered by item (4) of this subsection (f), are cost‑effective using the total resource cost test and represent a diverse cross‑section of opportunities for customers of all rate classes to participate in the programs.

DCEO has not met this burden. The Department cannot accurately calculate the total resource cost test without an accurate estimate of avoided costs. And witness Crandall's unrebutted testimony concludes that the Department's estimate of avoided costs is flawed. The Commission should reject DCEO's portion of the Ameren plan and require the Department to refile the plan using the correct avoided costs.

DCEO's Statewide Incentives Could Create Inequities.

DCEO proposes to offer its programs statewide as opposed to offering different programs and incentives in the different utility service territories. (DCEO Ex. 1.0, p. 51). ELPC Witness Crandall has concerns about this approach in light of the very significant difference in avoided costs that DCEO currently projects. (ELPC Ex. 1.0, p. 27). As Crandall explains, DCEO's use of a statewide weighted average avoided cost that is based on very significantly different utility inputs could create inequity between commercial customers and public sector customers within Ameren's service territory. (*Id.*) This is because a school in Ameren's service territory, for example, could receive a much different incentive to save energy than a commercial customer "just by virtue of the DCEO having created a standard program offering based on fictitious composite avoided cost." *Id.*

The Commission should direct the Department to reassess its statewide program offerings and incentives in light of the revised avoided cost inputs that it must develop in order to correct the problems identified in Section A above.

CONCLUSION:

Ameren has the burden of demonstrating that its programs meet the statutory goals set forth for years 2011, 2012 and 2013, or explain why the price caps prohibit it from doing so. Ameren has not met that burden. While Ameren may not be able to meet the goals for the third year of its Plan, the Commission should direct the Company to achieve the targets for the first two years.

WHEREFORE, NRDC and ELPC respectfully request that the Commission:

1. Reject Ameren's 3-year plan for failure to meet the statutory savings goals, and failure to justify falling short of the targets with compelling evidence that the targets are unattainable within the budget suggested by the rate impact cap.

2. Require Ameren to file a new plan that meets the statutory targets for PY4 and PY5, and meets at least the PY 5 target for PY6.

3. Require Ameren to amend its program design for the RES Home Performance and RES Moderate Income Retrofit programs to capture more of the cost-effective savings through durable measures as described herein.

4. Order the limitations on deeming of gross savings values, NTG ratios and realization rates described herein.

5. Order the limitations on the company's flexibility to make program changes during the 3-year plan term described herein.

6. Order the parties to engage in a process through the Statewide Advisory Group to develop a statewide Technical Reference Manual.

Dated: November 29, 2010

Respectfully submitted,

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STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

CENTRAL ILLINOIS LIGHT COMPANY d/b/a AmerenCILCO CENTRAL ILLINOIS PUBLIC SERVICE COMPANY d/b/a AmerenCIPS ILLINOIS POWER COMPANY d/b/a AmerenIP Approval of the Energy Efficiency and Demand-Response Plan	)))))))))))	Docket No. 10-0568

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the INITIAL BRIEF OF THE NATURAL RESOURCES DEFENSE COUNCIL AND THE ENVIRONMENTAL LAW AND POLICY CENTER has been served upon the parties reported by the Clerk of the Commission as being on the service list of this docket, on the 29th day of November, 2010, by electronic mail.

/s/ *Stephen J. Moore*_______________

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