

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

Central Illinois Light Company	)	
d/b/a Ameren CILCO	)	
	)	
Central Illinois Public Service Company	)	
d/b/a Ameren CIPS	)	
	)	Docket No. 10-0568
Illinois Power Company	)	
d/b/a AmerenIP	)	
	)	
Verified Petition for Approval of	)	
Integrated Electric and Natural	)	
Gas Energy Efficiency Plan	)	

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**STAFF OF THE ILLINOIS COMMERCE COMMISSION'S BRIEF ON EXCEPTIONS**

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**STAFF BRIEF ON EXCEPTIONS**

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Pursuant to Section 200.830 of the Illinois Commerce Commission’s (“Commission”) Rules of Practice, 83 Ill. Adm. Code 200.830, Staff of the Illinois Commerce Commission (“Staff”), by and through its undersigned counsel, respectfully submits this Brief on Exceptions (“BOE”) to the Administrative Law Judge’s Proposed Order (“ALJPO”) issued on December 8, 2010. Staff addresses issues to which it takes exception in the order in which they appear in the Proposed Order, utilizing the headings found in the Proposed Order for organizational purposes.

## **I. Introduction**

Staff commends the Administrative Law Judge (“ALJ”) for the thorough, cogently-reasoned analysis contained in the Proposed Order. The ALJPO also generally provides an accurate and detailed summary of the positions of the parties and reaches conclusions with respect to all issues that are consistent with applicable requirements under the Illinois Public Utilities Act (“PUA”).

Staff, nonetheless, has a few recommended edits to the ALJPO in the form of replacement language. Most of Staff’s proposed replacement language is tied to exceptions.

## **II. Staff Exceptions**

### **III. Exception 1: Statutory Requirements**

The ALJPO does not address the statutory requirements regarding the dates to open a docket to determine whether Ameren and DCEO have met their energy efficiency obligations under Section 8-103 of the Illinois Public Utilities Act (“Act” or “PUA”). (220 ILCS 5/8-103(i) and (j); Staff Brief at 6-7) In addition, the ALJPO does not address several of the statutory filing requirements. (220 ILCS 5/8-103(f); Staff Brief at 7-18) The ALJPO does not address the updated modified energy savings targets proposed by Ameren in its rebuttal testimony. (Ameren Ex. 7.1) Staff provides a summary table of the modified savings targets that Ameren proposed throughout this proceeding. Therefore, Staff proposes language in Section V of this BOE below to strengthen the Commission’s conclusion in this regard, which is included and made a

part of the alternative language of the ALJPO, Section II.A.3.f., Commission Analysis and Conclusion.

<b>Summary of Electric Statutory Goals and Ameren's Modified Incremental % of Energy Delivered and Modified Energy Savings Target (MWH)</b>				
	<b>PY4</b>	<b>PY5</b>	<b>PY6</b>	<b>Total Plan 2</b>
Projected Energy Delivery (Ameren Ex. 1.1 (Rev.) at 4)	38,716,487	39,263,963	39,841,950	
<b>Incremental % of Energy Delivered (220 ILCS 5/8-103(b))</b>	<b>0.80%</b>	<b>1.00%</b>	<b>1.40%</b>	
<b>Statutory Goal</b> (Ameren & DCEO) (Ameren Ex. 1.1 (Rev.) at 4)	<b>309,732</b>	<b>392,640</b>	<b>557,787</b>	<b>1,260,159</b>
Ameren's Modified Target As Filed (Ameren Ex. 1.1 (Rev.) at 4)	208,525	195,973	181,044	585,541
DCEO Target As Filed (Ameren Ex. 1.1 (Rev.) at 87; DCEO Ex. 1.3)	42,026	42,399	42,496	126,921
<b>Ameren &amp; DCEO Modified Target As Filed</b> (Ameren Ex. 1.1 (Rev.) at 4 & 87; DCEO Ex. 1.3)	<b>250,551</b>	<b>238,372</b>	<b>223,540</b>	<b>712,462</b>
<b>Modified Incremental % of Energy Delivered As Filed</b>	<b>0.65%</b>	<b>0.61%</b>	<b>0.56%</b>	
Delta MWH Removed Voltage Optimization and Reallocated Funds Proportionally Across All Programs (Ameren Ex. 7.1)	5,964	6,172	5,681	17,818
<i>Ameren &amp; DCEO Modified Target (Ameren Ex. 7.1) Removed Voltage Optimization Program<sup>†</sup></i>	<i>256,515</i>	<i>244,544</i>	<i>229,221</i>	<i>730,280</i>
<b>Modified Incremental % of Energy Delivered Removed Voltage Optimization Program<sup>†</sup></b>	<b>0.66%</b>	<b>0.62%</b>	<b>0.58%</b>	
Delta MWH CFL NTG 58%, 53%, 48% PY456 (Ameren Ex. 7.1)	(4,412)	(1,396)	1,637	(4,171)
<i>Ameren &amp; DCEO Modified Target (Ameren Ex. 7.1) CFL NTG 58%, 53%, 48% for PY456</i>	<i>246,139</i>	<i>236,976</i>	<i>225,177</i>	<i>708,291</i>
<b>Modified Incremental % of Energy Delivered CFL NTG 58%, 53%, 48% for PY456</b>	<b>0.64%</b>	<b>0.60%</b>	<b>0.57%</b>	
Delta MWH Removed Voltage Optimization & CFL NTG 58%, 53%, 48% (Ameren Ex. 7.1)	1,552	4,776	7,318	13,647
<i>Ameren &amp; DCEO Modified Target (Ameren Ex. 7.1) CFL NTG 58%, 53%, 48% and Removed Voltage</i>	<i>252,103</i>	<i>243,148</i>	<i>230,858</i>	<i>726,109</i>
<b>Modified Incremental % of Energy Delivered – CFL NTG 58%, 53%, 48% and Removed Voltage Optimization</b>	<b>0.65%</b>	<b>0.62%</b>	<b>0.58%</b>	
<b>Statutory Spending Limit</b> (Ameren Ex. 1.1)	<b>\$</b>	<b>\$</b>	<b>\$</b>	<b>\$</b>

(Rev.) at 4)	59,261,622	60,095,066	60,733,316	<b>180,090,004</b>
Ameren Only Budget (Ameren Ex. 1.1 (Rev.) at 91)	\$ 44,199,039	\$ 44,846,501	\$ 45,099,568	\$ 134,145,107
DCEO Only Budget (Ameren Ex. 1.1 (Rev.) at 91; DCEO Ex. 1.3)	\$ 14,590,000	\$ 14,800,000	\$ 14,880,000	\$ 44,270,000
Budgeted Spending (Ameren Ex. 1.1 (Rev.) at 91)	\$ 58,789,039	\$ 59,646,501	\$ 59,979,568	<b>\$ 178,415,107</b>
Funds Not Budgeted within Spending Limit	\$ 472,584	\$ 448,565	\$ 753,748	<b>\$ 1,674,897</b>
DCEO Budget as % of Spending Limit	25%	25%	25%	25%
DCEO Savings as % of Statutory Goal	14%	11%	8%	10%
DCEO Savings as % of Energy Delivered	0.11%	0.11%	0.11%	
Ameren's Budget as % of Spending Limit	75%	75%	74%	74%
Ameren's Savings as % of Statutory Goal (CFL NTG 58%, 53%, 48%)	66%	50%	33%	46%
Ameren's Savings as % of Energy Delivered (CFL NTG 58%, 53%, 48%)	0.53%	0.50%	0.46%	

†To calculate the Delta MWH from removing the Voltage Optimization Program, Ameren reallocated the Voltage Optimization Program funds *proportionally* across the other programs. However, it would be more efficient and greater MWH would be saved by allocating these funds to the Residential Lighting program.

#### IV. Exception 2: Voltage Optimization Pilot Program

Ameren originally proposed a Voltage Optimization program. (Ameren Ex. 1.1 (Rev.) at 153) In response to Staff Data Request JLH 2.01(a), Ameren witness Mr. Costenaro states in part:

A customer's total demand is an aggregate of the various types of electric devices the customer operates and varies from customer to customer. Many of the electrical devices a typical customer operates will automatically reduce demand when the voltage is reduced with no detrimental effect on the device or the customer, which allows demand reduction through voltage reduction to work.

...that electric devices that contain switching power supplies, such as liquid crystal displays (LCD) and plasma displays used for computers and TVs will have **no demand reduction**, and in some cases **slightly increase demand** when voltage is reduced.

(Staff Group Cross Ex. No. 1, p. 84, emphasis added)

In response to Staff Data Request JLH 3.05, Ameren witness Mr. Martin states:

Ameren Illinois is proposing Voltage Optimization as a Demand Response measure, to be used to achieve its Demand Response goals. Ameren Illinois has limited information and no operating experience indicating that measurable kWh savings can be obtained. As a result Ameren believes it is inappropriate to consider such energy savings as part of the planning kWh target. Data related to the potential system impact resulting from extended hours of voltage optimization might be gathered from the program as proposed.

(Staff Group Cross Ex. No. 1)

Since Ameren acknowledges it has limited information and no operating experience regarding the Voltage Optimization program, it is Staff's opinion that it would be imprudent to permit Ameren to deem kW savings for this program as part of the planning kW target when Ameren itself concedes it is inappropriate to consider kWh savings as part of the planning kWh target.

Due to the concerns regarding the purported kW demand savings of the Voltage Optimization program, Staff witness Jennifer Hinman originally recommended that the Commission reject Ameren's proposed demand response program and order Ameren to conduct a pilot of the Voltage Optimization Program, including testing not only the demand response capabilities of the program, but also the energy efficiency capabilities, if implemented on a continuous basis. Ms. Hinman further recommended that Ameren design a number of tests that can be used to ensure the demand response capabilities of the pilot program will actually work; such test designs should be submitted to Staff prior to implementing the Voltage Optimization Pilot Program. (ICC

Staff Ex. 1.0 at 7:175-182) However, in the Company's rebuttal testimony, the proposed Voltage Optimization program was removed completely.

Although Staff agrees with the ALJPO's conclusion requiring Ameren to implement a pilot of the Voltage Optimization Program, it appears that the ALJPO inadvertently omitted a concluding sentence reflecting Staff's proposed safeguards. Staff therefore proposes language in Section V of this BOE to strengthen the Commission's conclusion in this regard, which is included and made a part of the alternative language of the ALJPO, Section II.A.3.f., Commission Analysis and Conclusion.

#### **V. Exception 3: Dual Fuel Savings Opportunities**

Although Staff agrees with the ALJPO's conclusion directing Ameren to spend excess gas funds on dual fuel savings measures, the ALJPO inadvertently omitted a few supporting sentences that would provide clarification regarding the calculation of energy savings in Ameren's Portfolio.

Therefore, Staff recommends that the ALJPO's language on pages 26-29 under Section II.A.3.f., Commission Analysis and Conclusion, be modified as follows:

#### **f. Commission Analysis and Conclusion**

This Commission adopts the following dates for commencement of Commission dockets reviewing: (1) whether Ameren has met the efficiency standard as specified in 220 ILCS 5/8-103(b), as modified by subsections (d) and (e); and (2) whether the Department has implemented the Department's share of energy efficiency measures required by the standards in 220 ILCS 5/8-103(b):

January 31, 2013 for review of Plan Year 4 (06/01/2011 – 05/31/2012);

January 31, 2014 for review of Plan Year 5 (06/01/2012 – 05/31/2013);

January 30, 2015 for review of Plan Year 6 (06/01/2013 – 05/31/2014).

This Commission finds that initiating proceedings on these dates is necessary and appropriate to ensure compliance with the Act. On or before those dates, the Commission directs Staff to provide the Commission with draft orders that initiate review, pursuant to 220 ILCS 5/8-103(i) and (j).

This Commission's guidelines for approving or disapproving the plan are set forth in the statutory filing requirements of Section 8-103(f)(1)-(7) of the Act. If the evidence in the record shows that a utility has met each of these seven filing requirements, its plan should be approved. In submitting proposed energy efficiency and demand-response plans and funding levels to meet the savings goals pursuant to 220 ILCS 5/8-103, the utility shall:

(2) Present specific proposals to implement new building and appliance standards that have been placed into effect. (220 ILCS 5/8-103(f)(2))

This Commission finds that Ameren has met this requirement. With respect to DCEO, this Commission addresses DCEO's portion of Ameren's Plan in Section VI., DCEO Plan of this Order.

(3) Present estimates of the total amount paid for electric service expressed on a per kilowatthour basis associated with the proposed portfolio of measures designed to meet the requirements that are identified in subsections (b) and (c) of this Section, as modified by subsections (d) and (e). (220 ILCS 5/8-103(f)(3))

Consistent with its previous energy efficiency Order, this Commission agrees with its previous finding that irrespective of the fact that Ameren's Plan may be a comprehensive three-year Plan, the spending limits are based on projections, which, necessarily, need to be re-examined, as they can change from year to year, based on the previous year's figures. The previous year's figures, upon which, those calculations must be made, cannot be known years before the dates enunciated in the statute have occurred. Consistent with the Final Order in Docket No. 07-0539, Ameren is directed to recalculate its projections on an annual basis. (See, Final Order, Docket No. 07-0539, Order at 22-23, (Feb. 6, 2008))

With regard to updating energy savings goals, Staff has suggested that to the extent ComEd is allowed to update its energy savings goals on an annual basis, Ameren should be granted the same ability such that the energy savings goal will be adjusted relative to any adjustment in the spending screen on an annual basis. The Commission finds no reason that Ameren and ComEd should be treated differently with regard to calculating the statutory annual energy savings goal. This Commission directs Ameren to adjust its energy savings goal relative to any adjustment in the spending screen to the same extent such ability is granted to ComEd in Docket No. 10-0570.

(4) Coordinate with the Department to present a portfolio of energy efficiency measures proportionate to the share of total annual utility revenues in Illinois from households at or below 150% of the poverty level. The energy efficiency programs shall be targeted to households with incomes at or below 80% of area median income. (220 ILCS 5/8-103(f)(4))

This Commission addresses DCEO's portion of Ameren's Plan in Section VI., DCEO Plan of this Order.

(5) 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. (220 ILCS 5/8-103(f)(5))

While there is a general consensus that Ameren's portion of its overall portfolio of energy efficiency and demand-response measures satisfies this requirement, it is unclear whether the Department's portion of Ameren's portfolio (excluding the low-income programs covered by item (4) of subsection (f) of 220 ILCS 5/8-103) has met this requirement. Because the avoided cost inputs used by DCEO in the construction of its Plan appear to be flawed, the Commission cannot determine whether or not the overall portfolio of energy efficiency and demand-response measures meets this requirement of the statute. The Commission agrees with Staff that the Building Energy Code Compliance program and funding for projects at federal facilities do not provide "incremental savings" as required by 220 ILCS 5/8-103(b) and 220 ILCS 5/8-104(c). While the Commission further addresses DCEO's portion of Ameren's Plan in Section VI., DCEO Plan of this Order, this Commission notes here that the DCEO has made erroneous baseline assumptions that directly impact the energy savings and corresponding benefits used in its calculation of the TRC test ratio

that has resulted in inflated benefit-cost ratios for the Building Energy Code Compliance Program and the overall portfolio of energy efficiency and demand-response measures. This Commission directs DCEO to recalculate the cost-effectiveness of its measures, programs, and overall portfolio using the appropriate avoided costs suggested by the ELPC as well as appropriate baseline assumptions that arise from the Act's requirement that energy savings must be "incremental." Additionally, this Commission orders Ameren and the DCEO to implement cost-effective measures in its programs where possible.

(6) Include a proposed cost-recovery tariff mechanism to fund the proposed energy efficiency and demand-response measures and to ensure the recovery of the prudently and reasonably incurred costs of Commission-approved programs. (220 ILCS 5/8-103(f)(6))

The Commission addresses the cost-recovery tariff mechanism in Section V., Proposed Rider EDR and GER of this Order.

(7) Provide for an annual independent evaluation of the performance of the cost-effectiveness of the utility's portfolio of measures and the Department's portfolio of measures, as well as a full review of the 3-year results of the broader net program impacts and, to the extent practical, for adjustment of the measures on a going-forward basis as a result of the evaluations. The resources dedicated to evaluation shall not exceed 3% of portfolio resources in any given year. (220 ILCS 5/8-103(f)(7))

This Commission addresses this requirement in Section III., Evaluation, Measurement & Verification of this Order. In order for this Commission to submit the required energy efficiency related reports to the General Assembly, the Commission agrees with Staff and directs Ameren to file the evaluations and reports required by Section 8-103(f)(7) of the Act as they become available via the Commission's e-Docket system in Docket No. 10-0568.

(1) 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).

The evidence in the record has demonstrated that the proposed energy efficiency and demand-response measures will not achieve the requirements in subsections (b) and (c) of 220 ILCS 5/8-103, as modified by subsections (d) and (e).

The Commission first notes that Ameren acknowledges that the initial plan which it proposed did not meet the statutory requirements for electric energy savings contained in Section 8-103 of the Act. Ameren explains that the rate impact limitations contained in the legislation prevent it from meeting the savings requirements and, in fact, the proposed energy savings by Ameren go down each plan year.

Following the submission of this plan, Staff and the various Intervenor made various suggestions on how Ameren could achieve greater savings, while still complying with the rate impact provisions of the statute. It appears to the Commission that most parties acknowledge that Ameren will be unable to meet the required savings, at least in PY5 and PY6, due in part to the expected spending staying virtually flat, while the required savings continue to increase. Based in part on these various suggested changes, Ameren has proposed a modified plan, which the Commission must now consider. The Commission notes that its options in this proceeding by statute are to either accept Ameren's modified plan which incorporates reduced energy efficiency savings; or reject the modified plan, and 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. A third path, which Ameren and some other parties suggest, would be for the Commission to direct Ameren to make a compliance filing incorporating the provisions of this Order.

The Commission begins its analysis by looking at what the statute requires of Ameren in its energy efficiency plans for the years in question. The statute in question calls for energy savings of 0.8% of energy delivered in the year commencing June 1, 2011 ("PY4"); 1% of energy delivered in the year commencing June 1, 2012 ("PY5"); and 1.4% of energy delivered in the year commencing June 1, 2013 ("PY6"). Ameren indicates that this would translate into required electric energy efficiency savings of 309,732 MWh in PY4, 392,640 MWh in PY5, and 557,787 MWh in PY6, while it appears that Ameren proposes that the total savings standard be modified to 0.65% of energy delivered in the year commencing June 1, 2011 (PY4); 0.61% of energy delivered in the year commencing June 1, 2012 (PY5); and 0.56% of energy delivered in the year commencing June 1, 2013 (PY6). Ameren's modified energy savings standard translates into 250,551 MWh in PY4; 238,372 MWh in PY5; and 223,540 MWh in PY6. Ameren

removed its proposed Voltage Optimization Program in its rebuttal testimony and allocated those funds proportionally across all programs to achieve additional energy savings. Ameren agreed to adjust the NTG ratios for its Residential Lighting Program (regular CFL bulbs) to 0.58 for PY4, 0.53 for PY5, and 0.48 for PY6. Taking into consideration the impacts from removing the Voltage Optimization Program and adjusting the NTG ratios for the Residential Lighting program, Ameren proposes that the total savings standard be modified to 0.65% of energy delivered in the year commencing June 1, 2011 (PY4); 0.62% of energy delivered in the year commencing June 1, 2012 (PY5); and 0.58% of energy delivered in the year commencing June 1, 2013 (PY6). Ameren's final modified energy savings standard, taking into consideration the impacts from removing the Voltage Optimization Program and adjusting the NTG ratios for the Residential Lighting program, translates into 252,103 MWh in PY4; 243,148 MWh in PY5; and 230,858 MWh in PY6.

Before analyzing the various proposed changes suggested for Ameren's modified plan, the Commission would like to express its concerns over the manner in which these efficiency dockets proceed. It appears that all the parties express some level of frustration over the expedited schedule they are presented with, and the inability to fully discuss the issues and various proposals. The Commission appreciates this concern, but recognizes that until there is a change made by the Legislature, the parties must accept the hand they are dealt. The Commission is concerned with some of the proposals presented by the parties during this proceeding, and the lack of detail provided on what impact the adoption of the proposal should have on the Ameren plan. The Commission recognizes that there is a SAG which involves the parties to this docket, and suggests that perhaps there is the place to determine what impact a proposal would have if adopted, and then to present that to the Commission. The Commission is of the opinion that it is difficult to determine whether to adopt a party's position when there is little or no evidence on the cost of that position, and the accompanying savings that would be accomplished. While the Commission recognizes that it is not Staff or an Intervenor's responsibility to craft a plan for Ameren, it is not very helpful to the process to suggest a change, without explaining the impact of that change on either the cost or savings side of the equation. This Commission directs Ameren to meet with the SAG before submitting its modified Plan in a compliance filing to this docket in order to determine the impact that Staff and Intervenor's suggestions have on the cost and savings side of its revised Plan

as well as come to a consensus regarding the NTG ratio values to deem for the Plan.

The Commission will next address the issue of the Voltage Optimization Program, which Ameren initially proposed to satisfy the demand-response requirements of Section 8-103. Ameren calculated that the statute required demand-response goals of 4.42 MW, 4.20 MW, and 4.16 MW for PY4 through PY6 respectively. Various Intervenors suggested that Ameren should abandon the plan, and divert the planned expenditure to other energy efficiency programs, while Staff suggested that Ameren develop a pilot program to test the benefits of the Voltage Optimization Program. CUB recommends that the Commission direct Ameren to reinstate that program, and monitor the results to ensure that actual demand-response savings are achieved. The IPA argues that as Ameren is not proposing an acceptable plan, the Commission should transfer the responsibility of implementing the energy efficiency programs to the IPA. The IPA also notes that it has attempted to conduct a competitive bidding process for demand response in the procurement proceedings for the Ameren service territory; however, the Commission has to date denied those requests. Given that, the IPA requests that the Commission now authorize the IPA to acquire demand response for Ameren, as Ameren has failed to do so. If the Commission does not authorize the IPA to acquire demand response, then the IPA suggests that the Commission reject Ameren's plan and direct Ameren to submit a revised plan within 30 days which includes a viable demand-response program.

Ameren now argues, essentially, that it will meet the demand response requirements of Section 8-103(c) simply by implementing energy efficiency measures pursuant to Section 8-103(b) of the Act. At this time, the Commission is not convinced that this interpretation of the Act is correct.

It is the Commission's understanding that for ComEd, PJM acquires the necessary demand response through the markets that it administers and the Reliability Pricing Model ("RPM") auction process. This issue was addressed in the last procurement proceeding, Docket No. 09-0373 and is also currently an issue in the current procurement proceeding, Docket No. 10-0563. The Commission is not aware that MISO or Ameren have a similar mechanism for acquiring demand response. Nevertheless, the record of this proceeding does not support the proposition that cost-effective demand response measures are available to Ameren at this time. The Commission fully expects Ameren to endeavor to

identify cost-effective demand response measures that might be incorporated in its next energy efficiency and demand response Plan and discuss these with the SAG.

Considering “electric devices that contain switching power supplies... will have no demand reduction, and in some cases slightly increase demand when voltage is reduced” (Ameren Response to Staff Data Request JLH 2.01a, Part 2 – Staff Group Cross Ex. No. 1, p. 84), ¶the Commission is of the opinion that it would be appropriate to institute a pilot of the Voltage Optimization Program, to determine what the benefits would be of a wider adoption of this program. This Commission agrees with Staff that the pilot should include testing not only the demand response capabilities of the program, but also the energy efficiency capabilities, if implemented on a continuous basis. This Commission directs Ameren to conduct a pilot of the Voltage Optimization Program on a heavily loaded feeder that is able to support a significant reduction in voltage in order to maximize the cost-effectiveness of the pilot. This Commission directs Ameren to design a number of tests using industry best practices that can be used to ensure the demand response capabilities of the pilot program will actually work. The test designs and proposed feeder locations should be submitted to the Staff of the Commission prior to implementing the Voltage Optimization Pilot Program for approval. The Commission believes that the adoption of a pilot program, with the remainder of the funds directed toward greater energy efficiency, along with other possible demand-response measures, will be appropriate at this time. ~~With these measures in place, the Commission does not find it necessary at this time to direct the IPA to acquire demand response, although this may become necessary in the future should Ameren continue to miss its statutory goals on demand response.~~

The parties also mention Ameren's real-time pricing program, PSP, as an opportunity to reduce demand for electricity. The Commission understands that an evaluation of this program will occur in early 2011, but it is not yet clear whether this program, assuming it is shown to be effective, should be counted toward the demand-response goals. The Commission directs Ameren to continue to keep the SAG and the Commission apprised of the effectiveness of its PSP program.

The Commission notes that Ameren also agrees to explore the use of on-bill financing to increase energy efficiency measures, which the Commission finds to be appropriate. It appears from the

evidence that the benefits of on-bill financing are still to be determined for the most part, but the Commission believes that Ameren should avail itself of any reasonable measures to meet its required savings. While Ameren concludes that there are limited programs suitable for on-bill financing, the Commission urges Ameren to pursue this program further.

As for the parties' varied suggestions that Ameren avail itself of outside financing, such as TIF funding, or ARRA money, it appears to the Commission that Ameren has pursued those avenues, and has had little success. While the Commission encourages Ameren to continue to pursue innovative funding sources to leverage its energy efficiency financing, it does not appear appropriate, or even possible, to order Ameren to obtain outside funding, when the final decision is outside the control of the Commission and Ameren.

The Commission also views favorably Ameren's proposed Residential Behavioral Modification program, and its potential value both as an educational tool and a motivational tool to encourage electric and gas savings. The Commission conclusions regarding this issue appear later in this Order.

Of the various other suggestions made to improve Ameren's plan, the Commission does find merit in continuing, and even increasing Ameren's use of CFL light bulbs to achieve energy efficiency savings. While Ameren expresses concern over recent Federal legislation, other parties express their opinion that Ameren's concerns are exaggerated. The Commission agrees that the increased use of CFLs, especially specialty CFLs, represent cost-effective and low-cost savings. It appears appropriate to the Commission to direct Ameren to adopt a residential light program more akin to that adopted in previous plan years, taking into account the reduced NTG ratios suggested by Staff, and agreed to by Ameren as discussed later in this Order.

The Commission finds that the suggestion with the greatest potential to allow Ameren to meet its electric energy efficiency goals is the suggestion that Ameren use funds not currently budgeted for use in the gas efficiency program, by allocating them to joint gas and electric efficiency programs. Staff and various Intervenors point out that unless a change is made in Section 8-103, it appears that it will become increasingly difficult for Ameren to meet the statutory energy efficiency requirements, and the Commission notes that Ameren does not presently plan on meeting

any of the three years in this Plan. The Commission believes that Ameren's stated concerns over subsidization of electric customers by gas customers can be addressed in the fashion suggested by Staff. The Commission finds that the potential benefit to all customers on the energy efficiency front, both gas and electric, warrant Ameren to develop a plan to spend excess gas energy efficiency funds on joint gas-electric savings. Furthermore, there appear to be sufficient opportunities for Ameren to claim dual fuel savings as over 30 energy efficiency measures involved in 11 of Ameren's 14 energy efficiency programs result in both electric and gas savings. (Ameren Ex. 3.0 at 7:109-110) This Commission agrees with Staff that Ameren should be allowed to fund a measure resulting in both gas (therm) and electric (kWh) energy savings, and charge the full incentive cost of the measure to the gas portfolio, so long as the measure results in sufficient benefits to gas customers that it is likely to be provided by a gas-only utility. The Commission directs Ameren to claim all electric (kWh) savings associated with measures installed for Ameren's combination electric and gas customers, including measures for which no electric incentive has been paid, as these savings reduce Ameren's deliveries. In addition, the Commission directs Ameren to claim all gas (therm) savings associated with measures installed for Ameren's combination electric and gas customers, including measures for which no gas incentive has been paid, as these savings reduce Ameren's deliveries. However, electric (kWh) savings for measures installed for Ameren's gas-only customers should not be counted toward Ameren's electric savings goal as these savings do not affect Ameren's electric deliveries.

Likewise, gas (therm) savings for measures installed for Ameren's electric-only customers should not be counted toward Ameren's gas savings goal as these savings do not affect Ameren's gas deliveries. This Commission directs Ameren to adjust its proposed modified incremental percent of energy delivered standards, and corresponding energy savings targets to reflect these changes and include these adjustments in its compliance filing in this docket.

~~The Commission finds that evaluating cost-effectiveness on a portfolio level is necessary to ensure that Ameren not be penalized for planning assumptions that turn out to be inaccurate. The Commission concludes it is appropriate to apply the TRC test at the portfolio level, but Ameren Illinois and the DCEO should be allowed to apply it at the measure or program level if they so choose. The Commission also finds Ameren's proposal to apply the TRC test at the measure level for planning purposes, if it~~

~~chooses, and apply any ex post TRC test at the portfolio level is reasonable and is hereby adopted. Further, the Commission declines to micromanage Ameren Illinois by ordering it to allocate more or less money to individual programs that Intervenor's claim are more cost-effective.~~

Following a review of the party's arguments, and taking into account the Commission's findings presented here, it appears to the Commission that Ameren has failed to propose an energy efficiency plan which satisfies the requirements of Section 8-103 of the Act. The Commission finds, and Ameren acknowledges, that the revised plan does not contemplate meeting the energy savings goals expressed in Section 8-103(b). The Commission recognizes that Ameren indicates that it is constrained by the spending limitations imposed by Section 8-103; however, the Commission believes that a revised plan could be submitted by Ameren, implementing the findings expressed in this Order, which would encompass greater energy savings, while complying with the spending limitations. The Commission recognizes that the statute imposes an ever greater energy efficiency savings requirement on Ameren each year, without a proportionate increase in funding. The Commission believes that this will require Ameren and the various other stakeholders involved in this process to develop innovative processes to leverage the available funding to implement the will of the Legislature. The Commission believes it is appropriate to direct Ameren to make a compliance filing within 30 days of the date of this Order, as Ameren suggested in its Brief would be appropriate. The Commission directs that this compliance filing contain a revised Energy Efficiency and Demand Response Plan, which contains terms and provisions consistent with and reflective of the findings and determinations contained in this Order.

(ALJPO at 26-29)

#### **VI. Exception 4: Statutory Requirements**

The ALJPO does not address the statutory requirements regarding the date to open a docket to determine whether Ameren has met its energy efficiency obligations under Section 8-104 of the PUA. (220 ILCS 5/8-104(i); Staff Brief at 26-27) In addition, the ALJPO does not address several of the statutory filing requirements. (220 ILCS 5/8-

104(f); Staff's Brief at 28-38) Therefore, Staff recommends that the ALJPO's language on pages 42-44 under Section II.B.5., Commission Analysis and Conclusion, be modified as follows:

## **5. Commission Analysis and Conclusion**

This Commission adopts the following date for commencement of a Commission docket reviewing whether Ameren has met the efficiency standard as specified in 220 ILCS 5/8-104(c), as modified by subsection (d):

January 30, 2015 for review of the 3-year Plan (06/01/2011 – 05/31/2014).

This Commission finds that initiating a proceeding on this date is necessary and appropriate to ensure compliance with the Act. On or before January 30, 2015, the Commission directs Staff to provide the Commission with a draft order that initiates review, pursuant to 220 ILCS 5/8-104(i).

This Commission's guidelines for approving or disapproving the plan are set forth in the statutory filing requirements of Section 8-104(f)(1)-(8) of the Act. If the evidence in the record shows that a utility has met each of these eight filing requirements, its plan should be approved. In submitting proposed energy efficiency plans and funding levels to meet the savings goals pursuant to 220 ILCS 5/8-104, the utility shall:

(2) Present specific proposals to implement new building and appliance standards that have been placed into effect.

This Commission finds that Ameren has met this requirement. With respect to DCEO, this Commission addresses DCEO's portion of Ameren's Plan in Section VI., DCEO Plan of this Order.

(3) Present estimates of the total amount paid for gas service expressed on a per therm basis associated with the proposed portfolio of measures designed to meet the requirements that are identified in subsection (c) of this Section, as modified by subsection (d) of this Section.

This Commission finds that Ameren has met this requirement.

(4) Coordinate with the Department to present a portfolio of energy efficiency measures proportionate to the share of total annual utility revenues in Illinois from households at or below 150% of the poverty level. Such programs shall be targeted to households with incomes at or below 80% of area median income.

This Commission addresses DCEO's portion of Ameren's Plan in Section VI., DCEO Plan of this Order.

(5) Demonstrate that its overall portfolio of energy efficiency 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.

While there is a general consensus that Ameren's portion of its overall portfolio of energy efficiency measures satisfies this requirement, it is unclear whether the Department's portion of Ameren's portfolio (excluding the low-income programs covered by item (4) of subsection (f) of 220 ILCS 5/8-104) has met this requirement. Because the avoided cost inputs used by DCEO in the construction of its Plan appear to be flawed, the Commission cannot determine whether or not the overall portfolio of energy efficiency measures meets this requirement of the statute. The Commission agrees with Staff that the Building Energy Code Compliance program and funding for projects at federal facilities do not provide "incremental savings" as required by 220 ILCS 5/8-103(b) and 220 ILCS 5/8-104(c). While the Commission further addresses DCEO's portion of Ameren's Plan in Section VI., DCEO Plan of this Order, this Commission notes here that the DCEO has made erroneous baseline assumptions that directly impact the energy savings and corresponding benefits used in its calculation of the TRC test ratio that has resulted in inflated benefit-cost ratios for the Building Energy Code Compliance Program and the overall portfolio of energy efficiency measures. This Commission directs DCEO to recalculate the cost-effectiveness of its measures, programs, and overall portfolio using the appropriate avoided costs suggested by the ELPC as well as appropriate baseline assumptions that arise from the Act's requirement that energy savings must be "incremental." Additionally, this Commission orders Ameren and the DCEO to implement cost-effective measures in its programs where possible.

(6) Demonstrate that a gas utility affiliated with an electric utility that is required to comply with Section 8-103 of this Act has integrated gas and electric efficiency measures into a single program that reduces program or participant costs and

appropriately allocates costs to gas and electric ratepayers. The Department shall integrate all gas and electric programs it delivers in any such utilities' service territories, unless the Department can show that integration is not feasible or appropriate.

The Commission finds that the potential benefit to all customers on the energy efficiency front, both gas and electric, warrant Ameren to develop a plan to spend excess gas energy efficiency funds on joint gas-electric savings. Furthermore, there appear to be sufficient opportunities for Ameren to claim dual fuel savings as over 30 energy efficiency measures involved in 11 of Ameren's 14 energy efficiency programs result in both electric and gas savings. (Ameren Ex. 3.0 at 7:109-110) This Commission agrees with Staff that Ameren should be allowed to fund a measure resulting in both gas (therm) and electric (kWh) energy savings, and charge the full incentive cost of the measure to the gas portfolio, so long as the measure results in sufficient benefits to gas customers that it is likely to be provided by a gas-only utility. The Commission directs Ameren to claim all electric (kWh) savings associated with measures installed for Ameren's combination electric and gas customers, including measures for which no electric incentive has been paid, as these savings reduce Ameren's deliveries. In addition, the Commission directs Ameren to claim all gas (therm) savings associated with measures installed for Ameren's combination electric and gas customers, including measures for which no gas incentive has been paid, as these savings reduce Ameren's deliveries. However, electric (kWh) savings for measures installed for Ameren's gas-only customers should not be counted toward Ameren's electric savings goal as these savings do not affect Ameren's electric deliveries.

Likewise, gas (therm) savings for measures installed for Ameren's electric-only customers should not be counted toward Ameren's gas savings goal as these savings do not affect Ameren's gas deliveries. This Commission directs Ameren to adjust its proposed modified incremental percent of energy delivered standards, and corresponding energy savings targets to reflect these changes and include these adjustments in its compliance filing in this docket.

(7) Include a proposed cost recovery tariff mechanism to fund the proposed energy efficiency measures and to ensure the recovery of the prudently and reasonably incurred costs of Commission-approved programs.

The Commission addresses the cost-recovery tariff mechanism in Section V., Proposed Rider EDR and GER of this Order.

(8) Provide for quarterly status reports tracking implementation of and expenditures for the utility's portfolio of measures and the Department's portfolio of measures, an annual independent review, and a full independent evaluation of the 3-year results of the performance and the cost-effectiveness of the utility's and Department's portfolios of measures and broader net program impacts and, to the extent practical, for adjustment of the measures on a going forward basis as a result of the evaluations. The resources dedicated to evaluation shall not exceed 3% of portfolio resources in any given 3-year period.

This Commission addresses this requirement in Section III., Evaluation, Measurement & Verification of this Order. In order for this Commission to submit the required energy efficiency related reports to the General Assembly, the Commission agrees with Staff and directs Ameren to file the evaluations and reports required by Section 8-104(f)(8) of the Act as they become available via the Commission's e-Docket system in Docket No. 10-0568.

(1) Demonstrate that its proposed energy efficiency measures will achieve the requirements that are identified in subsection (c) of this Section, as modified by subsection (d) of this Section.

The evidence in the record has demonstrated that the proposed energy efficiency measures will not achieve the requirements in subsection (c) of 220 ILCS 5/8-104, as modified by subsection (d).

The Commission notes that Ameren indicates it has calculated its therm savings energy efficiency goals by applying the percentage reductions in the statute to sales volumes consumed by customers served under Rider S, which corresponds to approximately 1.8, 3.6 and 5.3 million therms for PY4, PY5 and PY6, respectively. Ameren is responsible for 80% of the gas savings, or 1.4, 2.8 and 4.2 million therms, and its Plan 2 proposes savings of 3.0 million therm savings for PY4, and 3.1 million therms for PY5 and PY6. The Commission acknowledges that the gas savings goals in Section 8-104 of the Act are cumulative, and that Ameren's projected savings over the three years exceed the required savings over those same three years.

Staff disagrees with Ameren's calculation of its savings goal, noting that Ameren chose to base its calculation only on retail customers who purchase their gas directly from Ameren, while Staff believes that the calculation should be based on the total amount of gas delivered to retail customers. Staff indicates that based on its

calculations, the gas savings goals should be set at 2.35 million therms for PY4, 4.7 million therms for PY5, and 7.06 million therms for PY6.

The Commission notes that CUB indicates in its brief that Ameren proposes to spend \$9.49 Million in PY4, \$10.26 Million in PY5, and \$10.9 Million in PY6. CUB indicates it supports Ameren's plan to spend less than the maximum allowed under the Act to achieve its required gas savings, and supports granting Ameren the flexibility it has requested on the spending cap, provided Ameren provides the SAG information on any major changes to its programs that result in spending more of its natural gas budget.

The AG is concerned that if Ameren pursues a strategy that just meets the requirements of Section 8-104, Ameren will end PY6 with no greater savings than it started with, and will be required in PY7 to more than double the savings from PY6. The AG recommends that the Commission approve Ameren's plan for PY4, but require Ameren to significantly ramp up its savings and spending goals so that Ameren captures incremental savings of at least 0.6% of load in PY6. The AG argues this will allow Ameren to not spend all its available funds, while still ensuring a reasonable ramp up to future years.

The Commission believes that the parties are in agreement on Ameren's natural gas spending limit for the three years of the plan, \$56,641,420. Staff and Ameren both agree with this amount, although the AG suggests that Ameren should follow the example of utilities in other jurisdictions by seeking non-ratepayer funds to deliver increase natural gas savings. While the Commission certainly encourages Ameren and the SAG to explore diverse funding sources outside of ratepayer funds, it does not appear at present that there is any specific suggestion before this Commission to be considered on this matter.

Where the parties diverge on determining the amount of gas savings to be required of Ameren is in whether the gas purchased by Ameren's large transportation customers, those served under Rider T, should be included in the calculations. Ameren excludes those customers, believing that the statute requires them to only consider gas delivered to retail customers, and that as Ameren does not sell gas to those transportation customers, they should not be included in the calculation.

Staff and the AG both disagree with Ameren's reasoning, and argue that only those transportation customers who satisfy the requirements of Section 8-104(m) should be excluded from the calculation of required gas savings. According to the AG, the exclusion of those eligible transportation customers results in Ameren underestimating the appropriate gas savings goals by about 45%.

The Commission is persuaded by Staff's analysis and arguments that it was proper for Ameren to exclude the dollars paid to alternative gas suppliers by Ameren's large transportation customer from the computation of its gas spending limit, but it was incorrect for Ameren to exclude the volumes of gas purchases by those same transportation customers from the computation of its savings goals. While this result may seem contradictory at first blush, it is clear to the Commission that this finding comports with the statute in question, and the attendant legislative history as discussed by Staff. The Commission will therefore determine that for PY4, PY5, and PY6, the savings goals endorsed by Staff are adopted for this proceeding. The Commission further directs Ameren to include in its compliance filing, a gas savings plan that encompasses the agreed gas spending limit of \$56,621,420 and results in the gas savings espoused by Staff and the AG for Plan 2. The Commission recognizes that the requirements for gas savings during the Plan can be accomplished with excess savings in one year satisfying another year, however the Commission expects Ameren to be mindful of the savings requirements that will be expected in the next Plan. The Commission also directs Ameren to direct excess funds available in any year that are over and above what Ameren expects to spend on gas savings, be directed toward joint gas-electric savings opportunities that Ameren and the SAG can identify based on the criteria set forth by this Commission above and in Section II.A., Electric Savings Goals of this Order. The Commission finds that the expenditure of these funds will not only benefit joint gas-electric customers, recognizing that Ameren is a gas and electric utility, but should enable Ameren to approach its required electric efficiency savings under the Act.

(ALJPO at 42-44)

## **VII. Exception 5: Flexibility and EM&V Contractor Independence**

The ALJPO's conclusion regarding flexibility was inadvertently addressed in the second paragraph regarding EM&V contractor independence in Section III.F., Commission Analysis and Conclusion, on p. 67 of the ALJPO. Staff therefore recommends deleting this text regarding flexibility from Section III.F. of the ALJPO, as indicated in Section XII of this BOE, and adding it to its appropriate place in the first paragraph of Section IV.F., Commission Analysis and Conclusion, on p. 84 of the ALJPO, as indicated in Section XV of this BOE.

While Staff agrees with the ALJPO conclusion further directing Ameren to instruct its evaluation contractor to submit draft EM&V reports to Ameren, the SAG, and Staff concurrently to help ensure independence of its evaluation contractor, it appears that the ALJPO inadvertently omitted concluding sentences reflecting Ameren's and Staff's proposed safeguards to ensure EM&V contractor independence as explained in Staff's Brief at 46-50. Staff therefore proposes language in Section XII of this BOE below to strengthen the Commission's conclusion in this regard, which is included and made a part of the alternative language of the ALJPO in Section III.F., Commission Analysis and Conclusion.

## **VIII. Exception 6: Evaluation Cycle**

While Staff agrees with the ALJPO conclusion approving Ameren's final evaluation cycle proposal subject to the three conditions proposed by Staff, the statement that Ameren does not object to all three conditions may not be accurate. Ameren's original proposal (Ameren Ex. 1.1 (Rev.) at 60-65) differs from its final

proposal (Ameren Ex. 10.0 at 13:296-311 and 14:353-360). Staff does not oppose Ameren's original proposal subject to two conditions and Ameren indicates agreement with Staff's two conditions in Ameren's Brief at 69. However, Staff had the opportunity to respond to Ameren's final proposal in Staff's Brief at 50-52. Staff does not oppose Ameren's final evaluation cycle proposal subject to three conditions. Considering Ameren states that the first two conditions are in line with its evaluation cycle proposal, Staff's third condition is really the most important condition. (Staff's Brief at 50-52) Therefore, Staff proposes language in Section XII of this BOE below to strengthen the Commission's conclusion in this regard, which is included and made a part of the alternative language of the ALJPO in Section III.F., Commission Analysis and Conclusion.

#### **IX. Exception 7: Technical Reference Manual**

While Staff agrees with all of the ALJPO conclusions regarding the development of a Technical Reference Manual ("TRM"), the ALJPO inadvertently omitted a few concluding sentences that would ensure transparency of the assumptions underlying Ameren's energy savings calculations as well as DCEO's energy savings calculations as explained in Staff's Brief at 71-74. Based on Ameren's independent evaluations, there are cases where Ameren has refused to update its TRM to include more conservative and accurate savings values. Staff believes that requiring Ameren to file a copy of its annual TRM via the Commission's e-Docket system in Docket No. 10-0568 will make it more "formalized" and ensure that the Commission can access it at a later date. Staff believes that in its filing of its annual TRM, Ameren should clearly indicate the changes made over the previous year's TRM. If Ameren, its program implementers,

its evaluation contractor, and the SAG are not in agreement regarding particular assumptions in its TRM, a document indicating these discrepancies should be included with Ameren's e-Docket filing of its TRM. Staff believes these requirements for a TRM are necessary to ensure transparency in the calculation of energy efficiency savings in Illinois. Staff therefore proposes language in Section XII of this BOE below to strengthen the Commission's conclusion in this regard, which is included and made a part of the alternative language of the ALJPO in Section III.F., Commission Analysis and Conclusion.

#### **X. Exception 8: AG Nonstandard Measures**

The ALJPO's summary of the AG's position regarding nonstandard measures was inadvertently addressed in the first paragraph on p. 70 of the ALJPO, Section III.F., Commission Analysis and Conclusion, which addresses NTG ratio values. Staff recommends that the text regarding the AG's position on nonstandard measures be moved to its appropriate place in the fifth paragraph on p. 69 of the ALJPO, Section III.F., Commission Analysis and Conclusion, which addresses nonstandard measures, as indicated in Section XII of this BOE below.

#### **XI. Exception 9: NTG Ratio Values**

While Staff agrees with all of the ALJPO conclusions regarding the process of deeming the NTG ratio values and the Residential Lighting Program (regular CFLs) NTG ratio values of 0.58 for PY4, 0.53 for PY5, and 0.48 for PY6, it appears that the ALJPO inadvertently omitted a concluding sentence indicating the NTG ratio values to

deem for the rest of the programs. As explained in Staff's Brief at 56-69, Staff therefore proposes language in Section XII of this BOE below to strengthen the Commission's conclusion in this regard, which is included and made a part of the alternative language of the ALJPO in III.F., Commission Analysis and Conclusion.

## **XII. Exception 10: Updates to Load Shape and Useful Life Values**

Staff recommends that load shape and useful life values be updated on an ongoing basis along with other items in a Technical Reference Manual. (Staff Brief at 54 and 70) Ameren's proposal regarding application of fixed values to load shapes and useful lives is provided in Ameren witness Mr. Weaver's rebuttal testimony. Mr. Weaver states:

**Application of fixed values to load shapes and useful lives:** the Commission should require that plan cost-effectiveness calculations be made using fixed load shapes and useful lives that apply to all standard measures. Fixed load shape and useful life values for standard measures shall remain unchanged for all 3 years of the Plan period, and be updated for the next Plan cycle. Load shapes and useful lives for nonstandard measures shall be determined by the independent evaluator.

(Ameren Ex. 10.0 at 14:333-338)

Ameren claims that the fixed load shape and useful life values should be updated for the next 3-year Plan ("Plan 3"). Thus, these updated values will be known before the start of Plan Year 6 of this Plan ("Plan 2") in order for Ameren to take the updated values into account when it develops Plan 3. Sections 8-103(f) and 8-104(f) of the Act require Ameren's overall portfolio of energy efficiency measures to be cost-effective according to the Total Resource Cost test. As better information becomes available that

can impact measure-level cost effectiveness, Staff believes that this information should be incorporated into Ameren's Plan on a prospective basis to ensure the statutory requirements of implementing a cost-effective energy efficiency portfolio are accurately met. Many new energy efficiency measures such as LEDs claim to have very long useful life values and ongoing testing by the EPA and DOE continue to update and improve these values. By requiring these measure-level load shape and useful life values to be updated annually along with the measure-level savings values, Ameren will be able to more accurately determine whether a particular measure is still cost-effective and adjust its portfolio for the next Plan Year appropriately.

The ALJPO incorrectly states that Staff's Brief cites ICC Staff Ex. 1.0 at 19-20 in support of this recommendation. On page 70 of Staff's Brief, Staff cites ICC Staff Ex. 1.0 at 19-20 with respect to timing for updating fixed values in terms of unit savings values, not load shape and useful life values. Page 54 of Staff's Brief does not provide a citation because this is a new proposal that Ameren introduced in its rebuttal testimony. Therefore, Staff recommends that the ALJPO's language on pages 67-71, Section III.F., Commission Analysis and Conclusion, be modified as follows:

#### **F. Commission Analysis and Conclusion**

The parties' positions, discussions, and recommendations regarding several of the EM&V issues are interrelated making it difficult for the Commission, in some cases, to address them individually. This is not intended to be a criticism of the parties, rather, an explanation of the difficulties the Commission and the parties face on these complicated issues. This conclusion represents the Commission's effort to address the EM&V issues in a complete, comprehensive, and consistent manner.

Generally, the parties and this Commission seem to agree the EM&V contractor independence is important in complying with both statutes 220 ILCS 5/8-103(f)(7) and 220 ILCS 5/8-104(f)(8). To ensure EM&V contractor independence, this Commission hereby adopts Ameren's and Staff's recommendations to include contract language consistent with that adopted in the Order on Rehearing in Docket No. 07-0539 (March 26, 2008). In addition, the Commission directs Ameren to hire its EM&V contractor consistent with the direction provided in the Order on Rehearing in Docket No. 07-0539 and file the appropriate compliance documents in Docket No. 10-0568. This Commission directs Ameren to continue the activities listed in its Plan to help preserve the independence of the evaluator. (Ameren Ex. 1.1 (Rev.) at 62-63) This Commission agrees with Staff that Ameren should ensure the data used in the independent evaluations can be made available to the Commission upon request. Staff does not oppose Ameren's request for flexibility. The Commission once again grants Ameren the flexibility to administer its programs in the same manner and subject to the same requirements that it has been granted to administer its previous plans. (See, Order, Docket No. 07-0539, Order at 30, (Feb. 6, 2008)) The Commission believes the level of flexibility granted in Plan 1 is sufficient to address intervenors' concerns and therefore approve the same level of, and application of, flexibility as granted in Docket No. 07-0539. Further, Ameren is directed to instruct its evaluation contractor to submit draft EM&V reports to Ameren, the SAG, and Staff concurrently, and directs Ameren to include such a provision in its contract. This Commission believes that implementation of the aforementioned guidelines, along with another guideline addressed later in this section regarding the evaluation cycle, should help ensure independence of Ameren's EM&V contractor to comply with 220 ILCS 5/8-103(f)(7) and 220 ILCS 5/8-104(f)(8).

Ameren currently proposes a modified three-year evaluation cycle that explicitly allows the independent evaluator to conduct less than one impact evaluation and less than one process evaluation every year, with a general goal of conducting one impact evaluation and one process evaluation for each program during each Plan cycle. Staff does not oppose Ameren's proposal subject to several conditions. The AG wants the Commission to adopt the SAGS NTG framework that was the basis for the Settlement Stipulation in the ComEd case, Docket No. 10-0570. NRDC-ELPC urge Ameren to engage stakeholders through the SAG to develop an evaluation schedule for each program within the limitations of the evaluation budget.

With regard to the AG's proposal, the Commission believes it would be problematic to impose on Ameren a settlement stipulation from a different proceeding to which Ameren has not agreed. While not specifically what the AG proposes, the Commission finds that Ameren's final proposal regarding the evaluation cycle is consistent with the AG's objectives. Similarly, the Commission believes that Ameren's final proposal adequately addresses the concerns expressed by NRDC-ELPC. The three conditions proposed by Staff, two to which Ameren does not object, and the third to which this Commission finds necessary to ensure independence of the evaluator, appear reasonable and they are hereby approved.

With regard to verified participation and the associated calculations, it appears that Ameren and Staff are in agreement and no party objects to their proposal. The Commission concludes that this proposal is reasonable and it is approved.

Generally, the parties agree that the development of a TRM is appropriate. While some parties believe it is appropriate to develop a statewide TRM, others believe, at a minimum, it is premature to develop a statewide TRM. ELPC witness Crandall, for example, recommends that the SAG should take primary responsibility for developing one statewide TRM. Having reviewed the record on this issue, the Commission concludes that it is neither necessary nor appropriate to order a statewide TRM in this proceeding. The Commission finds that it is more important for Ameren to focus on developing a TRM that is appropriate and specific to its service territory, at this time. The Commission may be willing to reconsider whether a statewide TRM is appropriate in a future energy efficiency, demand response plan proceeding. The Commission also accepts Ameren's recommendation that Ameren, as well as ComEd, and the independent evaluators strive to understand differences in evaluation results and to reconcile differences not driven by differences in weather, market and customers. The Commission further directs Ameren to work with ComEd to develop a consistent format for the TRM (to allow for easy comparison among companies) where feasible.

With regard to any suggestion that the SAG should have ultimate responsibility for development of the TRM, the Commission finds that because Ameren is ultimately responsible for the development and implementation of its energy efficiency, demand response plan; Ameren, not the SAG is responsible for the development of the TRM. Ameren is also directed to provide its

annual TRM for stakeholder review and to file a copy with the Commission via the Commission's e-Docket system in Docket No. 10-0568. In its filing of its annual TRM, Ameren is directed to clearly indicate the changes made over the previous year's TRM. If Ameren, its program implementers, its evaluation contractor, and the SAG are not in agreement regarding particular assumptions in its TRM, a document indicating these discrepancies should be included with Ameren's e-Docket filing of its TRM. The Commission believes these requirements for a TRM are necessary to ensure transparency in the calculation of energy efficiency savings in Illinois. The DCEO is also directed to provide its annual TRM for stakeholder review and to file a copy with the Commission via the Commission's e-Docket system in Docket No. 10-0568 when it files its annual report. As for CUB's concerns about using funding from Ameren's energy efficiency and demand response programs to pay for a TRM, the Commission is convinced by the arguments of all other parties that the benefits of a TRM will in all likelihood exceed the costs.

With regard to realization rates, while it was addressed by Ameren, Staff, the AG and NRDC-ELPC, it is not clear to the Commission what if anything is in dispute. The Commission has reviewed the rebuttal testimony of Ameren witness Weaver and finds that his proposal for defining realization rates is reasonable for purposes of this proceeding. To the extent the AG is recommending that the Commission impose on Ameren, a settlement stipulation relating to realization rates from the ComEd proceeding, the Commission rejects such a suggestion as inappropriate.

As an initial matter, the Commission notes that it finds some of the arguments regarding fixed values, deeming, NTG and related issues to be confusing. The Commission again rejects the AG's recommendation that "the Fixed Values be consistent with the SAG NTG framework. AG Exhibit 1.0 and the Settlement Stipulation agreed to in the ComEd EE case, Docket No. 10-0570." Not only is it somewhat unclear what specifically the AG wants, it is inappropriate to impose the terms of a settlement in another proceeding on Ameren in this proceeding. Ameren, Staff, CUB, and NRDC-ELPC appear to agree to some extent that plan savings and cost-effectiveness calculations be made using fixed values for unit savings that apply to at least some standard measures. Among other things, CUB suggests that the Commission policy with respect to deemed parameters for gross measure savings and other parameters should be consistent across utilities. As outlined

above, NRDC-ELPC identified specific standard items for which it believes deeming of gross measure savings is appropriate. NRDC-ELPC recommends that the actual deemed values be determined in a separate proceeding. Finally, the Commission notes that the timing for updated fixed value will be addressed separately below in this conclusion.

The Commission appreciates the relative clarity of NRDC-ELPC's arguments on these issues and appreciates the difficulties that come with an expedited proceeding. The Commission; however, is required to comply with statutory deadlines on a routine basis and does not believe a new separate proceeding to address these issues is an effective use of resources. The request for a separate proceeding is denied.

As noted above, Staff supports the prospective application of fixed values to unit savings updated annually for standard measures in calculating plan savings as it increases certainty, reduces risk on the utility, and reduces litigation complexity. The Commission finds Staff's argument convincing and it is hereby adopted.

With regard to nonstandard measures, Ameren recommends that savings and cost-effectiveness calculations should be made using estimates of unit impacts for nonstandard measures that are determined by the independent evaluator. Ameren proposes that unit impacts for nonstandard measures shall be updated annually and applied retrospectively. Staff supports Ameren's proposal. ~~The AG opposes Ameren's proposal in its entirety.~~ The AG recommends that AG Exhibit 1.0 and the Settlement Stipulation agreed to in the ComEd case, Docket No. 10-0570, be considered as an appropriate model for retroactive treatment of any assumed savings for non-standard measures. It appears that, for the most part, NRDC-ELPC believes deemed savings value for nonstandard measures is inappropriate. With regard to nonstandard measures, the Commission believes that adopting Ameren's proposal in calculating plan savings increases certainty, reduces risk on the utility, and reduces litigation complexity. The Commission finds Ameren's proposal reasonable and it is hereby approved.

Table 17 in Ameren Exhibit 1.1 contains Ameren's NTG factors, as originally proposed. Ameren proposes that NTG factors be fixed for three years and that they always be applied prospectively. Staff recommends the Commission fix the NTG ratio values provided in the table on page 69 of its Brief over the entire

3-year Plan cycle to ensure that Ameren has a reasonable opportunity to reach its modified statutory energy savings goals. In addition, Staff recommends the Commission direct Ameren to have updated NTG ratio values to propose before it files its next 3-year energy efficiency plan. ~~The AG recommends that AG Exhibit 1.0 and the Settlement Stipulation agreed to in the ComEd case, Docket No. 10-0570, be considered as an appropriate model for retroactive treatment of any assumed savings for non-standard measures.~~ Outside of these recommendations, the AG identified specific concerns with some proposed NTG values. NRDC-ELPC recognize the value of deeming NTG values but proposes specific limitations on the use of NTG ratios.

The AG's views on this issue are inconsistent with all other parties to this proceeding, are not reasonable, and will not be adopted. Additionally, as previously stated, the Commission believes it would be inappropriate to impose on Ameren a settlement stipulation from another proceeding involving a different utility. While the Commission understands NRDC-ELPC's view, the Commission is concerned with both how its proposal could be adopted by Ameren and what the implication would be on Ameren's ability to meet the energy efficiency goals in the Act. The Commission believes that the public interest would be best served by fixing the NTG ratios over the entire 3-year Plan cycle. The Commission finds that such an action, when compared to the alternatives proposed, will increase certainty, potentially reduce litigation, and reduce the risk that the utility will be unable to meet the statutory goals for reasons beyond its control. While Ameren believes that its approach to establishing the NTG ratios for regular CFLs is appropriate, Ameren indicates it does not oppose the more conservative NTG values suggested by Staff. As a result, the Commission will adopt the NTG values for regular CFLs suggested by Staff, 0.58, -0.53, and 0.48 for PY4, PY5, and PY6, respectively. Finally, the Commission directs Ameren to have updated NTG ratio values to propose before it files its next 3-year energy efficiency plan; for the programs not yet evaluated as of the date of this filing, the updated NTG ratio values should be based on Illinois-specific data. The Commission directs Ameren to work with its evaluators, program implementers, and the SAG in the development of these updated NTG ratio values to avoid the problems that occurred in this proceeding from the lack of consensus in these values. When Ameren submits its Revised Electric and Gas Energy Efficiency and Demand Response Plan in a compliance filing in this docket, Ameren is directed to provide supporting information for updated NTG ratio values for at least the program elements listed in the

previously mentioned table on page 69 of Staff's Brief based on data from Ameren's service territory including draft reports and survey findings from its natural gas and electric energy efficiency programs with the exception of the Residential Lighting program because this Commission has determined already that the NTG ratio values for regular CFLs will be fixed at 0.58, 0.53, and 0.48 for PY4, PY5, and PY6. This Commission proposes that a SAG meeting may be an appropriate venue to discuss the proposed NTG ratio values to have deemed over the 3-year Plan cycle. Ameren is directed to develop the NTG ratio values for its revised EE Plan in conjunction and agreement with the SAG. Where Ameren and the SAG cannot come to an agreement, Ameren is directed to provide savings calculations based on both Ameren's and the SAG's proposed NTG ratios. The Commission will determine which it finds to be the more appropriate NTG ratio value.

Turning next to the timing for updating fixed values, the AG expressed some concerns with Ameren's proposal for updating unit savings and NTG ratios, and in response, Ameren modified its proposal. Among other things, Ameren's modified proposal, increases the speed at which new fixed values are implemented. It appears that Ameren's modified proposal, as described above, would effectively mitigate the concerns raised by the AG. Staff recommends that load shape and useful life measures be updated on an ongoing basis along with other items in a TRM. ~~Staff's Brief cites ICC Staff Ex. 1.0 at 19-20 in support of this recommendation. The cited testimony, however, does not address this issue.~~ The Commission finds that by requiring these measure-level load shape and useful life values to be updated annually along with the measure-level savings values, Ameren will be able to more accurately determine whether a particular measure is still cost-effective and adjust its portfolio for the next Plan Year appropriately. This is ~~no~~ evidence to support Staff's recommendation and it is therefore adopted~~rejected~~. The Commission finds that the record of this proceeding supports adopting Ameren's modified proposal for updating unit savings and NTG ratios, as explained in the rebuttal testimony of Ameren witness Weaver, Ameren Ex. 10.0, subject to Staff's modifications previously referenced.

The AG and NRDC-ELPC express concern about realization rates and insist that realization rates should not be deemed. They also believe that all planning estimates of realization rates should be 1.0. The AG suggests the Commission conclusion should be

consistent with the SAG NTG framework, AG Exhibit 1.0 and the Settlement Stipulation agreed to in the ComEd case, Docket No. 10-0570. NRDC-ELPC indicate they are open to the realization rate methods discussed in the rebuttal testimony of Ameren witness Weaver.

Having reviewed the record, it appears that the parties raised legitimate concerns with respect to Ameren's original definition of realization rates and calculations. Ameren witness Weaver suggests that provided the Commission directs the independent evaluator to calculate Plan energy savings as the product of verified participation, unit savings, and NTG ratios, and if the Commission provides guidance with regard to the use of fixed/deemed values as well as prospective/retrospective application, then all issues related to realization rates results can be addressed through the definition of fixed/deemed values or through the independent evaluator's assessment of retrospective evaluation results. (See Ameren Ex. 10.0 at 21-24) It appears to the Commission that Mr. Weaver's assessment of the situation is correct. Additionally, the Commission believes that this order contains sufficient guidance regarding that it should be possible to avoid the issue of deeming realization rates. In sum, it appears that the recommendations regarding realization rates contained in Ameren Ex. 10.0 are reasonable and should therefore be adopted.

(ALJPO at 67-71)

### **XIII. Exception 11: SAG**

While Staff agrees with the ALJPO conclusion declining to extend decision-making authority to the SAG, it appears that the ALJPO inadvertently omitted a concluding sentence approving a continuation of the SAG consistent with the Commission's Order in Docket No. 07-0539, as explained in Staff's Brief at 74-78. Staff therefore proposes language in Section XV of this BOE to strengthen the Commission's conclusion in this regard, which is included and made a part of the alternative language of the ALJPO in Section IV.F., Commission Analysis and Conclusion.

#### **XIV. Exception 12: Motors Program**

Although Staff agrees with the ALJPO conclusion directing Ameren to adopt the AG's proposed modification to Ameren's proposed motors program, it appears that the ALJPO inadvertently omitted a concluding sentence addressing the AG's concerns related to a huge number of free riders and the corresponding adjustment necessary in the NTG ratio values deemed for the motors program.

The AG notes in its Brief that federal standards go into effect this month that eliminate most inefficient motors. Staff agrees with the AG that this clearly will result in a huge number of free riders. Considering the aforementioned concern of the AG regarding the impact of new federal standards and the fact that Ameren's motors program has evaluated NTG ratios between 12 and 30 percentage points lower than that proposed in its Plan, Staff believes that the record supports having a separate NTG ratio value for the motors program. (Staff Brief at 69; AG Brief at 30) Staff recommends the Commission direct Ameren to include updated NTG ratio values for all three years in its Revised Electric and Gas Energy Efficiency and Demand Response Plan in a compliance filing in this docket. In addition, Ameren should provide supporting documentation for the updated NTG ratio values based on data from Ameren's service territory including draft reports and survey findings from its energy efficiency programs. Staff therefore proposes language in Section XV of this BOE to strengthen the Commission's conclusion in this regard, which is included and made a part of the alternative language of the ALJPO in Section IV.F., Commission Analysis and Conclusion.

## **XV. Exception 13: HEP**

Staff agrees with the ALJPO conclusion that supports NRDC-ELPC's goals of increasing energy savings by requiring modification of the whole-home audit (HEP) program.

Therefore, Staff recommends that the ALJPO's language on pages 84-85 under Section IV.F., Commission Analysis and Conclusion, be modified as follows:

### **F. Commission Analysis and Conclusion**

Ameren requests that the Commission grant it the flexibility to adjust all portfolio elements as need to achieve portfolio success. Staff supports Ameren's proposal, which it says proved successful in the first plan. While both the AG and NRDC-ELPC generally support the concept that Ameren should be granted flexibility, they recommend restrictions on Ameren's flexibility. As discussed elsewhere in this order, the SAG has proved quite effective thus far and Ameren insists it is committed to continued participation in the SAG. Additionally, it does not appear that any party is suggesting that Ameren has abused the flexibility that the Commission has thus far granted it. Were Ameren to abuse the flexibility granted it, the Commission would, of course, take steps necessary to address such a situation. Given the that Ameren is ultimately responsible for achieving portfolio success, and the other circumstances present, it is not clear that the limitations on Ameren's flexibility proposed by the AG or NRDC-ELPC are necessary, at this point in time. The Commission once again grants Ameren the flexibility to administer its programs in the same manner and subject to the same requirements that it has been granted to administer its previous plans. (See, Final Order, Docket No. 07-0539, Order at 26, (Feb. 6, 2008)) The Commission believes the level of flexibility granted in Plan 1 is sufficient to address Intervenor's concerns and therefore approve the same level of, and application of, flexibility as granted in Docket No. 07-0539.

Ameren, Staff, and CUB recommend that the role of the SAG continue essentially unchanged. In contrast, the AG

recommends that the SAG be the decision-making party on broad EM&V issues. Among other things, the Commission is concerned about the suggestion to grant stakeholders decision-making authority, as it raises the possibility of a deadlock, and gives rise to the possibility of conflicts of interest arising in the context of delivering the optimal programs and measures to the ratepayers. Finally, it appears that granting stakeholders decision-making authority would be inconsistent with the rationale articulated in the Final Order in Docket No. 07-0539, and the original intent of the group, which was for it to be advisory only, and which has been effective. The Commission finds that extending decision-making authority to the SAG is not appropriate at this time. This Commission expands the Illinois Energy Efficiency Stakeholder Advisory Group (SAG) to cover the gas energy efficiency programs, which is consistent with the approach that Ameren and that SAG have already been taking. In addition, the SAG is directed to file the reports related to its responsibilities articulated in the Final Order in Docket No. 07-0539 as well as those articulated in this Order, via the Commission's e-Docket system in Docket No. 10-0568.

With regard to banking savings, Ameren has suggested that to the extent ComEd is allowed to bank savings, Ameren should be granted the same ability. The Commission finds no reason that Ameren and ComEd should be treated differently with regard to banking savings. The Commission grants Ameren the ability to bank savings to the same extent such ability is granted to ComEd in Docket No. 10-0570.

With regard to administrative and marketing costs, it is not entirely clear if there is a dispute between Ameren, the AG, and CUB. The Act requires that energy savings targets must be achieved within the spending limits set forth in Sections 8-103(d) and 8-104(d); resources dedicated to evaluation may not exceed 3% of portfolio resources; and no more than 3% of expenditures on energy efficiency measures may be allocated for demonstration of breakthrough equipment and devices. To the extent requested by any party, the Commission declines to extend spending limits to categories of costs not set by the Act. CUB's requests that the Commission direct Ameren to provide an annual report on marketing costs for each residential and business program to SAG members. Given that the SAG appears to be functioning in an effective manner as a cooperative process, the Commission is not inclined to insert itself into that process at this time. Nevertheless, the Commission encourages Ameren and CUB to use the SAG

process to address this issue, to the extent there is disagreement, and ensure that Ameren complies with the requirements to Sections 8-103(d) and 8-104(d) of the Act.

The AG has expressed concerns with Ameren's proposed business motors program. While acknowledging that it makes sense to encourage customers to replace existing inefficient motors early, the AG urges the Commission to adopt a very limited program targeted only at customers with large motors that plan to rewind rather than replace them. Were the Commission to adopt the AG's recommendation, the AG believes it would require a significant redesigned delivery strategy. While Ameren's brief suggests that it appreciates the AG's concern, it apparently did not appreciate it enough to respond in testimony. The Commission finds that the record supports the AG's proposed modification of Ameren's proposed motors program and Ameren is directed to do so. In addition, the AG notes in its Brief that federal standards are going into effect this month that eliminate most inefficient motors. This Commission agrees with the AG that this clearly will result in a huge number of free riders. Considering the aforementioned concern of the AG regarding the impact of new federal standards and the fact that Ameren's motors program has evaluated NTG ratios between 12 and 30 percentage points lower than that proposed in its Plan, the Commission finds that the record supports having a separate NTG ratio value for the motors program. (Staff Brief at 69; AG Brief at 30) The Commission directs Ameren to include updated NTG ratio values for all three years in its Revised Electric and Gas Energy Efficiency and Demand Response Plan in a compliance filing in this docket. Ameren is directed to provide supporting documentation for the updated NTG ratio values based on data from Ameren's service territory including draft reports and survey findings from its energy efficiency programs. This Commission proposes that a SAG meeting may be an appropriate venue to discuss the proposed NTG ratio values to have deemed for each year of the 3-year Plan cycle. Ameren is directed to develop the NTG ratio values for its revised EE Plan in conjunction and agreement with the SAG. Where Ameren and the SAG cannot come to an agreement, Ameren is directed to provide savings calculations based on both Ameren's and the SAG's proposed NTG ratios. The Commission will determine which it finds to be the more appropriate NTG ratio value.

Ameren has proposed a behavior modification program limited to 50,000 customers pending the evaluation of the results of a prior pilot program. Both the AG and CUB express concerns with

Ameren's proposal, although the AG indicates that it understands why Ameren has proposed such a program. The Commission review of the record indicates that the proposal has the potential to assist Ameren in meeting the energy efficiency goals. While the behavior modification program is not without its shortcomings, the Commission believes that by limiting the scope of the program at this time, Ameren has made a reasonable proposal. CUB's suggestion to apply the California Experimental design, while well intended, appears to be overly burdensome. This view is supported by CUB's own concern about the potential costs. The Commission declines to accept CUB's recommendation in this regard.

As discussed above, Ameren's plan includes a HEP program for residential customers. NRDC-ELPC urge the Commission to require that the HEP program be modified to produce greater energy savings. ~~While~~Considering the additional gas funds Ameren is directed to spend, the Commission believes NRDC-ELPC's goals are laudable, and accordingly this Commission directs Ameren to adopt more aggressive incentives in its comprehensive whole-home audit (HEP) program to encourage the installation of cost-effective measures beyond CFLs and faucet aerators.~~it is not clear how the Commission or Ameren can achieve them. Unfortunately, NRDC-ELPC's recommendations lack sufficient detail to allow the Commission to adopt them in this proceeding.~~

(ALJPO at 84-85)

## **XVI. Exception 14: Banking Energy Savings**

In Ameren's Brief on page 101, Ameren incorrectly cited Staff as commenting on banking savings. To correct this, Staff recommends the following edits to the ALJPO's language on page 77, Section IV.C., Banking Savings.

### **C. Banking Savings**

Ameren says it does not have a position in its Petition on banking energy savings across program years. However, Ameren believes the most appropriate policy regarding the accumulation of savings across program years is demonstrated in the gas energy efficiency legislation Section 8-104(c) of the Act. Also, Ameren

believes that applying this method of accumulating savings would provide consistency among utility portfolios. Ameren does not anticipate banking many savings. ~~But as noted by Staff witness Hinman, to the extent that the Commission allows ComEd to bank its savings, Ameren believes it should be allowed to do so as well. Ameren agrees with Staff's tacit recommendation and asks that the Commission allow Ameren to bank excess savings.~~

(ALJPO at 77)

## **XVII. Exception 15: DCEO Position**

The ALJPO states that the DCEO plan is reasonable and that the Commission does not think it is necessary or appropriate to require or order the changes that Staff, the AG, and NRDC-ELPC have proposed. (ALJPO p. 104) The ALJPO appears to afford substantial deference to DCEO, citing DCEO's argument that the Commission has limited authority over DCEO. Id. The Commission should reject this argument. It is clear from the language of the statute that the Commission was also given authority to review the entirety of Ameren's Plan, including the DCEO portion, and to approve the Riders to collect the funds to pay for these plans.

Section 8-103(e) provides, in relevant part, that:

Electric utilities shall be responsible for overseeing the design, development, and filing of energy efficiency and demand-response plans with the Commission. Electric utilities shall implement 100% of the demand-response measures in the plans. Electric utilities shall implement 75% of the energy efficiency measures approved by the Commission, and may, as part of that implementation, outsource various aspects of program development and implementation. The remaining 25% of those energy efficiency measures approved by the Commission shall be implemented by the Department of Commerce and Economic Opportunity, and must be designed in conjunction with the utility and the filing process.

220 ILCS 5/8-103(e) (emphasis added)

It is clear from this language that all energy efficiency measures must be approved by the Commission, regardless of whether they are implemented by the utility, the DCEO, or a third-party contractor to which “various aspects of program ... implementation [have been outsourced]”. Thus, without regard to the question of what jurisdiction the Commission has over DCEO, the fact is that it has the right to approve, and concomitantly to decline to approve, energy efficiency measures proposed by DCEO. Put another way, the Commission is, pursuant to a specific statutory delegation of authority, approving or declining to approve specific measures. The question of its authority over DCEO is not relevant.

Accordingly, Staff believes the Commission can, reasonably, appropriately and indeed in a manner consistent with its statutory charge, order that the DCEO section of Ameren’s plan be modified to include Staff’s recommendations.

Moreover, the Commission has a responsibility to ratepayers to ensure those funds are used effectively.

Ameren’s overall plan does not meet the statutory goals set forth in Section 8-103(b) of the PUA. Part of the reason it does not meet the goals is that DCEO reduced the share of kWh it planned to achieve in this plan to 15% from the 20% of kWh it planned to achieve in the previous plan. A Commission order requiring DCEO to adopt Staff’s position on “lost opportunities,” will increase both the kWh nor therm savings achievable in this plan, benefiting both ratepayers and taxpayers.

It is also appropriate for the Commission to order DCEO to remove the Building Energy Code Compliance Program and to exclude federal facilities from the list of government agencies eligible to receive ratepayer funds. None of the savings from

these programs are incremental as these investments are required by other laws. As such, there are no incremental benefits, and the Total Resource Cost test ratio for these programs is zero.

As Dr. Brightwell pointed out in his testimony, DCEO witness Baker testified that the Building Energy Code Compliance Program is designed to achieve the minimum requirements of state and federal laws. (Staff Ex. 2.0, pp. 13-14) An Executive Order requires federal facilities to upgrade to cost-effective energy efficient measures whenever renovations are made to those facilities. These funds merely serve as a transfer from ratepayers to either DCEO or the federal government to perform activities that these organizations are elsewhere required to do by law. There is no incremental energy savings associated with any of these activities.

This clearly contradicts the intent of the General Assembly which stated that requiring investment in cost-effective energy efficiency measures will reduce the direct and indirect costs to consumers. (220 ILCS 5/8-103(a) and 5/8-104(a)) Consumers do not benefit directly or indirectly by allowing ratepayer funds to be distributed to projects that must be completed in the absence of those funds.

For the reasons stated above, Staff recommends the following changes to the Commission Analysis and Conclusions section found on page 104 of the ALJPO:

Staff, the AG, and NRDC-ELPC have raised concerns with some aspects of DCEO's plan and made proposes for changes in some instances. In the Commission's view, DCEO is, for the most part, given great latitude in the statute. DCEO asserts that its portfolio passes the TRC test and the Commission has limited authority over DCEO. The Commission disagrees with DCEO's assertion. DCEO files its plan as part of Ameren's overall plan and the Commission has the authority to approve or not approve that plan, or approve it with modifications. DCEO is using ratepayer

money and the Commission has an obligation to ensure it is used effectively and within the parameters of the law. This point is especially true since Ameren's overall plan does not meet the goals of Section 8-103(b) of the PUA and that DCEO is reducing its share of savings targets from the first three-year plan. The Commission does not believe it is appropriate to allow DCEO to pursue suboptimal savings under these circumstances. The Commission therefore orders DCEO to follow Staff's guidelines regarding "lost opportunities." The Commission also agrees with Staff that the Building Energy Code Compliance program and funding for projects at federal facilities do not provide incremental savings. There are no direct or indirect benefits to ratepayers from these investments. This is clearly contrary to the intent of the gas and electric energy efficiency laws. DCEO is ordered to remove these programs from its portion of Ameren's Plan. Given the circumstances, and the Commission's belief that, overall, DECO's proposed plan is reasonable, the Commission does not believe it is necessary or appropriate to require or order changes to DECEO's plan which other parties have suggested.

#### **XVIII. Exception 16: Recovery of Incentive Compensation Expense**

One of the purposes of this proceeding is to determine the decisional prudence of the proposed energy efficiency plans. The subsequent annual reconciliations provide an opportunity for Staff to conduct a prudency review of the costs incurred and recovered through the Riders in furtherance of the plan's goals. In order to obtain approval of an incentive compensation program to be considered for recovery through Riders EDR and GDR, the proposed energy efficiency (EE) plans should include an incentive compensation program which clearly demonstrates ratepayer benefit in the context of energy efficiency. This would lead to a decisional prudence determination of the incentive compensation program in the Commission's approval of the three-year Plan and less uncertainty for the Company regarding the recovery of incurred costs. Litigating

the merits of an incentive compensation program on an annual basis in the annual reconciliations is neither efficient nor productive for any interested party and leads to increased uncertainty and prolonged reconciliation dockets for all parties involved. Staff recommends that the language in the Incentive Compensation section, beginning on page 89, be modified as follows:

## **2. Staff's Position**

Staff believes that the recovery of incentive compensation costs should be excluded from Riders EDR and GER. Staff notes that Ameren avers that there are no incentive compensation costs budgeted in the proposed Plan. Staff states that if no incentive compensation costs for Ameren employees are included in the proposed Plans, then the recovery of such costs through the Riders would not be reasonable and prudent.

Staff recognizes that Ameren may hire incremental employees in the future to administer the Plans. The expenses for those incremental employees would be a modification to the Plans as they are currently proposed. Staff says such modifications would void any prior determination by the Commission of the decisional prudence of the Plans. In addition, Staff claims the Commission has previously determined that an annual reconciliation proceeding is not the appropriate place for litigating the issue of incentive compensation. Staff contends that should the Company seek recovery of future incremental incentive compensation expense for energy efficiency employees, then the 3 year energy efficiency plan filing should include an incentive compensation plan which demonstrates ratepayer benefits in the context of energy efficiency. Thus, the decisional prudence of the Company's incentive compensation plan for energy efficiency employees could be litigated once every three years, rather than annually in the reconciliation proceedings. Therefore, only the amount of costs incurred would be subject to a prudence review during the annual reconciliations. Staff maintains that the Riders should be modified to include language that excludes the recovery of costs which are not included in the Plans.

## D. Commission Analysis and Conclusion

Consistent with the above language modifications, Staff recommends the following revisions on page 90 of the ALJPO:

Staff believes that the recovery of incentive compensation costs should be excluded from Riders EDR and GER. Ameren objects to Staff's proposal. The Commission finds the suggestion that it should reach a conclusion regarding incentive compensation in this proceeding to be premature. ~~misguided on many levels.~~ The Commission need not, and should not, make any findings regarding the prudence of future incentive compensation expenses this issue in this proceeding because the Plan did not include an incentive compensation program. The Commission finds that the annual reconciliations are a prudency review of the costs incurred and collected through Riders EDR and GER in the furtherance of the EE plans goals and are not appropriate proceedings for litigating the merits of an incentive compensation plan. Thus, without an incentive compensation program in Ameren's EE plan, the Commission is unable to allow such costs to be recovered through Riders EDR and GER. In Ameren's next three-year plan, the Company should present an incentive compensation plan that would result in ratepayer benefits in the context of energy efficiency. In the subsequent annual reconciliations, the relationship of the incentive compensation program to EE will not need to be addressed and just the reasonableness and prudence of costs will have to be shown. In conclusion, the Commission considers it unnecessary for the tariff language to indicate that incentive compensation costs cannot be recovered through Riders EDR and GDR because costs associated with an unapproved incentive compensation plan are not recoverable through an energy efficiency rider.

## XIX. Conclusion

For the reasons set forth herein in Staff's Brief and this Brief on Exceptions, Staff of the Illinois Commerce Commission respectfully requests that that the Commission's Final Order in this proceeding reflect all of Staff's recommendations in this proceeding.

Respectfully submitted,

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