

**STATE OF ILLINOIS  
ILLINOIS COMMERCE COMMISSION**

---

Illinois Commerce Commission	:	
On its Own Motion	:	
	:	
-vs-	:	Docket No. 12-0132
	:	
MidAmerican Energy Company	:	
	:	
Evaluation of MidAmerican Energy Company	:	
Energy Efficiency Programs	:	

---

**REPLY BRIEF OF THE STAFF  
OF THE ILLINOIS COMMERCE COMMISSION**

Jessica L. Cardoni  
Nicole T. Luckey  
Angelique Palmer  
Office of General Counsel  
Illinois Commerce Commission

160 North LaSalle Street  
Suite C-800  
Chicago, Illinois 60601  
(312) 793-2877

527 E. Capitol Avenue  
Springfield, Illinois 62701  
(217) 785-8439

*Counsel for the Staff of the  
Illinois Commerce Commission*

September 11, 2012

## Table of Contents

<b>I.</b>	<b>OVERVIEW .....</b>	<b>1</b>
<b>II.</b>	<b>ARGUMENT.....</b>	<b>2</b>
	A. LEGAL STANDARD.....	2
	B. CLARIFICATION OF STAFF'S RECOMMENDATIONS AND PROGRAM TERMINATION AND/OR CONTINUATION.....	3
	C. MEC'S CHALLENGES TO STAFF'S RECOMMENDATIONS .....	9
	1. <i>Consistency and Avoidance of Customer Confusion.</i> .....	9
	2. <i>Appropriate Evaluation Method and Metrics Used By Staff</i> .....	12
	a) Appropriate Evaluation Method .....	12
	b) Metrics Used by Staff .....	14
<b>III.</b>	<b>CONCLUSION .....</b>	<b>16</b>

**STATE OF ILLINOIS  
ILLINOIS COMMERCE COMMISSION**

---

Illinois Commerce Commission	:	
On its Own Motion	:	
	:	
-vs-	:	Docket No. 12-0132
	:	
MidAmerican Energy Company	:	
	:	
Evaluation of MidAmerican Energy Company	:	
Energy Efficiency Programs	:	

---

**REPLY BRIEF OF THE STAFF  
OF THE ILLINOIS COMMERCE COMMISSION**

Staff of the Illinois Commerce Commission ("Staff"), by and through its undersigned counsel, pursuant to Section 200.800 of the Illinois Commerce Commission's ("Commission" or "ICC") Rules of Practice (83 Ill. Adm. Code 200.800), respectfully submits its Reply Brief in the above-captioned matter.

**I. OVERVIEW**

The Initial Brief of the Staff of the Illinois Commerce Commission ("Staff Initial Brief" or "Staff IB") was filed on August 31, 2012. The Initial Brief of MidAmerican Energy Company ("MEC IB" or the "Company IB") was also filed on August 31, 2012. First, Staff will summarize its recommendations. Then, Staff will respond to some of MEC's arguments from its IB. Some of the issues raised in the parties' initial briefs were addressed in Staff's IB and, in the interest of avoiding unnecessary duplication, Staff has not repeated every argument or response previously made in Staff's IB. Thus, the

omission of a response to an argument that Staff previously addressed simply means that Staff stands on the position taken in its IB.

## **II. ARGUMENT**

### **A. Legal Standard**

Subsections (a) and (d) of Section 8-408 of the Act state as follows:

(a) Any electric or gas public utility with fewer than 200,000 customers in Illinois on January 1, 2007 that offers energy efficiency programs to its customers in a state adjacent to Illinois may seek the approval of the Commission to offer the same or comparable energy efficiency programs to its customers in Illinois. For each program to be offered, the utility shall submit to the Commission:

- (1) a description of the program;
- (2) a proposed implementation schedule and method;
- (3) the number of eligible participants;
- (4) the expected rate of participation per year;
- (5) the estimated annual peak demand and energy savings;
- (6) the budget or level of spending; and
- (7) the rate impacts and average bill impacts, by customer class, resulting from the program.

The Commission shall approve each program demonstrated to be cost-effective. Programs for low-income customers shall be approved by the Commission even if they have not been demonstrated to be cost-effective if they are demonstrated to be reasonable. An order of the State agency that regulates the rates of the utility in the adjacent state that finds a program to be cost-effective or reasonable shall be sufficient to demonstrate that the program is cost-effective or reasonable for the utility's customers in Illinois. Approved programs may be delivered by the utility or by a contractor or agent of the utility.

\*\*\*\*\*

(d) A public utility that offers approved energy efficiency programs in the State may do so through at least December 31, 2012. The Commission shall monitor the performance of the energy efficiency programs and, on or before October 31, 2012, the Commission shall make a determination regarding whether the programs should be continued beyond calendar year 2012. The Commission shall also file a written report with the General Assembly explaining the basis for that determination and detailing the results of the energy efficiency programs, including energy savings, participation numbers, and costs.

(220 ILCS 5/8-408(a) and (d)).

**B. Clarification of Staff's Recommendations and Program Termination and/or Continuation**

In MEC's IB, there appears to be confusion on the part of the Company in understanding and characterizing Staff's recommendations to the Commission. In an effort to clarify, and not reiterate all arguments clearly delineated in Staff's Direct Testimony and IB, Staff succinctly states its alternative recommendations as follows:

1. Staff does not agree with MEC that if the Commission allows the energy efficiency ("EE") programs to continue to be offered under Section 8-408, then on a going-forward basis, Illinois is compelled to defer to the Iowa Utilities Board ("IUB"), and all programs approved in Iowa may be implemented in Illinois regardless of the fact that they may not be cost-effective in Illinois. If this "all-or-nothing" approach is indeed MEC's position, Staff recommends that the Commission take the "nothing" alternative, and decline to authorize MEC to continue its programs under Section 8-408 after December 31, 2012. Therefore, if the Commission determines that subsection (a) is the only EE plan approval provision that may be used under

Section 8-408 of the Act, instead of subsection (d) upon which this proceeding was initiated, then to protect the interests of Illinois ratepayers, the Commission should discontinue MEC's EE programs offered under Section 8-408 of the Act. (Staff Ex. 1.0, pp. 3, 11-13).

2. If Recommendation (1) is rejected, Staff does not oppose extending certain programs for a year subject to the following conditions:
  - a. The Commission direct MEC to submit a compliance filing no later than December 3, 2012;
  - b. The Commission order MEC to conclusively demonstrate that those programs and measures it intends to offer in 2013 are projected to be cost effective in Illinois;
  - c. The Commission order MEC to discontinue the Residential Equipment and Residential New Construction programs because they have consistently provided negative net benefits to ratepayers and there is no evidence in this proceeding to demonstrate that they will improve;
  - d. The Commission direct MEC to exclude offering incentives for those measures that are found to be cost-ineffective;
  - e. The Commission direct MEC to provide detailed information regarding the modified measure mix and program offerings, including, but not limited to, estimated cost-effectiveness, savings, expected participation, and budgets. The compliance filing must persuasively demonstrate cost-effectiveness of the 2013 modified measure mix and program offerings for Illinois.

- f. The Commission direct MEC exclude offering incentives for measures that do not exceed energy codes and standards.
  - g. The Commission order MEC to separate out the upstream compact fluorescent lamp ("CFL") component from the Residential Audit and Small Business programs in its quarterly reports to the Commission and in any compliance filings in this docket. This would allow for more transparent evaluation of the programs.
- 3. Alternative Recommendation (2) (Withdrawn). While the Commission is required by Section 8-408(d) to file a written report with the General Assembly explaining the basis for its determination regarding whether MEC's EE programs should be continued beyond calendar year 2012, it is not clear from the plain language of the statute that the General Assembly is required to act upon that report in any way. Therefore, it is Staff's position that Recommendations (1) and (3), in which the Commission would either deny, or approve MEC's EE plans on a basis other than that specified under Section 8-408(a), respectively, would allow MEC the opportunity to provide cost-effective EE programs in Illinois, while prohibiting the utility from continuing cost-ineffective programs to the detriment of Illinois ratepayers.
- 4. Alternative Recommendation (3). Lastly, Section 8-408(d) of the Act provides the Commission with broad legal authority to monitor the energy efficiency programs

offered by utilities pursuant to Section 8-408 and, in determining whether the programs should be continued beyond calendar year 2012.

- a. Staff recommends that pursuant to Section 8-408(d), the Commission should order MEC to provide the projected level of cost-effectiveness for each EE program and measure that it proposes to offer to its Illinois customers in each EE plan filing before the Commission, in addition to the seven items specified in Section 8-408(a) of the Act. (Staff Ex.1.0, p. 14; Staff Ex. 2.0, pp. 11-12). It is imperative that the Commission be permitted to closely review a utility's EE plans in order to protect Illinois ratepayers from funding measures, programs, or EE plans that provide negative net benefits to ratepayers in Illinois.
- b. Further, at the suggestion of the Company, MEC should provide justification for including any programs or measures that are projected to be cost-ineffective for Illinois customers in the plan filings for the Commission's consideration.
- c. The Commission should also direct MEC to separate out the upstream CFL component as a separate program in any future EE plan filings. Staff recommends that MEC should be required to report expenses, savings, and cost-effectiveness for the upstream CFL component of its Small Business and Residential Audit programs as a separate program, given that it has significantly different delivery strategy and implementation costs from the other programs with which it is currently grouped. (Staff Ex 1.0, p. 14). This information would allow for a more transparent evaluation of the programs.

5. If the Commission declines to adopt Recommendations (1) and (3), which Staff recommends the Commission should not, and the Commission determines that subsection (a) is the only EE plan approval provision that may be used under Section 8-408 of the Act, instead of subsection (d) upon which this proceeding was initiated, and the Commission does not want to discontinue the EE program offerings under Section 8-408, then Staff would recommend that the Commission allow MEC to continue offering certain Section 8-408 programs beyond December 31, 2012 contingent on MEC persuasively demonstrating cost-effectiveness of proposed programs for Illinois in each EE plan filing pursuant to Section 8-408(a). If the Company were willing to stipulate that it would not use the findings of the IUB to demonstrate cost-effectiveness in future proceedings, then this may provide a viable option for the Commission to allow the programs to continue. Staff has requested that MEC clarify its position regarding whether it is committed to demonstrating cost-effectiveness of proposed programs for Illinois. To date, the Company has not done so. Staff does not want the Commission to rely on a finding from the IUB regarding cost-effectiveness of Iowa programs in all future plan filings under Section 8-408 of the Act. If MEC commits to this condition, Staff believes this alternative would better protect Illinois ratepayers than if the programs continued under Section 8-408(a) without such condition. Subject to the foregoing, and in the event the Commission rejects Recommendation (1) and (3) (which Staff recommends that the Commission should not), and in the event MEC commits to offer only Illinois cost-effectiveness analysis as a basis for demonstrating cost-

effectiveness of proposed programs under Section 8-408(a), Staff would recommend that the Commission find that MEC's EE programs should be allowed to continue beyond December 31, 2012 contingent on condition that MEC shall be required to persuasively demonstrate cost-effectiveness of proposed programs for Illinois in each EE plan filing pursuant to Section 8-408 of the Act and it shall not offer an IUB-Order in the proceeding as a demonstration of cost-effectiveness.

It appears that MEC expanded the scope of Staff's recommendations to apply to all programs which were found to be cost-inefficient under any test. Staff recommends that two programs, the Residential Equipment and Residential New Construction program, be terminated due to their demonstrated and clear cost-*ineffectiveness* over the past four years. The data presented by MEC and evaluated by Staff point out that MEC should have discontinued these two programs, since they have resulted in the expenditure of over \$100,000 of ratepayer funds in a 4-year time span, without anything like commensurate benefits. (MEC Ex. 2.1, pp. 6, 15; *Tr.*, August 16, 2012, p. 38). MEC's own evaluation supports Staff's findings regarding these two programs and also notes that two additional programs, the Small Commercial Audit and the Commercial New Construction programs, were found to be cost-ineffective under the TRC test, which is the primary test used to evaluate other utility EE programs in Illinois. (Staff IB, pp. 21, 24; MEC IB, p. 9; MEC Ex. 2.0, p. 9). Staff did not argue that these two additional programs be discontinued.

Faced with clear evidence that MEC's portfolio includes cost-ineffective programs that do not provide a net-benefit to Illinois customers, MEC is compelled to argue that past program performance should not be the basis for determining whether or not a program

should be continued in the future. Staff has requested, on several occasions, that MEC provide evidence in the proceeding that could demonstrate the program performance would improve going forward on any basis; MEC has not done so. (Staff IB, p. 21).

It is for these reasons that Staff recommends that the Commission discontinue the Residential Equipment and Residential New Construction programs. These programs have consistently provided negative net benefits to ratepayers and there is no evidence in this proceeding to demonstrate that they will improve. (Staff IB, pp. 21-24). Of course, MEC would not be prevented from proposing these programs in its Plan filing next year, in the event the Commission rejects Recommendation (1), if MEC believed it had an appropriate action plan in place to ensure the programs would result in net benefits.

**C. MEC's Challenges to Staff's Recommendations**

**1. Consistency and Avoidance of Customer Confusion.**

In the Company's IB, MEC argues that because it only serves a small number of Illinois customers,<sup>1</sup> it is reasonable for the Company to market all of its Iowa programs in the adjacent Illinois market without differences in program design or rebate levels, regardless of whether they are cost-effective in Illinois or not. (MEC IB, p. 1; MEC Ex. 5.0, p. 4). In support of its argument, MEC emphasizes the importance of administrative efficiency and program consistency throughout its service territories, noting that offering identical programs in both states minimizes regulatory costs. (Id.). In addition, the Company notes that "[o]ffering differing programs in the same region may confuse

---

<sup>1</sup> The Company describes its service territory in Illinois as a relatively small region primarily concentrated in the Quad Cities, directly contiguous to its Iowa service territory. (MEC IB, p. 2).

customers and trade allies." (Id.). First, it is not clear to Staff why the "relatively small" Illinois customer base should shoulder the costs of EE programs which may be beneficial to Iowa ratepayers but which are cost-ineffective, and not beneficial to Illinois customers. The fact that MEC's Illinois customer base is small is all the more reason to protect those ratepayers from rate increases due to EE programs which are not cost-effective in Illinois.

Second, as Staff noted in its IB, MEC offers no concrete evidence to support its contention that offering different programs to its Illinois and Iowa customers would somehow create customer confusion. (*Tr.*, August 16, 2012, p. 21). Currently the Company offers an appliance recycling program in Iowa, and not in Illinois, but when asked, Company witness Ms. Munns could not identify any issues of customer confusion that have arisen as a direct result of offering different programs. (*Tr.*, August 16, 2012, pp. 47-50). To date, MEC has not provided an explanation to address the inherent inconsistency between its current practice of offering different programs in different states, and its present argument that it should now be permitted to offer the same programs in all states, regardless of whether they are cost-efficient in Illinois. (*Tr.*, August 16, 2012, p. 12).

In response to Company data request ("DR") MEC 1.10, which addressed consistency in program offerings, Staff responded that different customer segments should, appropriately, be treated differently:

[t]here may be significant differences across the areas between states, especially since MEC has been operating programs in Iowa for over a decade, and only four years in Illinois. For example, there could be various customer segments that require different incentive levels - thus, it is not necessarily the case that "overall program success [would be] more likely" under this "one size fits all" approach.

(Staff Group Ex. 1, p. 12).

Therefore, regardless of the size of the customer base, MEC should not be allowed to continue programs which are cost ineffective for Illinois customers simply because MEC may suffer administrative inconvenience by removing such programs from its portfolio. In fact, the tailoring of programs to provide 'net benefits' to customers is nothing new as demonstrated by other utility companies, such as Ameren Illinois Company, which successfully offer different programs in nearby large metropolitan areas such as St. Louis on the one hand, and adjacent Illinois cities on the other. (*Tr.*, August 16, 2012, pp. 49-50). Interestingly, both the MEC Illinois-Iowa areas and the Ameren Illinois-Missouri areas are good-sized metropolitan areas separated by the same river, the Mississippi. See, "Annual Estimates of the Population of Metropolitan and Micropolitan Statistical Areas: April 1, 2010 to July 1, 2011". 2011 Population Estimates. United States Census Bureau (Quad Cities Metropolitan Statistical Area with 2011 population of 381,342; St. Louis Metro Area with 2,817,896).

Clearly the General Assembly, in drafting Section 8-408, directed the Commission to review the EE programs offered to MEC's Illinois service territory, regardless of its size. (220 ILCS 5/8-408(d)). Section 8-408(d) provides in relevant part that: "[t]he Commission shall monitor the performance of the energy efficiency programs and, on or before October 31, 2012, the Commission shall make a determination regarding whether the programs should be continued beyond calendar year 2012." 220 ILCS 5/8-408(d) (emphasis added). While this provision might, at first blush, be susceptible to a reading in which the Commission is authorized to determine whether all of the programs should continue, or

none of them should, this is not the case. Section 1.03 of the Statute on Statutes, 5 ILCS 70/1.03, provides that: “[w]ords importing the singular number may extend and be applied to several persons or things, and words importing the plural number may include the singular.” Accordingly, the plain meaning of Section 8-408(d) is that the Commission is authorized to determine whether none, one, some or all of MEC’s programs should continue beyond December 31, 2012.

Thus, the Commission's expertise in evaluating energy efficiency programs is recognized in Section 8-408(d). Therefore, MEC should only be permitted to offer energy efficiency programs that provide a net benefit to its Illinois customers, despite its arguments to the contrary.

## **2. Appropriate Evaluation Method and Metrics Used By Staff**

### **a) Appropriate Evaluation Method**

Staff agrees that Section 8-408 of the Act does not detail a specific recommendation for the requirements of program evaluation. However, the language of the Act and the initiating order both clearly state that the Commission shall approve the programs offered only where there are "net benefits". (220 ILCS 5/8-408(a); Initiating Order, February 23, 2012, p. 2). Even MEC agrees that the statute does not restrict what may be used in the Commission's determination. (MEC IB, p. 3). It is Staff's position that although the Commission only mentioned "net benefits of the programs" in its initiating order, this language alone does not restrict the Commission from using whatever evidence arises in the proceeding to inform its decision in this docket.

Section 8-408(a) of the Act clearly states that "the Commission shall approve each program *demonstrated* to be cost-effective." (220 ILCS 5/8-408(a)) (emphasis added). As discussed above, Section 8-408(d) directs the Commission to monitor the performance of the programs and determine whether the programs should continue beyond 2012. From a policy perspective, it does not seem reasonable that the intent of these provisions is to: (1) direct the Commission to monitor the performance of the pilot energy efficiency programs in Illinois; yet then also (2) direct the Commission to ignore the information gleaned through that evaluation in determining how the programs should continue going forward in Illinois, if they should continue at all. (Staff IB, pp. 14-16). Such a reading of the provision would violate the well-settled rule of construction that statutes should be construed so that no term is rendered superfluous or meaningless. See, e.g., Stroger v. Regional Transportation Authority, 201 Ill. 2d 508, 523; 778 N.E. 2d 683, 693 (2002). To review only the information required by Section 8-408(a), and to allow an order from the IUB finding programs to be cost-effective in Iowa as sufficient evidence to demonstrate that they are cost-effective in Illinois, would allow the utility to continue programs in Illinois that are very likely cost-ineffective, without justification and to the detriment of Illinois ratepayers. (Id.).

An IUB Order which states that an EE program is cost-effective in Iowa has not been shown, in reality, to be indicative of a program's cost effectiveness in Illinois, and Section 8-408 alone does not incent a Company to discontinue cost-ineffective programs. Though the IUB may reach conclusions in the interest of Iowa ratepayers, it is not expected to protect the interest of Illinois ratepayers; nor is that its function. This Commission has that responsibility. Staff's analysis is reasonable and shows that two

programs are not cost-effective under any test. All items requested by Staff are reasonable given Section 8-408(a)'s requirement that the programs must be demonstrated to be cost effective. MEC should be ordered to provide information on program and measure basis consistent with Staff's recommendations. (Staff IB, p. 16).

Staff recommends that pursuant to Section 8-408(d) (Recommendation (3)), the Commission should order MEC to provide the projected level of cost-effectiveness for each EE program and measure that it proposes to offer to its Illinois customers in each EE plan filing before the Commission, in addition to the seven items specified in Section 8-408(a) of the Act. (Staff Ex.1.0, p. 14; Staff Ex. 2.0, pp. 11-12).

**b) Metrics Used by Staff**

MEC disagrees with Staff's assessment of the cost-effectiveness and net benefit of the programs it offers to its Illinois customers. (MEC IB, pp. 11-12). In particular, MEC contends that Staff's assessment and recommendations – finding that the programs are not cost-effective because the projected cost-effectiveness used to design the Iowa programs does not necessarily translate to the projected cost-effectiveness for Illinois programs – are unreasonable, and will most likely result in MEC having to stop and restart energy efficiency programs without the regulatory certainty it is afforded under Section 8-408. (MEC IB, pp. 11-12).

MEC contends that the impact evaluation it conducted to determine the net benefits to its Illinois customers is consistent with IUB practice. The Company used Iowa's gross ex-ante savings in its calculations under the Societal Cost Test. (MEC IB, p. 6). In contrast, use of net ex-post savings has been standard practice for other Illinois utilities in

calculating the TRC Test. (MEC IB, p. 8). It is MEC's position that it utilized, and complied with the Commission's directive to provide an impact evaluation. (MEC IB, p. 5; Staff Ex. 1.0, pp. 6-7).

MEC further argues that simply because the portfolio as a whole has been cost-effective historically, that it is reasonable for the Commission to continue all programs in Illinois regardless of clear data demonstrating the cost-ineffectiveness of some of the programs. (Staff Ex. 2.0, p. 4; MEC Ex. 3.0, pp. 3-4; *Tr.*, August 16, 2012, pp. 7-9). The Company confirmed this position at hearing, arguing that the cost-ineffective programs should be allowed to continue until they could be assessed under "normal economic conditions" because they were "long-term" and negatively affected by the economy. (*Tr.*, August 16, 2012, p. 8). The Company could not provide Staff with any parameters or metrics to determine how "normal economic conditions" might be measured, nor could the Company provide Staff with a date certain for when these conditions might resume and the programs might be deemed cost effective to Illinois customers. (*Tr.*, August 16, 2012, pp. 8-9). As demonstrated by MEC's own witness, the Company does not contest that it is requesting that the Commission should approve every program in its entire EE portfolio, including those programs with a demonstrated track record of negative net benefits for its Illinois customers. (*Tr.*, August 16, 2012, pp. 7-9; Staff IB, p. 19).

It is Staff's position that MEC has not shown, as 8-408(a) requires, that each program that it offers to Illinois customers has provided an economic benefit. Staff's assessment was based on MEC's own calculations, which included its Gross Ex-Ante Savings in the Societal Cost Test ("SCT"). Thus, Staff used MEC's own lenient metrics in this determination. Staff only relied on MEC's own metrics due to the delay in receiving

the independent impact evaluation results. Nevertheless, even under the SCT using gross ex-ante savings, MEC's programs are still not cost effective. MEC should not be allowed to argue that its own delay and failure to provide the necessary calculations for analysis of projected cost-effectiveness of its programs, during the four year period prior to this evaluation, is basis to avoid complying with the Act's requirements.

Additionally, it is important to point out that MEC's argument that Staff's recommendation would deprive the Company of the regulatory certainty afforded under 8-408, is unavailing. Section 8-408(d) requires the Commission to assess whether MEC's programs should continue after 2012 based on whether they were shown to be cost effective. However, a clear reading of the language of this section shows that beyond 2012, Section 8-408 does not provide any certainty regarding the continuation of such programs.

Staff's assessment and recommendations, based solely on the information that MEC provided, demonstrate that under any test the Residential Equipment and Residential Construction programs are cost-ineffective. Accordingly, Staff recommends that the Commission decline to authorize MEC to continue these two programs for an additional year that were offered under Section 8-408 after December 31, 2012, based on the insufficient metrics MEC provided in the record.

### **III. Conclusion**

Staff respectfully requests that the Commission's Final Order in the instant proceeding reflect Staff's recommendations in this docket.

Respectfully submitted,

---

JESSICA L. CARDONI  
NICOLE LUCKEY  
ANGELIQUE PALMER  
Office of General Counsel  
Illinois Commerce Commission  
160 N. LaSalle, Ste. C-800  
Chicago, IL 60601  
Phone: (312) 793-2877  
Fax: (312) 793-1556  
E-mail: jcardoni@icc.illinois.gov  
nluckey@icc.illinois.gov  
apalmer@icc.illinois.gov

September 11, 2012

*Counsel for Staff of the  
Illinois Commerce Commission*