

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

Illinois Commerce Commission :
On Its Own Motion :
-vs- :
MidAmerican Energy Company : **12-0132**
: :
Evaluation of MidAmerican Energy :
Company Energy Efficiency Programs. :

ORDER

By the Commission

On February 23, 2012, the Illinois Commerce Commission (“Commission”) issued an order initiating this proceeding in order to make a determination by October 31, 2012, as to whether MidAmerican Energy Company’s (“MidAmerican”, “MEC”, or “Company”) energy efficiency (“EE”) programs should be continued beyond calendar year 2012 as required by Section 8-408(d) of the Public Utilities Act (“Act”).

Although the statute has no specific requirement for the type of program evaluation the Commission must conduct to make its determination, in the Initiating Order, the Commission noted the following Commission Staff observation:

Staff hereby recommends that a docket be initiated to: (1) review the performance of MidAmerican’s EE Programs implemented in Illinois; and (2) make a determination regarding whether the EE Programs should be continued beyond calendar year 2012. Staff further recommends that the Commission direct that MidAmerican must show that its EE Programs have provided net benefits to its Illinois customers.

Initiating Order at 1, citing the February 14, 2012, Staff Report.

A status hearing was held on March 27, 2012, wherein the parties agreed that MidAmerican would file direct testimony on May 25, 2012. On June 4, 2012, the Administrative Law Judge (“ALJ”) issued a Notice of Continuance of Hearing and Notice of Schedule. Pursuant to the schedule, Commission Staff filed direct testimony on June 27, 2012, and MidAmerican filed rebuttal testimony on July 18, 2012. Commission Staff filed rebuttal testimony on July 27, 2012, and MidAmerican filed surrebuttal testimony on August 3, 2012. An evidentiary hearing was conducted on August 16, 2012.

MidAmerican presented the testimony of Diane C. Munns and Charles B. Rea. Commission Staff presented the testimony of Jennifer L. Hinman. The ALJ marked the record “heard and taken” at the conclusion of the August 16, 2012, hearing.

Initial briefs were filed August 31, 2012, and reply briefs were filed on September 7, 2012. The ALJ’s Proposed Order was served on September 24, 2012. Briefs on Exceptions were filed on October 4, 2012 by MidAmerican and Staff.

I. Statutory Authority

Section 5/8-408. Energy efficiency plans for small multi-jurisdictional utilities.

(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.

(b) Notwithstanding the provisions of Section 9-201, a public utility providing approved energy efficiency programs in the State shall be permitted to recover the reasonable costs of those programs through an automatic adjustment clause tariff filed with and approved by the Commission. Each year the Commission shall initiate a review to reconcile any amounts collected with the actual costs and to determine the

adjustment to the annual tariff factor to match annual expenditures. The determination shall be made within 90 days after the date of initiation of the review.

(c) The utility may request a waiver of one or more components of an approved energy efficiency program at any time in order to improve the program's effectiveness. The Commission may grant the waiver if good cause is shown by the utility. Notwithstanding the cessation of the programs, a utility shall file a final reconciliation of the amounts collected as compared to the actual costs and shall continue the resulting factor until any over-recovery or under-recovery approaches zero.

(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.

II. MidAmerican's Position

Overview of Illinois Program Evaluation from 2009-2011

In compliance with the Commission's Order, MidAmerican engaged Tetra Tech Inc., a provider of consulting, technical and engineering services, to conduct an evaluation of MidAmerican's entire Illinois energy efficiency portfolio. The impact evaluation completed by Tetra Tech included verification of recorded energy savings for the Illinois programs, estimates of realization rates, net-to-gross interviews and on-site measurement and verification work for large nonresidential projects. See Rev. MEC Ex. 2.2.

Based on the evaluations presented in testimony, MidAmerican asserted that its energy efficiency programs provided positive net economic benefits for its customers for both electric and gas service under both the Total Resource Cost ("TRC") Test using net ex-post savings and the Societal Test using gross ex-ante savings. MEC Ex. 2.0 at 8; Ex. 2.1. The Societal Test benefit to cost ratio for the Illinois energy efficiency portfolio of programs was 1.68 and the net adjusted TRC benefit to cost ratio was 1.23 on a combined electric and gas basis. *Id.* Total net economic benefits for the combined portfolio were \$15,949,139 under the Societal Test and \$3,900,134 under the net adjusted TRC Test. See MEC Ex. 2.1.

On the electric side, the evaluation showed that MidAmerican's customers saved 32,582,823 kWh (first-year gross savings) over the 2009-2011 period analyzed. MEC Ex. 2.0 at 8. This was 72% of targeted gross savings for the 2009-2011 period. Adjusted net kWh saved were 22,292,295 kWh. *Id.* Electric spending for the three-year period totaled \$6,419,954 which was 91% of the budget. See MEC Ex. 2.1.

On the gas side, MidAmerican's customers saved 1,442,792 therms (first-year gross savings) over the 2009-2011 period analyzed. MEC Ex. 2.0 at 8. This was 146% of targeted gross savings for the 2009-2011 period. Adjusted net therms saved were 1,073,893 therms. Gas spending for the three-year period totaled \$6,226,385 which was 102% of the budget. Id.

Savings and Costs

Mr. Rea explained that MidAmerican's Energy Efficiency Management Information System ("EEMIS"), which tracks energy efficiency activities, contains deemed savings values and savings algorithms developed by MidAmerican and its consultants in the development of MidAmerican's energy efficiency plans. MEC Ex. 2.0 at 3. The deemed savings values and savings algorithms, which are unique to each measure in MidAmerican's portfolio, provide the basis for determining gross ex-ante savings. Gross ex-ante savings from projects that are done in MidAmerican's new construction, custom, and energy analysis programs are calculated on a project by project basis. Id. Consistent with Iowa Utility Board ("IUB") practice, MidAmerican has used these gross ex-ante savings in calculating the Societal Cost Test.

Mr. Rea also explained that MidAmerican made two adjustments to gross ex-ante savings to arrive at net ex-post savings in its analysis. MEC Ex. 2.0 at 4. The first adjustment is a realization rate adjustment, which estimates the percentage of energy savings calculated by MidAmerican through the deemed savings and savings algorithms mentioned above that actually was realized by customers. This adjustment attempts to reflect effects of issues such as customers not using or removing energy efficiency measures. Id. The second adjustment is a net-to-gross, or free ridership adjustment. Inclusion of this adjustment assumes that a certain percentage of customers that received rebates from MidAmerican would have installed energy efficient measures even without the program. The net-to-gross adjustment estimates this level of free ridership by program and reduces gross energy savings by that amount. Id. Mr. Rea also explained that MidAmerican applied the realization and net-to-gross adjustments at a program level and applied those rates to 2009, 2010, and 2011 program level savings to determine total net ex-post savings for the 2009-2011 period. MEC Ex. 2.0 at 4-5. Use of net ex-post savings has been standard practice for other Illinois utilities in calculating the TRC Test. MidAmerican therefore used the net ex-post savings in its calculations of the TRC Test.

MidAmerican defined savings to be the net present value of all avoided costs as a result of implementing the energy efficiency measures in each program. These avoided costs are analyzed over a multi-year period and include: avoided electric energy costs, avoided generation capacity costs, avoided electric transmission costs, avoided electric distribution costs, avoided natural gas costs, and avoided gas pipeline reservation costs.

For the purposes of cost effectiveness testing, MidAmerican defined program costs as: the incremental cost (or full cost depending on the measure) of implementing all measures that were implemented in a program; plus all of the costs that were incurred on the customer's behalf that are directly related to those measures (home audit costs, facility walkthrough costs, for example); plus MidAmerican's administrative cost to operate the program.

Analysis of Programs

Mr. Rea explained that MidAmerican's analyses of net economic benefits and cost effectiveness for the energy efficiency portfolio was conducted on a program by program basis. MEC Ex. 2.0 at 5. Net economic benefits were determined by estimating the total value of savings associated with the installations of energy efficiency measures in each program and subtracting the costs associated with implementing that program. Id.

MidAmerican witness Rea provided two different tests that measure the cost-effectiveness of MidAmerican's energy efficiency programs, the TRC Test and the Societal Test. MEC Ex. 2.0 at 6; MEC Ex. 2.1. The TRC Test is the primary test used to evaluate other utility energy efficiency programs in Illinois. Id. Mr. Rea explained there are two important assumptions to note in regards to the TRC test. MEC Ex. 2.0 at 7. The first is the discount rate used to present value the multi-year stream of avoided costs which represent the value of the savings of the programs. For the TRC test, MidAmerican applied a discount rate of 7.90%, which represents MidAmerican's weighted average cost of capital at the time the programs were implemented. Id. The second important assumption is the level of non-energy related benefits assumed. MidAmerican's calculation of the TRC test ratios assumes no non-energy related benefits. The only benefits attributable to the energy efficiency programs in this test are the avoided energy costs themselves. Id.

The Societal Test is the primary test used to evaluate energy efficiency programs in Iowa, and was the test used by the IUB in determining that MidAmerican's Iowa programs, which were offered to Illinois customers, were cost effective. The Societal Test is similar to the TRC test, but differs in two important aspects. MEC Ex. 2.0 at 7. The first is that the Societal Test discount rate is based on daily average yields of 10-year and 30-year U.S. Treasury Bonds instead of MidAmerican's weighted average cost of capital, as described in IUB rules pertaining to energy efficiency analysis. The discount rate used in the analyses provided in this docket is 4.81%. Id. The second difference is that the Societal Test includes a 10% adder to electric avoided costs and a 7.5% adder to gas avoided costs to account for non-energy benefits. These externality factors are also prescribed by IUB rules. MEC Ex. 2.0 at 8.

Both tests compare the benefits of avoided energy and capacity costs associated with energy savings realized through energy efficiency programs to the cost of implementing those programs. MEC Ex. 2.0 at 6. If the benefits outweigh the costs (in other words, the ratio of benefits to costs is greater than 1.00), the programs are

considered to be cost effective. MidAmerican witness Rea presented testimony that explained how MidAmerican performed its energy efficiency plan impact analysis, including information from the independent evaluation performed by Tetra Tech. Ex. 2.0 at 2. Mr. Rea noted the following programs did not pass both cost-effectiveness tests:

- Residential Equipment – Electric
- Residential New Construction – Electric
- Residential New Construction – Gas (TRC Only)
- Small Commercial Audit – Electric (TRC only)
- Commercial New Construction – Electric (TRC Only)
- Commercial New Construction – Gas (TRC Only).

MidAmerican pointed out that its energy efficiency programs in Illinois were designed to be cost effective based on the Societal Test perspective as defined by the IUB. The only two programs that do not pass the Societal Test are the electric components of the Residential Equipment and Residential New Construction programs. However, MidAmerican argues that past program performance should not be the sole basis for determining whether or not a program should be continued in the future.

In response to Staff's argument that programs that are not cost-effective should not be continued unless there are some extenuating circumstances that would justify the cost ineffective measure or program, MidAmerican presented extenuating circumstances that it asserts justify the continuance of the Residential Equipment and Residential New Construction programs in MidAmerican's future programs. Mr. Rea explained that the new construction programs are programs where a significant level of spending may occur before significant savings can begin to be realized. Given that the 2009-2011 program years marked the first offering of these programs in Illinois, it is not surprising that these programs do not appear to be as cost-effective as they otherwise would in a "steady-state" situation where projects are entering and leaving the pipeline at approximately the same rate. MEC Ex. 2.0 at 9. Additionally, Ms. Munns presented testimony noting that performance of the residential new construction program suffered as the economy slowed and new housing starts fell. MEC Ex. 1.0 at 6-7. According to Department of Commerce and Economic Opportunity data, in 2007 there were 42,941 building permits for housing issued in Illinois. That number fell to 22,224 in 2008 and 11,321 in 2009. *Id.* at 7, fn. 2. These two factors contributed to reduced savings in the Residential New Construction program which may not be reflective of future activity.

Consequently, these extenuating circumstances merit re-evaluating the continuation of the program, and the after the fact review of performance alone should not be adequate reason to discontinue the programs. In regards to program modifications to increase program cost-effectiveness, MidAmerican witness Munns testified that the Residential New Equipment program provides rebates on standard types of efficient equipment, and with the right mix of equipment in the program, the program should perform on a cost-effective basis. MEC Ex. 5.0 at 5. Ms. Munns further testified the "right mix" will be determined and shown in MidAmerican's proposed new plan filing. *Id.*

Continuity of Programs beyond 2012

MidAmerican states that the record demonstrates that MidAmerican's Illinois energy efficiency programs produced net benefits to Illinois customers and, thus, the Commission should allow MidAmerican to continue its Illinois energy efficiency programs pursuant to Section 8-408 of the Act.

MidAmerican has suggested a one year bridge plan based on the current portfolio of energy efficiency programs with modified budgets, savings, and participation levels. See MEC Ex. 4.1 and Ex. 4.2. As Ms. Munns indicated in testimony, these programs have already been deemed to be cost-effective by the IUB, and pursuant to Section 8-408(a) of the Act, an order from the IUB is sufficient to demonstrate that the program is cost-effective or reasonable in Illinois. MEC Ex. 3.0 at 5. MidAmerican also indicated it would file a new five-year plan by July 1, 2013, for the Commission and Staff to evaluate.

MidAmerican states that it will agree to not offer a finding of the IUB to demonstrate cost-effectiveness of its Illinois energy efficiency plan when it files a new plan on July 1, 2013, and beyond, but only if the standard of review for the Commission to determine cost-effectiveness is the following societal test, consistent with the cost-effectiveness analysis used in Iowa:

“Societal test” means an economic test used to compare the present value of the benefits to the present value of the costs over the useful life of an energy efficiency measure or program from a societal perspective. Present values are calculated using a 12-month average of the 10-year and 30-year Treasury Bond rate as the discount rate. The average shall be calculated using the most recent 12 months at the time the utility calculates its benefit/cost tests for its energy efficiency plan. Benefits are the sum of the present values of the utility avoided supply and energy costs including the effects of externalities. Costs are the sum of the present values of utility program costs (excluding customer incentives), participant costs, and any increased utility supply costs for each year of the useful life of the measure or program. The calculation of utility avoided capacity and energy and increased utility supply costs must use the utility costing periods.

MidAmerican makes this caveat because it believes the General Assembly did not intend to require MidAmerican to comply with the same energy efficiency analysis as the larger utilities. In enacting Section 8-408, the legislature eliminated many potential issues by setting out a framework for energy efficiency offerings for MidAmerican, just as it did for other Illinois utilities in enacting Sections 8-103 and 8-104 for energy efficiency programs. Clearly, MidAmerican argues, the Illinois General

Assembly did not believe that Sections 8-103 and 8-104 were the only best practices for energy efficiency programs; otherwise the General Assembly would have subjected MidAmerican to those requirements. The General Assembly found that best practices already used in other states are worth adopting for service territories that are contiguous to Illinois. The fact is that Section 8-408 has brought at least \$3.9 million in net benefits to Illinois customers.

MidAmerican outlined a 2013 bridge plan consistent with the statutory requirements of Section 8-408(a). Recognizing that the impact analysis of Residential Equipment and the Residential New Construction programs was disappointing, MidAmerican indicated it would provide the Commission, by December 3, 2012, with an updated Residential Equipment program, which includes only cost effective measures. Section 8-408(c) allows MidAmerican to request a waiver of an approved energy efficiency program in order to improve the program's cost-effectiveness. MidAmerican's December 3rd filing will include a waiver request detailing the measure changes for this program. Therefore, it argues that it is reasonable for the Commission to allow MidAmerican to rely on the statutory construct of Section 8-408 to improve the cost-effectiveness of its bridge plan and will provide the Commission with the comfort that MidAmerican has demonstrated that the Residential Equipment program will be projected to be cost effective for the 2013 bridge year.

In regards to the Residential New Construction program, it is important to note that MidAmerican's proposed 2013 budget for the Residential New Construction program is a very modest budget of \$19,705. Because Residential New Construction is a long-term program and the program infrastructure is already in place, it is reasonable for the Commission to allow that program to continue in 2013, but require MidAmerican to re-evaluate the program in its 2013 filing and demonstrate at least a reasonable probability that it will be cost-effective in the future. The 2013 bridge year plan would allow MidAmerican additional time to develop a new five year plan that would be filed shortly after its new Iowa five year plan. This approach allows the Illinois and Iowa plans to be synchronized, which allows for greater consistency. The new five year plan would take into account the changes in codes and standards and avoided costs since the previous plan was filed in Illinois. Additionally, the new plan would be informed by the new Iowa assessment of potential, which includes updated avoided costs and re-evaluates the measures and programs for cost-effectiveness. MidAmerican asserts that its proposal is reasonable, consistent with Section 8-408, and cost-effective.

III. Staff's Position

According to Staff, the critical sentence in Section 8-408(a) governing approval of the EE programs is the requirement that the "Commission shall approve each program demonstrated to be cost-effective." 220 ILCS 5/8-408(a). Section 8-408 directs the Commission to approve all such programs when the petitioner, MEC, demonstrates that they are cost-effective (or reasonable for low income programs). The statute also provides that an Order from another state agency, the IUB, finding such programs to be cost-effective, or reasonable, with regard to low-income programs, is "sufficient to

demonstrate that the program is cost-effective or reasonable for the utility's customers in Illinois." 220 ILCS 5/8-408(a). Staff's ultimate concern is that Illinois ratepayers should receive net benefits from each of the Company's programs, because they pay for the cost of the programs in rates. Staff has found that a finding by the IUB is insufficient to demonstrate the program is cost-effective for the utility's customers in Illinois.

Staff offers three options for the Commission's consideration.

Recommendation (1):

In the event that 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, Staff would propose that the Commission adopt its Recommendation (1).

Staff is unsure about MEC's final position concerning what the Company would use to demonstrate cost-effectiveness of proposed programs in future plan filings if the Commission were to allow MEC to continue operating programs under Section 8-408(a) of the Act. In particular, it is not clear whether: (1) MEC would actually file/use an IUB Order to demonstrate cost-effectiveness of the proposed programs; or whether (2) MEC would perform a cost-effectiveness analysis of its proposed program offerings on behalf of its Illinois customers. Staff believes that confirmation of MEC's position is crucial as the past four years have demonstrated that a program found to be cost-effective in Iowa is not necessarily cost-effective for MEC's Illinois customers. Staff Ex. 2.0 at 8. Thus, relying on an Order from the IUB regarding cost-effectiveness of programs implemented in Iowa, Staff asserts, is particularly problematic and would allow MEC to continue cost-ineffective programs to the detriment of Illinois ratepayers.

MEC demonstrated a number of the programs that have been cost-effective in Iowa, have been cost-ineffective and detrimental to MEC's Illinois ratepayers - yet MEC objects to the removal of these cost-ineffective programs in Illinois. MEC Ex. 2.0 at 10. 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 at 3.

Moreover, despite operating programs in Illinois for the past four years, MEC was unable to provide any measure-level cost-effectiveness analysis. Nevertheless, MEC witness Munns contends that 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 in-effectiveness of some of the programs. MEC Ex. 3.0 at 3-4. 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.* at 18-19. In the event that the Commission adopts the approach, that going-forward, regardless of

negative net benefits, the Commission is compelled to defer to IUB findings and automatically approve all programs, even if these programs are not cost-effective in Illinois, Staff recommends that the Commission decline to authorize MEC to continue its programs offered under Section 8-408 after December 31, 2012.

Staff suggests that MEC is not restricted to providing EE programs exclusively under Section 8-408 of the Act. Illinois utilities are currently operating EE programs under specific energy efficiency legislation (220 ILCS 5/8-103 and 8/104); although several utilities initiated these EE programs before they were legislatively mandated to do so. See, Northern Illinois Gas Company, Docket 08-0363, Final Order at 156-159 (March 25, 2009); Ameren Illinois Company, Docket 08-0104, Final Order (October 15, 2008); North Shore Gas Company/Peoples Gas Light and Coke Company, Dockets 07-0241/07-0242 (Consol.), Final Order at 183-184 (February 5, 2008). Under Recommendation (1), Staff is not, as MEC asserts, attempting to deny all opportunities for energy savings to the Company's Illinois customers. If the Commission adopts Recommendation (1) then it would be at MEC's discretion as to whether it wants to request Commission approval of EE programs outside of the terms of Section 8-408 of the Act, in order for its customers to receive the future benefits cited by MEC.

Staff notes that in the Company's rebuttal testimony and in a subsequent data request, MEC appeared to express some willingness to provide cost-effectiveness information for Illinois programs (instead of an IUB-Order referencing cost-effectiveness of Iowa programs) for the Commission's consideration in its review of future plan filings. Staff Cross Ex. 1 at 13; MEC Ex. 3.0 at 6.

If the Commission declines to adopt Recommendations (1) or (3), 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 and the Commission wants to continue the EE program offerings under Section 8-408, then Staff would recommend the following: the Commission allow MEC to continue offering Section 8-408 programs beyond December 31, 2012 contingent on MEC committing to refrain from offering the findings of the IUB to demonstrate cost-effectiveness in all future EE plan proceedings pursuant to Section 8-408 and persuasively demonstrating cost-effectiveness of proposed programs for Illinois. If the Company agrees that it would not use the findings of the IUB to demonstrate cost-effectiveness in all future proceedings, then this may provide a viable option for the Commission to allow the programs to continue.

Recommendation Alternative (2):

Initially, Staff's Recommendation (2) proposed that the Commission could grant MEC an extension limited to one year to allow the General Assembly to consider the Commission's report issued pursuant to 8-408(d), if the Commission interpreted the statute to allow a limited one year extension. Staff no longer believes this recommendation will provide the greatest benefit to Illinois ratepayers. 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. 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.

Recommendation Alternative (3):

It is Staff's position that 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, to order the utility to provide any information deemed necessary to accurately evaluate the cost effectiveness of such measures and programs in Illinois.

Staff notes that, as an initial matter, neither the Commission nor any court has yet interpreted Section 8-408(d) of the Act. In response to MEC's argument that under Section 8-408(a) the Commission should continue to accept a finding by the IUB of cost-effectiveness as sufficient proof of cost-effectiveness in Illinois, Staff reasons that from a policy perspective it does not seem to be reasonable or sound policy that the intent of this provision would be 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. 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 possibly cost-ineffective, without justification, and to the detriment of Illinois ratepayers.

Staff argues that statutes should be construed as a whole, with all relevant parts considered. *In re Marriage of Kates*, 198 Ill.2d 156, 163; 761 N.E.2d 153, 157 (2001). Therefore, Section 8-408(a) must be read in conjunction with Section 8-408(d) which directs the Commission to make a determination whether the programs should continue. To do otherwise would be counterintuitive and contrary to established law.

Further, it is clear to Staff that Section 8-408(a), as MEC interprets it, does not provide a utility with an incentive to discontinue cost-ineffective programs prior to the expiration of the plan, if at all. For example, MEC's cost-effectiveness analysis indicated that the Residential New Construction program was not cost-effective in Illinois under any method or test used to measure cost effectiveness, for any of the 4 years in which the program was implemented. Although MEC prepared a set of cost benefit analyses for the programs and provided this information to Staff in January of 2012, MEC did not prepare any cost benefit analysis prior to that time. *Tr.* at 30. Without further reporting requirements or review by the Commission that could be imposed under Section 8-408(d), MEC had no incentive to discontinue cost-ineffective programs prior to the

expiration of its plan, and further, it had no incentive to determine whether those programs were cost effective prior to that time. It is for these reasons that Staff is reluctant to recommend the Commission continue programs under Section 8-408(a), especially because MEC is unable to provide any detailed plans as to how improvements in cost-effectiveness could be attained. Instead, MEC states that they would review the plans and "factors [it] has going forward." *Id.* This does not give Staff the adequate level of information it needs to recommend the programs continue, especially since no data has shown they are cost-effective for Illinois.

Staff recommends that pursuant to Section 8-408(d), the Commission 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. 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. 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. The Commission should also direct MEC to separate out the upstream compact fluorescent lamp ("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 CFL7 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.

Staff Recommendations if the Commission Decides to Extend the Pilot EE Programs for a Sixth Year

This section sets forth Staff's position regarding MEC's request to extend certain programs for one year. This section is only applicable if the Commission rejects Recommendation (1). If Recommendation (1) is rejected, Staff does not oppose extending certain of MEC's programs for a year subject to MEC satisfying all of the conditions set forth below.

Excluding Cost-Ineffective Measures

In rebuttal testimony, MEC clarified that it proposes that the Commission approve programs for 2013 estimated to have annual bill impacts for each customer of \$14.74 (Residential Electric), \$18.87 (Residential Gas), \$181.28 (Nonresidential Electric), and \$91.09 (Nonresidential Gas). (MEC Ex. 4.2, pp. 1-2) However, MEC provides no projections of cost-effectiveness for the programs and measures it proposes the Commission approve for implementation in 2013, arguing that it is not reasonable to make decisions on the inclusion and exclusion of measures and programs at the time it is requesting that pilot EE programs be extended for a sixth year. Staff disagrees with MEC's position. Providing projections of cost-effectiveness as a component of petitions

for approval of EE plans funded by ratepayers is standard practice in Illinois and is considered best practices in the energy efficiency industry. 220 ILCS 5/8-103; 220 ILCS 5/8-103A; 220 ILCS 5/8-104; 220 ILCS 5/16-111.5B. Staff asserts that MEC should be no exception simply because its requested extension is for a single year. In fact, existing Illinois statutes provide that annual cost-effectiveness analysis of measures and programs for a single year be performed on an annual basis prior to utilities being permitted to recover costs associated with these expenditures as part of the proceeding regarding the Illinois Power Agency's procurement plan prepared pursuant to paragraph (2) of subsection (d) of Section 16-111.5 of the Act. 220 ILCS 5/16-111.5B. Staff recommends that the Commission not deviate from best practices, and direct the Company to perform an acceptable measure-level cost-effectiveness analysis that would be submitted prior to implementation of any programs in Illinois in 2013.

Staff recommends that the Commission direct MEC to exclude offering incentives for those measures that are found to be cost-ineffective. It is Staff's opinion that the savings from EE are somewhat uncertain. In order to help ensure that the portfolio of programs is cost-effective as a whole (i.e., providing positive net benefits), Staff believes it is prudent to discontinue programs and measures that are not cost-effective; unless there is some extenuating circumstance that would justify the inclusion of the cost-ineffective measure or program, (e.g., a low income program). Because MEC has not demonstrated any specific extenuating circumstances that the Commission could consider and evaluate whether MEC should be permitted to include the particular cost-ineffective measure in its programs in 2013, Staff recommends that as a condition of approval of extending any EE program in 2013, that the Commission direct that for 2013 only cost-effective EE measures are allowed to be implemented. Considering MEC apparently never performed a measure-level cost-effectiveness analysis for Illinois over the past four years, nor did they provide one during the proceeding, Staff recommends the Commission direct MEC to complete such analysis to inform the program modifications recommended herein. Staff Ex. 2.1 at 4.

Given that the Company has repeatedly declined to provide any projections for cost-effectiveness of the EE measures and programs it requests additional ratepayer funding for in this proceeding, Staff recommends that as a condition of approval of any program extensions, that the Commission direct MEC to perform a measure-level cost-effectiveness analysis for Illinois to inform the program modifications recommended herein and to submit this in a compliance filing no later than December 3, 2012. In order for any of the programs to continue beyond December 31, 2012, the compliance filing must persuasively demonstrate in sufficient detail the cost-effectiveness of the 2013 modified measure mix and program offerings for Illinois. Staff recommends that the Commission permit an extension of some of MEC's EE programs (excluding the Residential New Construction and Residential Equipment programs) until 2013 only under the condition that MEC submits a compliance filing no later than December 3, 2012, that conclusively demonstrates those programs and measures it intends to offer in 2013 are projected to be cost effective in Illinois.

Residential New Construction and Equipment Programs

Staff opposes extending two programs that have provided negative net benefits to Illinois customers over the 2008-2011 timeframe. Specifically, Staff recommends that the Commission decline to approve an extension of the Residential Equipment and Residential New Construction programs, and order MEC to incorporate certain program modifications as a condition for approval of the remaining programs. In rebuttal testimony, MidAmerican witness Munns states, "There is no reason to believe that its current portfolio will not continue to be cost effective in 2012 and 2013." (MEC Ex. 3.0, p. 5) Similarly, there is no reason to believe programs shown to be cost-ineffective in years past will not continue to be cost-ineffective in 2013. Therefore, Staff recommends the Commission decline to approve continuation of the Residential Equipment and Residential New Construction programs for 2013, as both of these programs have provided negative net benefits to Illinois customers. There is no evidence in this proceeding that demonstrates these programs will improve in 2013 and provide net benefits to Illinois customers. (Staff Ex. 1.0, pp. 7-8) Using the information provided in MEC Ex. 2.1, the net benefits to Illinois customers increase from \$3.9 million to approximately \$5.3 million once these two cost-ineffective programs are excluded from the portfolio. (Staff Ex. 2.0, pp. 8-9)

The Company attempts to justify continuing these cost-ineffective programs for an additional year by championing consistency and arguing that discontinuation would create "customer and trade ally confusion arising from different programs offered by the same utility in the same market area," (MEC Ex. 5.0, p. 4), although when asked, the Company could not point to even one instance of such confusion and confirmed that currently MEC offers different programs in the same market area. *Tr.* at 21. It is unclear to Staff how administrative consistency would justify continuing Iowa programs found to be cost-ineffective in Illinois, especially when no evidence has been adduced to indicate this need. MEC's historical data, showing consistent cost-ineffectiveness in some programs, demonstrates that it is reasonable for the Commission to determine that a program providing negative net benefits to Illinois ratepayers, should not be extended for a sixth year at Illinois ratepayers' expense.

Staff continues to recommend discontinuation of the two cost-ineffective programs even if MEC provides cost-effective projections in a compliance filing. Staff argues that the Company had ample opportunity in this case to provide projections for the Residential New Construction and Residential Equipment programs. Because MEC has not presented any evidence indicating these programs are cost-effective, MEC should not be allowed another chance to argue that they are.

Based on the reasons presented above, coupled with the absence of evidence in the record to show any change going forward, Staff recommends the Commission require MEC to discontinue offering the Residential Equipment and Residential New Construction programs for 2013 because they have consistently provided negative net benefits to ratepayers and there is no evidence in this proceeding to demonstrate they will improve.

Codes and Standards

Staff recommends that the Commission direct MEC to exclude offering incentives for measures that do not exceed energy codes and standards. Providing incentives to customers for measures that are considered “replace-on-burnout” and that do not exceed energy codes and standards, results in zero energy savings. Instead, the Company should direct funds toward cost-effective energy saving measures, therein increasing benefits to Illinois ratepayers. Staff Ex. 2.1 at 3. The results from the impact evaluation of MEC’s pilot EE programs also include recommendations to update to the latest code. See, e.g., MEC Rev. Ex. 2.2 at 81. Based on MEC’s response to a data request provided in Staff Ex. 2.1 at page 3, it is Staff’s understanding that MidAmerican agrees to make this type of program modification.

CFL Upstream Program

Staff further recommends that the Commission direct MEC to separate out the upstream 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. 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. This information would allow for a more transparent evaluation of the programs.

IV. Commission Analysis and Conclusion

MidAmerican currently operates its Illinois Energy Efficiency Programs pursuant to Section 8-408(a) of the Act. On May 21, 2008, in Docket 08-0107/08-0108, the Commission approved MidAmerican’s proposed energy efficiency plan for 2008 through 2012. Consistent with Section 8-408(a), the Commission accepted an order from the Iowa Utilities Board finding MidAmerican’s programs to be cost effective as sufficient demonstration that its proposed programs were cost effective. In this proceeding, MidAmerican has shown that, taken as a whole, its energy efficiency programs have produced net economic benefits of almost \$4 million for its Illinois customers. These results cannot be ignored and guide the Commission’s conclusions. MidAmerican now proposes to continue its current programs for one additional year and to file, on July 1, 2013, a new energy efficiency plan for the Commission’s approval. The Commission finds MidAmerican’s proposed process to be reasonable.

Two of MidAmerican’s energy efficiency programs were shown to be cost-ineffective for Illinois ratepayers: the Residential Equipment Program and the New Construction Program. For the transition year, the Company proposes to provide the Commission by December 3, 2012 with an updated Residential Equipment program, which will include only cost effective measures. Although Staff complains that the Company should have already provided this information, the Commission accepts the

Company's proposal to file a waiver request on December 3rd to eliminate the cost-ineffective measures. The Commission recognizes that this could have been done sooner, but the Commission puts the priority on ensuring that Illinois ratepayers continue to have the benefits of the energy efficiency program in 2013.

With respect to continuation of the Residential New Construction during the transition year, the Company points out that its proposed 2013 budget is only \$19,705. The Company argues that because the Residential New Construction is a long-term program and the program infrastructure is already in place, it is reasonable for the Commission to allow that program to continue in 2013. It is clear from the record that the Residential New Construction Program has failed a post-plan evaluation cost-benefit analysis under both the TRC Test and the Societal Test and, therefore, the Commission cannot in good conscience require Illinois ratepayers to continue to fund this program - even on an interim basis. Moreover, unlike the Residential Equipment Program, the Company makes no suggestion for ensuring the cost-effectiveness of the program for the transitional year. MidAmerican can, of course, include this program in its 2013 filing, but it must demonstrate at least a reasonable probability that it will be cost-effective in the future and any proposal will be scrutinized carefully by the Commission.

Staff recommends that MidAmerican be required to make a compliance filing that persuasively demonstrates, in sufficient detail, the cost-effectiveness of the 2013 modified measure mix and program offerings for all of the Company's Illinois energy efficiency programs. The Commission declines to adopt this recommendation. These programs are in place pursuant to Section 8-408(a) and have been shown to have net benefits for Illinois ratepayers, year after year. Requiring the Company to make an additional showing for the transitional 2013 year is not necessary.

The Commission has broad legal authority under 8-408(d) to determine whether programs should be continued beyond December 31, 2012 and is not bound by an IUB decision regarding cost-effectiveness. The statutory language deferring to the IUB applied to those programs in place on January 1, 2007 and not those proposed going forward. Nothing in the statute prohibits the Commission from allowing the initial IUB program to continue for another year, as proposed by MEC and then requiring that any future programs must be shown to be cost-effective in Illinois.

As part of the plan development process for the new plan to be filed in July 2013 and consistent with the development process for a new Iowa plan, MidAmerican will investigate potential ways to improve the cost-effectiveness of its existing programs, including changes that may be suggested by its program evaluator. That plan filing will be based on measure-level saving and avoided costs that have not yet been fully developed and MidAmerican is directed to provide Illinois specific information of the projected cost-effectiveness of the new energy efficiency programs.

Also, with respect to the planned July 2013 filing, it is clear from the overall statutory scheme that smaller, multi-jurisdictional utilities are to be treated differently, and perhaps less stringently, than their larger counterparts with respect to evaluating

energy efficiency programs. Based on the record here, it is clear that a finding of the IUB of cost-effectiveness does not guarantee cost-effectiveness for Illinois customers and, therefore, the IUB's approval would be relevant, but not determinative. Bearing this in mind, the Commission cannot say, based on the record in this proceeding, the standard to which these programs will be held, but notes with approval that the societal test appears to be accepted by both parties. Indeed, Staff notes, in its brief on exceptions, that MidAmerican has Illinois-specific net-to-gross ratios estimated through evaluation (MEC Revised Ex. 2.2), and recommends that MidAmerican present societal test cost-effectiveness estimates based on net savings in future plan filings. The Commission adopts this recommendation.

Staff's codes and standards recommendation is reasonable and uncontested and is adopted. Staff's concerns regarding transparency for evaluation purposes regarding CFLs are similarly adopted.

V. Findings and Orderings Paragraphs

The Commission, being fully advised in the premises, is of the opinion and finds that:

- (1) MidAmerican Energy Company, an Iowa corporation, is engaged in the distribution of gas service to the public in Illinois and, as such, is a public utility within the meaning of the Act;
- (2) the Commission has jurisdiction over Respondent and of the subject matter of this proceeding;
- (3) the statements of fact set forth in the prefatory portion of this Order are supported by the evidence of record and are hereby adopted as findings of fact;
- (4) MidAmerican Energy Company's energy efficiency programs, as a whole, are shown to be cost-effective for Illinois ratepayers;
- (5) MidAmerican Energy Company's energy efficiency programs, except the Residential New Construction program should continue until December 31, 2013;
- (6) MidAmerican Energy Company should file by December 3, 2012 a waiver, pursuant 8-408(c) requesting that it be permitted to no longer offer measures under the Residential Equipment program that are cost-ineffective;
- (7) MidAmerican Energy Company should file, by July 1, 2013 a new energy efficiency plan to be in place by January 1, 2014, which should only include measures shown to be cost-effective for Illinois ratepayers and consistent with the discussion contained herein, unless extenuating

circumstances are shown that would argue for inclusion of such measures or programs.

IT IS THEREFORE ORDERED that MidAmerican Energy Company's energy efficiency programs, except the Residential New Construction program may continue until December 31, 2013.

IT IS FURTHER ORDERED that MidAmerican Energy Company shall file by December 3, 2012 a waiver, pursuant 8-408(c) requesting that it be permitted to no longer offer measures under the Residential Equipment program that are cost-ineffective.

IT IS FURTHER ORDERED that MidAmerican Energy Company should file, by July 1, 2013 a new energy efficiency plan to be in place by January 1, 2014, which should only include measures shown to be cost-effective for Illinois ratepayers and consistent with the discussion contained herein.

IT IS FURTHER ORDERED that all motions, petitions, objections and other matters in this proceeding that remain unresolved are hereby disposed of in a manner consistent with the conclusions herein.

IT IS FURTHER ORDERED that, subject to the provisions of Section 10-113 of the Public Utilities Act and 83 Illinois Administrative Code 200.880, this Order is final; it is not subject to the Administrative Review Law.

By Order of the Commission this 17th day of October, 2012.

(SIGNED) DOUGLAS P. SCOTT

Chairman