AG Ex. 1.0

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

Commonwealth Edison, Inc. Approval of the Energy Efficiency and Demand-Response Plan Pursuant to Section 8-103(f) of the Public Utilities Act.	)))))))))))	Docket No. 11 – 0593

Direct Testimony of

Philip H. Mosenthal

On Behalf of

The People of the State of Illinois

August 13, 2012

IDENTIFICATION AND QUALIFICATIONS

Q. Please state your name and business address.

A. Philip H. Mosenthal, Optimal Energy, Inc., 14 School Street, Bristol, VT 05443.

Q. On whose behalf are you testifying?

A. I am testifying on behalf of the People of the State of Illinois ("the People" or "AG").

Q. By whom are you employed and in what capacity?

A. I am the founding partner in Optimal Energy, Inc., a consultancy specializing in energy efficiency and utility planning. Optimal Energy advises numerous parties including utilities, non-utility program administrators, government and environmental groups.

Q. Please provide a summary of your qualifications and experience.

A. I have 30 years of experience in all aspects of energy efficiency, including facility energy management, policy development and research, integrated resource planning, cost-benefit analysis, and efficiency and renewable program design, implementation and evaluation. I have developed numerous utility efficiency plans, and designed and evaluated utility and non-utility residential, commercial and industrial energy efficiency programs throughout North America, Europe and China.

I have also completed or directed numerous studies of efficiency potential and economics in many locations, including China, Colorado, Kansas, Maine, Massachusetts, Michigan, New England, New Jersey, New York, Quebec, Texas, and Vermont. These studies ranged from high level assessments to extremely detailed, bottom-up assessments evaluating thousands of measures among numerous market segments. A current example of the latter is an ongoing project to analyze the electric, natural gas and petroleum efficiency and renewable energy potential for New York State, on behalf of the New York State Energy Research and Development Authority (NYSERDA).

I am currently a lead advisor for business energy services in Rhode Island and Massachusetts on behalf of the Energy Efficiency Resource Management Council and the Energy Efficiency Advisory Council, respectively, overseeing and advising on utility program administrators plans, program designs, implementation and performance in those states.

I have been actively engaged in the Illinois Stakeholder Advisory Group (SAG) since its inception, representing the People of Illinois.

Prior to co-founding Optimal Energy in 1996, I was the Chief Consultant for the Mid-Atlantic Region for XENERGY, INC. (now DNVKEMA). I have a *B.A.* in Architecture and an *M.S.* in Energy Management and Policy, both from the University of Pennsylvania. My full resume has been provided to the ICC in many past dockets. My resume is attached as AG Exhibit 1.1

Q. Have you previously testified before the Illinois Commerce Commission ("the Commission" or "ICC")?

A. Yes. I testified in Dockets No. 07-0539, 07-0540 and 07-0541 related to the first 3 year plans of Central Illinois Light Company d/b/a AmerenCILCO, Central Illinois Public Service Company d/b/a AmerenCIPS and Illinois Power Company d/b/a AmerenIP ("Ameren"), ComEd, Ameren and DCEO respectively.[1] I have also testified in Dockets No. 10-0562, 10-0564, 10-0568 and 10-0570 related to the first 3 year plans of Nicor and Integrys and the second 3 year plans of Central Illinois Light Company d/b/a AmerenCILCO, Central Illinois Public Service Company d/b/a AmerenCIPS and Illinois Power Company d/b/a AmerenIP ("Ameren"), ComEd, Ameren and DCEO respectively.[2]

INTRODUCTION AND SUMMARY OF TESTIMONY

Q. What is the purpose of your testimony in this proceeding?

A. My testimony focuses on the following issues with respect to Commonwealth Edison's third program year:

1. Assessment of ComEd's achievement and performance in Program Year 3 (PY3) as it relates to ComEd's ICC-approved PY3 savings goals;
2. Banking of ComEd and DCEO savings going forward; and
3. Roles and obligations of ComEd and DCEO in regard to plans and goals and how this impacts issues related to overall statutory goal achievements and banking, as well as other issues, including DCEO's role in administering a portion of the annual energy efficiency program and the Commission's role in oversight of DCEO.

Q. Please summarize your testimony.

A. Below I summarize my main points:

1. ComEd Witness Michael Brandt indicates in his direct testimony that ComEd exceeded both its statutory energy efficiency kilowatt-hour (kWh) and demand response kilowatt (kW) savings goals established in its Commission-approved

[1] The Direct Testimony of Philip H. Mosenthal on behalf of The People of the State of Illinois, ICC Docket 07-0539 December 14, 2010; ICC Docket 07-0540 December 17, 2007; and ICC Docket 07-0541 December 17, 2010.

[2] *Id.*

2008 – 2010 Energy Efficiency and Demand Response Plan ("Plan") for PY3. Specifically, under the Plan, ComEd's total PY3 portfolio goal was 584,077 MWh and its demand response savings goal was 10.0 MW. Section 8-103(e) requires that the utility and the Department of Commerce and Economic Opportunity ("DCEO" or "the Department") share the duties of implementing the energy efficiency measures. Specifically, the statute provides that "[e]lectric utilities shall implement 75% of the energy efficiency measures approved by the Commission. … The remaining 25% of those energy efficiency measures approved by the Commission shall be implemented by the [Department], and must be designed in conjunction with the utility and the filing process." 220 ILCS 5/8-103(e). Because DCEO is responsible for a portion of the energy (MWh) goal, ComEd was directly responsible for a goal of 458,919 MWh, with DCEO responsible for the remaining 125,158 MWh.[3] According to ComEd Witness Brandt ComEd achieved net evaluated savings of 626,715 MWh, which is 137% of ComEd's goal.[4] I agree with ComEd that it has exceeded its PY3 goals.

2. Because ComEd exceeded its PY3 goals, and the combined savings of ComEd and DCEO also exceed the combined statutory goals, excess savings are available to be banked by ComEd. However, I disagree with ComEd's calculation of the appropriate banking allowable. Specifically, ComEd has calculated its limit of 10% of goals for purposes of banking based on the *combined* goals of ComEd and DCEO. However, DCEO fell short of meeting its goal by a wide margin. I believe past Commission Orders do not clearly support ComEd's proposed calculation, as I explain below. Effectively, ComEd is capturing an extra 20% more banked savings based on DCEO's portion of the goal, despite DCEO not meeting its goal, nor ComEd being responsible for this portion of the goal. This seems an illogical and perverse outcome. Therefore, I have recalculated the appropriate banking and

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[3] ComEd Exhibit 1.0 Corrected at 1-4.

[4] *Id.* at 5, lines 94-96.

propose the *additional incremental banked savings allowable from PY3 for ComEd to carry forward as 45,892 MWh,* a reduction of 12,516 MWh from ComEd's proposed incremental additional banked savings of 58,408 MWh.

3. Significant outstanding issues around the roles and obligations between utilities and DCEO in meeting statutory goals and delivering the EEPS portfolio, and the related issues around the Commission's authority over DCEO, continue to exist and have not been adequately addressed by the utilities, DCEO and the Commission. I believe the lack of clear rules on these issues serves as a barrier to capturing maximum cost-effective savings, results in utilities pursuing less efficiency than is appropriate, and creates significant uncertainties around what obligations DCEO and the utilities have, or what remedies are available, if problems in achieving goals occur. Below I explain these concerns in more detail and propose a solution to the Commission.

COMED'S PY3 ACHIEVEMENTS WITH RESPECT TO GOALS

Q. ComEd claims it exceeded its PY3 kWh savings goals by 137%. Do you agree with ComEd's calculation?

A. Yes, with a minor caveat. ComEd provides its evaluated savings claims by program in Mr. Brandt's direct testimony.[5] While Witness Brandt does not discuss issues of net versus gross savings or clearly label the figures as either net or gross, I interpret all the numbers in his testimony to reflect net, *ex-post* evaluation results, which is consistent with the way goals are set. I have reviewed ComEd's PY3 evaluations and generally find close agreement with these numbers. However, in some cases the program savings numbers presented in the evaluations are slightly different than those ComEd reports in Mr. Brandt's testimony. These variances are generally small, and if they are not correct it would not materially impact any results in *this* Docket because the total portfolio variance would be very small compared to the large excess of savings ComEd achieved. I estimate the total portfolio variance as less than 1% of the total ComEd claimed savings. It is possible these are legitimate adjustments to the numbers in the evaluations or reflect other small adjustments, such as carryover of CFL savings from PY1 and PY2. While I cannot exactly match ComEd's numbers, this should not impact the overall findings in this docket.

Q. ComEd claims it exceeded its PY3 kW demand response savings goals by 147%. Do you agree with ComEd's calculation?

A. Yes.

BANKING OF SAVINGS

Q. Please explain how ComEd calculated its banked savings?

A. As explained by ComEd witness Brandt, the Commission has allowed excess savings above goals to be "banked" and applied to future year savings achievements, if necessary, to meet goals. However, this ability is limited to 10% of the goal that can be banked in any given year.[6] In ICC Docket No. 10-0520, Staff Witness Jennifer Hinman raised a concern that ComEd was attempting to bank savings from PY1 because it did in fact exceed its *utility-specific* goal. However, Hinman pointed out that the *combined* efforts of ComEd and DCEO did not

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[5] *Id.* at 5-6.

collectively meet the PY1 statutory goal. Hinman argued that allowing ComEd to bank savings when the overall statutory goal was not exceeded would be inappropriate. I agree with Ms. Hinman's position. More importantly, the Commission agreed and imposed in its Order a secondary requirement for banking of savings.[7] This secondary requirement is that no banking may be permitted if the *combined* ComEd and DCEO achievements do not also exceed the combined statutory goals.

ComEd has shown that, while DCEO has once again failed to meet its plan goal by a significant margin, the combined total of both ComEd and DCEO savings still far exceeds the original statutory goal approved by the Commission because of the large excess of savings achieved by ComEd.[8] The total combined goal was 584,077 MWh, and the combined PY3 savings achieved was 680,844 MWh. This is both higher than the combined goal, and also significantly in excess of the 10% excess savings cap for purposes of banking.

As a result, ComEd has proposed it be allowed to bank an additional 10% of the *combined* savings goal, or 58,408 MWh.

Q. Please explain your concern with ComEd's calculation of banked savings?

A. First, I agree with ComEd on the basic facts:

1. That the combined achievements of ComEd and DCEO clearly exceed the combined statutory goal of 584,077 MWh and, therefore, banking is allowed;
2. That the combined achievements significantly exceed the combined statutory goal by more than 10%;

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[6] ICC Docket No. 07-0540, Feb. 6, 2008 Final Order at 41

[7] ICC Docket No. 10-0520, May 16, 2012 Final Order at 5

[8] ComEd Exhibit 1.0 Corrected at 7, lines 151-155.

3.That ComEd's achievement significantly exceeds ComEd's approved plan goal by more than 10%;.

4. Therefore, ComEd is entitled to bank savings up to the Commission imposed limit of 10% of *some* goal.

My disagreement is that ComEd has calculated its maximum allowable banking as 10% of the *combined* ComEd and DCEO goal. Rather, I believe ComEd should be limited to banking 10% of *ComEd's* goal. ComEd's individual PY3 goal was 458,919 MWh. Therefore, I believe ComEd should only be allowed to bank 45,892 MWh of additional incremental savings. This is a reduction in what ComEd has proposed as additional incremental banking of 12,516 MWh (58,408-45,892).

Q. Please explain why you believe ComEd's 10% banking limit should be applied to its individual goal rather than to the combined ComEd/DCEO goal.

A. Banking by ComEd is permitted by the Commission to assist the utility in meeting future *ComEd* energy savings goals, in the event necessary. The Commission limited banking to 10% of goals because it believed anything greater than a *de minimus* amount would have the effect of potentially undermining the statute's clear intent to have annual goals met each year.[9] As a result, the 10% limit was adopted as a way to balance the legislative goal of achieving annual energy savings, as provided in Section 8-103(b) of the Act, with the General Assembly's interest in encouraging utilities to strive to exceed goals when possible, and to avoid disruptions that result when programs are started and stopped so that the actual savings closely match but do not

[9] ICC Docket No. 07-0540, Feb. 6, 2008 Final Order at p. 41

significantly exceed goals in any given year. These are important policy objectives, and I believe the Commission's approach was a reasonable balance of these somewhat competing objectives.

The concern I have, however, is that effectively ComEd is proposing to capture *an additional 20% more banking* (applying the 10% banking limit to an additional 20% more savings) than I believe the Commission intended by banking 10% of DCEO's goal in addition to its goal. For PY3, DCEO not only did not meet its 20% of overall energy savings goal, but actually only achieved about 43% of that goal.[10] Clearly, it would not be appropriate to allow DCEO to bank 10% of its energy savings goal when it failed to even come close to meeting its goal, just because ComEd captured excess savings. However, ComEd's proposal is effectively asking the Commission to give this additional theoretical banked savings opportunity (the 10% of DCEO's individual goal) to ComEd to apply to *its* future goals. In essence, ComEd is leveraging DCEO obligations to capture approximately 20% more banking that is unrelated to both its individual goal in PY3 and ComEd's future individual goals to which the banking would be applied. This result is clearly not in the interests of ratepayers, given the General Assembly's clear interest in ensuring the achievement of *annual* energy savings. It is also illogical because ComEd has never had responsibility for the DCEO goals, and will never apply the banked savings to the DCEO portion of future goals. Looked at another way, ComEd is effectively turning the 10% banking limit into an approximate 12% limit (due to the additional greater banking), in my view clearly contrary to Commission's intent when it established the 10% banking rule.

[10] *See* ComEd Exhibit 1.0 Corrected at 4, 7 (percentage calculated from numbers provided in testimony)

Put simply, ComEd should not be allowed to benefit from DCEO's goal, especially when that goal (and the energy savings it represents) has not been met by DCEO.

Q. ComEd claims it calculated its banking consistent with Commission rules laid out in its Order in Docket 10-0520. Do you agree?

A. Not completely. In Docket 10-0520, ComEd initially proposed a banking calculation that clearly and explicitly only included 10% of ComEd's *individual* goal, as I believe was appropriate, and as I believe all utilities have interpreted the banking rules prior to the Order in Docket 10-0520.[11] However, in Docket No. 10-520, Staff Witness Hinman argued that ComEd's banking should be lowered because the overall *combined* (ComEd plus DCEO) PY1 goal was not met.[12] Ms. Hinman's argument was that because the overall goals in PY1 were not met, allowing *any banking* would have a perverse result when no overall excess savings were captured over and above statutory goals. As stated above, the Commission agreed with Staff Witness Hinman, and subsequently ordered the allowed ComEd banking to be reduced for PY1 and adopted Ms. Hinman's calculation for PY2 banking.

In the process of establishing this new reduced banking calculation for ComEd, it appears the Commission simply adopted Witness Hinman's PY2 calculation, which appears to have resulted in a banking allowance to ComEd of 10% of the full *combined* goal of both ComEd and DCEO for the banked savings coming from PY2. As a result, ComEd argues that calculating a banking cap based on the combined goals of ComEd and DCEO is implicit in the Commission

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[11] ICC Docket 10-0520, ComEd Exhibit 1.0 at 7.

[12] ICC Docket 10-0520, Final Order May 16, 2012 at 4.

Order.However, from a full reading of the Order, I believe this was at best an oversight by the Commission that is clearly not appropriate or in the interests of ratepayers.

The Commission Order has absolutely no discussion of this nuance, and ComEd never even argued for this outcome, and in fact clearly assumed that was not the appropriate way to calculate its banked savings when it first proposed its banking. Rather, Ms. Hinman happened to calculate her lower cumulative version of banked savings this way. In other words, this was not an issue that the Commission indicates in its Order was explicitly considered, and perhaps not even contemplated by the Commission or other intervening parties. The issue of contention was whether banking should be restricted only to instances where the combined total achievements of both ComEd and DCEO exceeded their combined goals. Because the Commission found for Ms. Hinman, they appear to have simply adopted the overall lower banked value from her calculation.

In short, ComEd's banking proposal is not in the interests of ratepayers and, in my opinion, inconsistent with the statute's clear intent to achieve specific, annual savings amounts, and the Commission's reasonable intent to limit banking to 10% of goal. The Commission should clarify this issue in its Order in this case, and ensure that ComEd is not permitted to leverage DCEO obligations to capture 20% more banking that is unrelated to both its individual goal in PY3 and ComEd's future individual goals to which the banking would be applied.

RULES AND OBLIGATIONS OF DCEO

Q. Please summarize your concerns around DCEO's roles and obligations in regard to the EEPS.

A. A simple reading of Section 8-103 makes clear that the General Assembly unequivocally directed DCEO to be a joint administrator of energy efficiency programs with the utilities. It went further by explicitly defining the specific customer segments DCEO should be responsible for (primarily low income and public entities), and a specific allocation of effort targeted to those segments (25% of "measures").[13] Specifically, Section 8-103(e) provides:

> 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.** The Department may outsource development and implementation of energy efficiency measures. A minimum of 10% of the entire portfolio of cost-effective energy efficiency measures shall be procured from units of local government, municipal corporations, school districts, and community college districts. The Department shall coordinate the implementation of these measures. [Emphasis added] [14]

In the first three-year electric plans and subsequent Commission Orders, it was established that the term "measures" should be viewed as referring to the share of overall budgets rather than the individual program "measures" provided by the utilities.[15] In other words, the defined 25% share relates to efficiency *budget amounts* rather than a share of *savings goals.* The statute goes on to state:

> The utility and the Department shall agree upon a reasonable portfolio of measures and **determine the measurable corresponding**

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[13] 220 ILCS 5/8-103(e).

[14] *Id.*

[15] ICC Docket No. 07-0540, Final Order Feb. 6, 2008 at 40-41

> **percentage of the savings goals associated with measures implemented by the utility or Department.** No utility shall be assessed a penalty under subsection (f) of this Section for failure to make a timely filing if that failure is the result of a **lack of agreement with the Department with respect to the allocation of responsibilities or related costs or target assignments.** In that case, the Department and the utility shall file their respective plans with the Commission and the **Commission shall determine an appropriate division of measures and programs that meets the requirements of this Section.** (emphases added)[16]

While I am not an attorney, I believe the above passage is important for two reasons:

1. It clearly implies that the 25% allocation is not a savings goal allocation, as the legislature clearly anticipated some sort of negotiation between DCEO and the utilities around the appropriate savings goals associated with this mandated 75/25 "measure" split.
2. Second, and perhaps most important, it also established a procedure whereby the utility and DCEO should work out a reasonable allocation of goals, and if they cannot, the Commission should impose goals on each entity.

Q. What is the significance of your second point?

A. The most significant part of this second point is that "the Commission shall determine" language highlighted above makes clear that the General Assembly intended the Commission to assert regulatory authority over the portion of the annual energy efficiency program allocated to DCEO, both in terms of the administration of the efficiency programs and how ratepayer funds are spent because it clearly provides the Commission with the power to impose goals on DCEO. This is further supported by the requirement in Section 8-103 that

[16] 220 ILCS 5/8-103(e)

DCEO file plans with the ICC and report its accomplishments annually to the ICC.[17] Presumably, this requirement would be a hollow gesture if the General Assembly did not intend that the Commission could in some way act on these filings.

While it is not in dispute that DCEO is a State entity and for purposes other than the provision of energy efficiency programs not regulated by the Commission, it is also clear that the Commission has ultimate responsibility for ensuring that ratepayer funds collected under Section 8-103 are spent appropriately, and for approving goals and monitoring performance of energy efficiency program efforts. In short, it seems clear the General Assembly indeed intended the Commission to have some sort of oversight and regulatory role that encompassed the entire energy efficiency effort to ensure ratepayers capture the net benefits they are paying for, and that goals are set reasonably. To date, these potentially ambiguous roles have been largely ignored, perhaps in the hope that there would be no practical effect and everything would work as planned.

Q. Do you believe this issue has practical importance and that if not resolved, places the provision of cost-effective energy efficiciency program efforts at risk?

A. I do. The historical record is that DCEO has signed up for and filed goals that may in fact not be achievable, and that certainly have not been achieved by a wide margin. The history of the past three years is that DCEO has failed to meet its goals in ComEd territory every year, with achievements in PY1 of less than 75%, in PY2 approximately 52%, and in PY3 only about 43%

[17] *Id.*

of goals.[18] During the first three-year electric plans, this shortcoming has not been a major problem because the collective goals were relatively low compared to all cost-effective achievable savings, and the spending caps were not so onerous as to put meeting collective goals in jeopardy. In short, ComEd has more than made up for these DCEO shortfalls and ratepayers have still captured savings and net benefits commensurate with legislative intent.

However, moving forward with the current three-year electric plans, and certainly for future plans, this is no longer the case. The current plans have allowed modifications to savings goals because of spending caps, and the likelihood the electric utilities will far exceed goals in the future is much lower. In addition, with respect to the delivery of gas efficiency programs, this is a significant issue even for PY1. While gas utilities have not yet filed with the Commission their savings claims for PY1, it is my understanding that gas utilities goals have not been met in PY1.

It is important to note that the failure of DCEO to achieve its first three-year electric goals may not indicate they have not captured a reasonable level of savings. I understand that while DCEO only met about half of its PY2 savings goal, it did in fact exceed the statutory percentage of *load savings goal* as applied to the energy loads of its public and low-income segments.

Q. Given that future goals may not be met, or at least that utilities may not make up for any shortfall in DCEO achievement, what is the practical outcome of the current situation?

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[18] I have had difficulty even determining exactly what the DCEO shortfall in these years has been—perhaps symptomatic of the concerns I raise around DCEO obligations and oversight. ComEd Witness Brandt's rebuttal testimony in Docket 10-0520 page 3, line 58 states for PY1 DCEO "achieved less than 75% of its portion of the statutory goal." I estimate from review of DCEO evaluations that PY2 achievements were 52% of goal, but recognize these may not be final numbers. Based on Mr. Brandt's direct testimony in this case, I estimate DCEO achieved approximately 54 GWh savings with a goal of 125 GWh, or only 43% of its goal.

A. The practical outcome is that a portion of the statutory goals are effectively being "orphaned." What has happened is that DCEO agrees to goals of approximately 20% of the total combined goals despite the fact there is no evidence they are likely to come close to achieving them, or even that they are cost-effectively achievable. Because to date there have been no consequences to DCEO from agreeing to *any* particular goal, they have not effectively negotiated a fair allocation with the utilities and simply agreed to numbers that they seem unable to achieve, contrary to the clear intent of Section 8-103. The result is that DCEO takes on higher goals only on paper, *which are then directly subtracted from the utility obligations*. Therefore, the practical effect is that statutory goals are being effectively reduced by approximately 10% in each year.

Q. Does Section 8-103 address the event of DCEO failing to meet goals?

A. Yes. In subsection (e) the Statute states:

> If the Department is unable to meet incremental annual performance goals for the portion of the portfolio implemented by the Department, then the utility and the Department shall jointly submit a modified filing to the Commission explaining the performance shortfall and recommending an appropriate course going forward, including any program modifications that may be appropriate in light of the evaluations conducted under item (7) of subsection (f) of this Section.[19]

Presumably this would imply the provision of *annual revised plans.* I say that because the only plans that already exist are the three-year plans that are being undertaken. Thus a revision would necessarily be to adjust the future remaining years of that plan. (Dealing with this shortfall

[19] 220 ILCS 5/8-103(e)

in the following three-year plan clearly cannot be viewed as a revision since the plan does not yet exist.) However, this clause in Section 8-103 certainly enables the Commission to establish more clear rules around these revisions, and I encourage the ICC to do so. These rules could include Commission-ordered actions, such as the provision of: 1) dates certain when revised plans must be submitted; 2) guidelines about how any shortfalls might be made up in the following year; and 3) consequences to DCEO and the utilities for not revising the plans.

Q. Do you have concerns about the current regulatory arrangement beyond your concern of "orphaning" goals?

A. Yes. There is also currently no remedy if it is determined that ratepayer funds are spent imprudently by DCEO. If a utility imprudently spends funds, the Commission has clear remedies to deny cost recovery and protect ratepayers. However, it is clear that the utilities exercise no control over DCEO and the statute intended to hold the utilities harmless for actions or failings of DCEO. Utilities are simply mandated to collect funds from ratepayers and transfer the amounts to be spent by DCEO to it for reimbursement. Certainly, it would not be fair to deny utilities recovery for these funds in the event imprudent spending by DCEO was identified and require utility shareholders to absorb these losses. This would be different if DCEO operated under the utilities' direction as a subcontractor. That, however, is not the case.

At the same time, it is certainly not clear the Commission could "claw back" any funds from DCEO, nor would that be an outcome that would help ratepayers. Because DCEO is a state agency, any disallowance of funds would presumably simply shift these costs to taxpayers.

Effectively, ratepayers and taxpayers are one and the same, so this outcome — even if possible — provides no real remedy.

In short, the current situation is that DCEO agrees to the goals the utilities desire, has no accountability to any entity for good performance, and no oversight or remedies if they operate imprudently or simply fail in their obligations. To be clear, I am not suggesting DCEO has imprudently spent funds, nor intentionally gamed this situation. Rather, my argument is simply that this *laissez-faire* approach is unacceptable, and does not adequately protect ratepayers. Protecting ratepayers is a clear responsibility of the Commission. Failing to fix this state of efficiency limbo causes real practical problems that are likely to become much more critical as goals increase and spending caps limit the amount of efficiency purchased. As a result, I believe the *status quo* is unacceptable and not in the interests of ratepayers, and that a more comprehensive solution needs to be found and articulated.

While the Commission is not a regulator of state entities, they clearly are the entity tasked with ensuring the delivery of cost-effective energy efficiency programs, and the General Assembly has clearly indicated an intent for the Commission to have some oversight role of DCEO in regard to energy efficiency program administration. Therefore, it seems clear the Commission is the appropriate entity to define clear rules to address these problems.

Q. What do you propose as a solution?

A. This is a complex question that raises a number of issues. First of all, I should note that I raise the issues involving DCEO goals and energy savings performance in this docket because they are integrally tied to the collective performance of ComEd and DCEO in PY3, reflected in the testimony of ComEd Witness Brandt, and also impact appropriate banking of savings that are an issue in this Docket. However, I also recognize that any solution affecting the establishment of DCEO performance goals and its role in delivering a portion of a utility's portfolio should necessarily apply to all Illinois gas and electric utilities. I recognize that these other utilities are not parties to this Docket, and certainly should have the opportunity to express their views, as should DCEO and other interested parties with appropriate standing. From a procedural standpoint, it may be more appropriate for the Commission to open a separate proceeding that all parties can provide testimony in to resolve these DCEO/utility savings goals apportionment and roles and oversight issues. If the Commission determines that route is more appropriate than articulating new rules in an order in this Docket, I encourage the Commission to open a proceeding to address this issue *post haste*. Resolving these issues prior to the beginning of electric PY6 and gas PY3 is important. Simply "kicking the can down the road" fundamentally risks the sustainability of the entire Illinois energy efficiency effort and does not adequately protect ratepayers. In my view, too, it is inconsistent with the goal of Section 8-103 of the Act for the delivery of cost-effective energy savings to ratepayers.

Q. Beyond the procedural issues, do you have a proposal?

A. For purposes of the concern around "orphaned goals" I do. I believe that the Commission should not allow DCEO and the utility to agree to a plan that includes DCEO goals that are higher than a reasonable person would agree are an appropriate share of savings based on historical performance, and also in light of the actual loads of the customer segments they serve as well as the participation barriers faced by these segments. DCEO may have in fact captured savings that met or exceeded the statutory percentage of *load savings goal* as applied to the energy loads of its public and low-income segments, at least in some years. One possible option is to simply apply the same statutory percent of load savings goals to both the utilities and DCEO. In other words, if the statue calls for 0.6% of load in incremental savings (as it did for PY3), then DCEO could be responsible for capturing no more than that amount, which I believe was less than half the goal to which DCEO actually agreed. While I have not done these calculations, I believe if assigned in this manner, DCEO goals would be much lower, achievable, proportionately commensurate with utility goals, and certainly would meet the intent of Section 8-103 of the Act. The result would be that utilities would still be held to meeting the same statutory percentage goal for their customers (but no more), an outcome clearly consistent with the intent of Section 8-103 of the Act. Currently, by definition, the utilities have adopted goals lower than the statutory percent of load requirement since DCEO has taken on higher goals. I stress that I have not done an analysis to determine if simply adopting the statutory percentage of load for DCEO customer segments would result in the most reasonable goal given a fixed 25% of budget. The evidence would indicate this is at least much closer to an appropriate goal allocation. The utilities and DCEO should be obligated to analyze what is reasonably achievable and support any goal allocation with evidence to support it. It seems clear to me that the Commission is the entity that needs to address this issue as part of its role of ensuring appropriate use of ratepayer funds and overseeing the achievement (or lack thereof) of meeting the energy savings goals articulated in Section 8-103 of the Act.

The Commission Staff has also recently raised concerns regarding this issue in its comments to the Commission on gas and electric coordination to support a forthcoming Commission report to the Legislature. I note that these comments clearly identified similar concerns and have the effect of beginning the process of considering these issues in this Docket and some future proceeding.

Q. Does this conclude your testimony?

A. Yes.