

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

ILLINOIS COMMERCE COMMISSION)	
On Its Own Motion)	
)	Docket No. 11-0341
-vs-)	
)	
AMEREN ILLINOIS COMPANY d/b/a)	
Ameren Illinois)	
)	
Reconciliation of revenues collected)	
under Rider EDR with the actual costs)	
associated with energy efficiency and)	
demand-response plans.)	
)	
Reconciliation of revenues collected)	
under Rider GER with the actual costs)	
associated with natural gas energy)	
efficiency plans.)	

AMEREN ILLINOIS COMPANY'S INITIAL BRIEF

May 7, 2013

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I. INTRODUCTION

A. Overview

Ameren Illinois Company d/b/a Ameren Illinois¹ (“Ameren Illinois” or “AIC”) respectfully requests that the Illinois Commerce Commission (the “Commission”) approve the reconciliation statements as proposed by the Company and find that the costs AIC incurred and the revenue recovered under Rider EDR – Energy Efficiency and Demand-Response Cost Recovery (“Rider EDR”) and Rider GER – Gas Energy Efficiency Cost Recovery (“Rider GER”) for the time period of June 1, 2009 through May 31, 2010 were reasonable and prudent.

Approximately \$31.1 million of the over \$31.2 million in total costs incurred under these Riders have been reviewed by the Staff of the Illinois Commerce Commission (“Staff”) and deemed to “have been reasonably and prudently incurred by the Company.” (Direct Testimony of S. Tolsdorf, Staff Ex. 1.0 at 4.) No party has contested Staff’s and AIC’s conclusion in this regard.

Indeed, the only contested issue in this docket – if AIC should recover \$119,500 of costs incurred implementing the gas SB HVAC Program – centers on an important policy question involving whether preliminary, interim Total Resource Cost (“TRC”) values² should be dispositive when deciding to discontinue or modify a cost-ineffective energy efficiency program. Staff believes that cost-effectiveness should have such a dispositive effect. But approving Staff’s disallowance would unnecessarily increase regulatory risk and substantially affect how Ameren Illinois, and possibly other utilities across Illinois, will approach energy efficiency investment. As set forth below, Staff’s position has little factual support, is wrong as a matter of law, and

¹ Effective October 1, 2010, Central Illinois Light Company d/b/a Ameren CILCO and Illinois Power Company d/b/a Ameren IP merged with and into Central Illinois Public Service Company d/b/a AmerenCIPS, leaving AmerenCIPS as the sole surviving legal entity. Simultaneously, AmerenCIPS changed its name to Ameren Illinois Company d/b/a Ameren Illinois.

² For an overview of the TRC test, please see Section II.B.2.a below.

would create bad policy. Based on the evidence in the record, including testimony from the Citizens Utility Board (“CUB”) supporting AIC’s recovery of the SB HVAC costs, the Commission should reject Staff’s recommendation and approve the costs incurred and revenue recovered for implementing the SB HVAC Program as reasonable and prudent.

B. Procedural History

On April 12, 2011, the Commission filed the initiating Order Commencing Reconciliation Proceedings to (1) reconcile the revenues collected under Rider EDR with the actual costs associated with energy efficiency and demand-response plans, and to (2) reconcile the revenues collected under Rider GER with the actual costs associated with natural gas energy efficiency plans. Docket 11-0341 opened at the time of the Order. The following parties filed appearances or intervened in this docket: Ameren Illinois; CUB; the Illinois Department of Commerce and Economic Opportunity (“DCEO”); the People of the State of Illinois (the “AG”); and the Natural Resources Defense Council (“NRDC”).

On November 30, 2011, Ameren Illinois filed direct testimony in support of its recovery of costs incurred and revenue recovered under Riders EDR and GER from the following witnesses: Kenneth Woolcutt, Managing Supervisor of Illinois Energy Efficiency for Ameren Illinois (Ameren Ex. 1.0); Dominic Perniciaro, Supervisor of Power Accounting for Ameren Services Company (Ameren Ex. 2.0); and Leonard Jones, Manager, Rates and Analysis for Ameren Illinois (Ameren Ex. 3.0). On March 2, 2012, Staff filed direct testimony in response to Ameren Illinois’ direct testimony from Scott Tolsdorf (Staff Ex. 1.0) and Jennifer Hinman (Staff Ex. 2.0). On October 9, 2012, CUB filed direct testimony in response to Staff’s direct testimony from Rebecca Devens (CUB Ex. 1.0).

Ameren Illinois filed rebuttal testimony on May 31, 2012 from Kenneth Woolcutt (Ameren Ex. 4.0) and Dr. John Chamberlin, senior advisor to Pacific Economics Group Research

(Ameren Ex. 5.0). Staff filed rebuttal testimony on October 20, 2012 from Scott Tolsdorf (Staff Ex. 3.0) and Jennifer Hinman (Staff Ex. 4.0). On December 20, 2012, Ameren Illinois filed surrebuttal testimony from Kenneth Woolcutt (Ameren Ex. 6.0). On March 12, 2013, Staff filed revised direct testimony (Staff Ex. 2.0R) and revised rebuttal testimony (Staff Ex. 4.0R) from Jennifer Hinman, and CUB filed revised direct testimony from Rebecca Devens (CUB Ex. 1.0R).

An evidentiary hearing was held before a duly authorized Administrative Law Judge on March 13, 2013. Testimony from the above witnesses and the affidavits of the non-appearing witnesses (Ameren Exs. 2.3 (Affidavit of D. Perniciaro), 3.1 (Affidavit of L. Jones), 5.2 (Affidavit of J. Chamberlin); Staff Ex. 3.1 (Affidavit of S. Tolsdorf)), as well as AIC and Staff Joint Exhibit 1.0, were received into the evidentiary record without objection. At the conclusion of the evidentiary hearing, the record was marked "Heard and Taken."

C. Legal Standard

Consistent with AIC's Commission-approved Riders EDR and GDR, the Commission annually reviews proposed energy efficiency and demand-response measures "to ensure the recovery of the prudently and reasonably incurred costs of Commission-approved programs."

220 ILCS 5/8-103(f); 220 ILCS 5/8-104(f). The Commission defines prudence as follows:

Prudence is that standard of care which a reasonable person would be expected to exercise under the same circumstances encountered by utility management at the time decisions had to be made. In determining whether a judgment was prudently made, only those facts available at the time judgment was exercised can be considered. Hindsight review is impermissible.

Imprudence cannot be sustained by substituting one's judgment for that of another. The prudence standard recognizes that reasonable persons can have honest differences of opinion without one or the other necessarily being 'imprudent'.

Illinois Commerce Comm'n v. The Peoples Gas Light and Coke Co., Docket 00-0720, 2002 Ill. PUC LEXIS 170, at *11 (Ill. PUC Jan. 24, 2002) (citing *Illinois Commerce Comm'n v. Commonwealth Edison Co.*, Docket 84-0395 (October 7, 1987)).

“The prohibition against the use of hindsight means that a finding of imprudence can result only if a utility manager made a decision or took action that was unreasonable based on the facts known to the manager at the time.” *Illinois Commerce Comm'n v. Commonwealth Edison Co.*, Docket 95-0119, 1998 Ill. PUC LEXIS 1018, at *12-14 (Ill. PUC Nov. 5, 1998) (citing *Illinois Power Company v. Illinois Commerce Comm'n*, 245 Ill. App. 3d 367, 376 (3d Dist. 1993). This means that “[a] utility’s decision is prudent if it was within the range of decisions reasonable persons might have made.” *Id.* “Thus, if a reasonable person could have chosen the course of action that [the utility] followed under the circumstances existing [during the period at issue], [the utility] was prudent.” *Id.* The utility has the burden of proof in establishing, by a preponderance of the evidence, prudence during the reconciliation period. *Illinois Commerce Comm'n v. North Shore Gas Co.*, Docket 91-0581, 1996 Ill. PUC LEXIS 302, at *37-40 (Ill. PUC June 5, 1996).

II. ARGUMENT

A. Uncontested Issues

Approximately \$31.1 million of the over \$31.2 million in total costs at issue under these Riders have been reviewed by the Staff of the Illinois Commerce Commission (“Staff”) and deemed to “have been reasonably and prudently incurred by the Company.” (Tolsdorf Direct, Staff Ex. 1.0 at 4.) Ameren Illinois implemented programs in Plan Year (“PY”) 2 (which spans June 1, 2009 through May 31, 2010) in accordance with the electric and gas Energy Efficiency and Demand Response Plans (“EEDR Plans”) that were approved by the Commission in Docket Nos. 07-0539 and 08-0104, respectively, and the laws of Illinois. (Docket No. 07-0539, Final

Order at 38 (Feb. 6, 2008); Docket No. 08-0104, Final Order at 22 (Oct. 15, 2008).) In 2007, Ameren Illinois sought and received Commission approval in Docket No. 07-0539 to implement a mandatory portfolio of electric energy efficiency programs to retail customers. (Rebuttal Testimony of K. Woolcutt, Ameren Ex. 4.0 at 3.) That docket constituted the first Commission review and approval of AIC's plan to manage and implement a portfolio of energy efficiency programs and measures. (*Id.*) In 2008, AIC, who provided both electric and gas service, *voluntarily* sought and received Commission approval in Docket No. 08-0104 to provide complementary natural gas energy efficiency programs to certain other eligible retail customers, limited to residential and small business customers. (Docket No. 08-0104, Final Order at 21-22 (Oct. 15, 2008).) Notably, because of the timing of Docket No. 08-0104, the first plan year for the gas energy efficiency programs spanned only five months as the Commission approved AIC's request that the electric and gas Plan Years run concurrently. (*Id.*) The Company's PY1 reconciliation statements were reviewed and approved, subject to adjustments proposed by Staff, in Docket No. 09-0535. (*See* Docket No. 09-0535, Final Order (Sept. 21, 2001).)

Pursuant to Docket Nos. 07-0539 and 08-104, Ameren Illinois hired third-party energy efficiency ("EE") program implementation contractors to assist with implementing AIC's EE portfolio, which comprised both Residential and Business EEDR Programs. The Residential EEDR Programs included: Lighting and Appliances, Appliance Recycling, Home Energy Performance, New Heating and Cooling Equipment, Multifamily, Energy Star New Construction, Low Income Gas, and E-Smart Programmable Thermostats. (Direct Testimony of K. Woolcutt, Ameren Ex. 1.0 at 6.) The total cost for these Programs was approximately \$12,212,530. (*Id.* at 8.) The Business EEDR Programs implemented for electric savings during PY2 were Standard, Custom, Retro-Commissioning, Commercial New Construction, and the E Smart Thermostat

Program; and Programs implemented for gas savings were Small Business HVAC, Food Service, and E-Smart Thermostat Program. (*Id.*) These Programs cost approximately \$8,614,825. (*Id.* at 10.) In addition, DCEO reported to AIC that DCEO’s costs for implementing its Programs equaled approximately \$6,643,234. (*Id.*)

The costs at issue in this docket generally fall into the following categories: (i) program-specific (residential electric, business electric, residential gas, and business gas); (ii) portfolio administration; and (iii) evaluation, measurement, and verification (“EM&V”) contractors. (*Id.* at 11.) Program-specific costs include incentive and non-incentive costs. (*Id.*) The non-incentive costs include implementation labor and direct costs incurred by implementers. (*Id.*) Portfolio administration costs are costs incurred by Ameren Illinois to administer the portfolios. (*Id.*) Finally, EM&V costs are those costs required for the independent evaluators to perform under their contracts, including providing an assessment of energy savings. (*Id.* at 11-12.)

The total revenue recovered under Rider EDR in PY2 was \$28,351,028, and the total revenue recovered under Rider GER was \$3,318,507. (*Id.* at 12.) The following charts compare the EDR and GER revenues and costs in PY2:

Rider EDR

Rate Group	PY2 Revenue	PY2 Costs	Over/(Under)
DS-1	\$ 11,360,510	\$ 12,252,118	\$ (891,608)
Ds-2, 3, 5	\$ 9,950,014	\$ 7,572,398	\$ 2,377,616
DS-4	\$ 7,040,504	\$ 7,687,771	\$ (647,267)
Total	\$ 28,351,028	\$ 27,512,287	\$ 838,741

Rider GER

Rate Group	PY2 Revenue	PY2 Costs	Over/(Under)
GDS-1 and 2	\$ 3,318,507	\$ 3,710,637	\$ (392,130)

(Direct Testimony of D. Perniciaro, Ameren Ex. 2.0 at 4.) The above charts reflect that Ameren Illinois had an over-recovery of \$838,741 for Rider EDR and under-recovery of \$392,130 for Rider GER for this reconciliation period.

To ensure that all the incurred costs were properly recorded and stated, AIC conducted internal audits for the EEDR Programs and provided the results to the Commission in 2010. (Woolcutt Dir., Ameren Ex. at 12.) The audits concluded that the costs under Riders EDR and GER were properly stated and recorded. (*Id.*) Additionally, as explained by AIC witness Dominic Perniciaro, AIC was subject to a spending budget for electric energy efficiency measures of \$29,404,520 and for gas energy efficiency programs of \$4,416,667. (Perniciaro Dir., Ameren Ex. at 4-5.) AIC's costs were thus also within budget limits.

As explained by AIC witness Kenneth Woolcutt, Ameren Illinois was responsible for four aspects of managing the Programs: (i) program and portfolio implementation, including reviewing and approving all implementation plans and program designs; (ii) contracting and oversight of implementation contractors, including providing high-level administrative, program design, delivery, and marketing oversight of implementation contractors as well as daily interaction with the prime implementers; (iii) coordinating activities with EM&V contractors; and (iv) reporting. (Woolcutt Dir., Ameren Ex. 1.0 at 5.) Regarding the first aspect, based on approval of portfolio flexibility, AIC and its prime implementers performed continuous assessment of appropriate Programs and Program revisions for its market. (*Id.*) Second, AIC

maintained oversight of the portfolio as a whole, as well as the program implementation contractors themselves. (*Id.*) Third, AIC coordinated activities for the independent evaluation process collaboratively with Staff and the Stakeholder Advisory Group (“SAG”). (*Id.*) Last, AIC reported the status of the Programs and their progress towards achieving energy savings targets. (*Id.*)

Based on this, Ameren Illinois respectfully requests that the Commission approve the proposed reconciliation statements that reflect a refund of \$838,741 for amounts over-collected pursuant to Rider EDR as well as a recovery of \$392,130 for amounts under-collected pursuant to Rider GER for this reconciliation period. The Programs in the EEDR Plans were chosen because they represented a means of achieving significant energy savings in a cost-effective manner while providing a diverse portfolio of programs. The Commission granted Ameren Illinois flexibility to implement the PY2 Plans, which AIC reasonably and prudently exercised using information available to it, as well as input from Staff, stakeholders, and consultants. AIC reviewed and approved the implementation plans and program designs, and oversaw the administrative, design, delivery, and marketing of the implementation contractors. AIC properly recovered the appropriate costs from customers. Aside from the costs incurred with respect to the SB HVAC Program (addressed below), Staff’s review found that all other costs “have been reasonably and prudently incurred by the Company.” (Tolsdorf Direct, Staff Ex. 1.0 at 4.) No party has contested Staff’s and AIC’s conclusion in this regard.³

³ Staff initially stated that AIC owed \$8,754 in refunds to customers through an Ordered Reconciliation Adjustment (“ORA”) from Docket No. 09-0535 (Tolsdorf Direct, Staff Ex. 1.0 at 3), but noted that “subsequent informational filings by the Company indicate that the Company properly refunded to customers the ORA originating from the Order in Docket No. 09-0535 during the reconciliation period ended [sic] May 31, 2011.” (Rebuttal Testimony of S. Tolsdorf, Staff Ex. 3.0 at 2).

Ameren Illinois, therefore, respectfully requests that the Commission approve the reconciliation statements with respect to these costs.

B. Contested Issues

Initially, Staff made three recommendations to the Commission relating to the SB HVAC Program costs in Rider GER, each of which was contested by the Company and CUB. Staff recommended that: (1) the Commission disallow \$131,771 in SB HVAC costs incurred; (2) the Commission direct AIC to monitor projected benefits and costs of the SB HVAC Program and to only continue the program if projected benefits exceed projected costs; and (3) the Commission “make a policy decision” and direct that AIC should always monitor projected benefits and costs of all of its energy efficiency programs and to only continue to spend funds on a program if and when projected benefits exceed projected costs. (Direct Revised Testimony of J. Hinman, Staff Ex. 2.0 at 18-19.) On rebuttal, AIC noted, among other things, the inclusion of PY1 costs within Staff’s disallowance calculation of the SB HVAC costs that had already been approved by the Commission as prudent and reasonable in Docket No. 09-0535. (Woolcutt Sur., Ameren Ex. 4.0 at 6.) AIC and CUB also criticized Staff’s policy recommendations as vague and improper. (Devens Dir., CUB Ex. 1, at 6-15; Woolcutt Sur., Ameren Ex. 4.0, at 7-16.) On rebuttal, Staff adjusted the SB HVAC costs by \$12,221, such that Staff’s proposed disallowance of the costs that AIC incurred through the SB HVAC Program was \$119,550. (Hinman Revised Reb., Staff Ex. 4.0R at 4.) Staff also withdrew its recommendation that AIC continuously monitor the SB HVAC Program’s and other energy efficiency programs’ benefits and costs and only spend funds on a program if projected benefits exceed projected costs. (*Id.* at 23-24; Tolsdorf Reb., Staff Ex. 3.0 at 3.) Thus, as confirmed by Staff at the hearing, the *only* contested issue that remains in this docket is whether the \$119,550 in costs that Ameren Illinois incurred while implementing its SB

HVAC Program should be disallowed. (Docket No. 11-0341, Hearing Tran. at 113:17-114:3 (Mar. 13, 2013).)

Staff recommends that the Commission disallow the entirety of these costs. In doing so, Staff “primarily relied upon the forecasted or projected” TRC test results taken by the program’s implementer as the basis for its recommendation. (Hinman Revised Reb., Staff Ex. 4.0R at 18.) Specifically, Ms. Hinman testified that the program implementer’s report “casted substantial doubt on whether the program would be cost-effective during PY2” or in the future because of low TRC values for the gas furnace tune-up measure. (*Id.* at 4-5.) Ms. Hinman further testified that, because the Commission granted AIC authority to modify its programs, the fact that it continued the tune-ups despite low TRC results demonstrates that “Ameren neglected its obligation to do so and ratepayers were forced to pay for a failed program as a result.” (*Id.*) Finally, Ms. Hinman cites AIC’s response to the first year TRC results of offering a special “Triad” offer that bundles furnace tune-ups with AC tune-ups and a thermostat measure as imprudent management. (*Id.* at 21.)

Staff’s position should be rejected in its entirety. First, as a factual matter, the SB HVAC Program costs were prudently and reasonably incurred, and the basis of Staff’s recommendation does not support an alternative conclusion. Ameren Illinois prudently managed the SB HVAC Program by modifying the Program consistent with the third-party implementer’s recommendations, which included a forecast that the Program would achieve cost effectiveness over the life of the three-year plan. Second, accepting Staff’s recommendation would create bad policy that could fundamentally change the way utilities implement energy efficiency programs in the future because utilities would be put at risk based on a subjective variable – TRC values at the measure and program level – that can change depending on who calculates them and when.

Such a result would likely stunt the growth and development, or possibly even eliminate, the continuation of energy efficiency in Illinois. In fact, CUB filed testimony in favor of AIC recovering the SB HVAC costs and advocating against Staff's recommendation based, in part, on this very reason. (*See* Revised Direct Testimony of R. Devens, CUB Ex. 1.0R.) The Commission should reject Staff's recommended disallowance and approve AIC's recovery of all costs incurred implementing the SB HVAC Program as proper.

1. SB HVAC Costs Were Reasonable and Prudent

a. SB HVAC Background

As explained by AIC witness, Mr. Kenneth Woolcutt, the SB HVAC Program was one of the voluntary gas programs that passed the TRC test submitted by AIC and reviewed and approved by the Commission to be implemented during PY 1-3 through Docket No. 08-0104 (the SB HVAC Program has also been referred to as the Small Business Tune-Up Program). (Woolcutt Reb., Ameren Ex. 4.0 at 3-4.) Consistent with the other programs reviewed and approved by the Commission, the SB HVAC Program met certain criteria, including having an acceptable TRC test result for planning purposes and the potential to penetrate the small business market such that small businesses would eventually make energy efficient choices. (*Id.* at 4.)

As further explained by Mr. Woolcutt, the SB HVAC Program was designed specifically to target small businesses in PY1 through PY3, with the goals of penetrating the market and incentivizing small businesses to tune-up or replace old, less-efficient furnaces. (Woolcutt Reb., Ameren Ex. 4.0 at 4.) To meet the program's goals, AIC relied heavily on trade allies that already provided HVAC service to small businesses. (*Id.*) While developing the plan that was ultimately approved by the Commission, AIC anticipated that small businesses were a particularly difficult market to penetrate because they traditionally have limited funds to spend on energy efficiency investments. (*Id.* at 4-5.) Yet, AIC believed it was consistent with

Commission precedent and a good investment to try and penetrate this market and offer programs to small businesses, particularly because they were a part of the target customer class approved by the Commission as being eligible to participate. (*Id.* at 5.)

So AIC worked with trade allies (comprising primarily of plumbing or HVAC service providers) to offer furnace tune-ups and new efficient equipment purchases coupled with a financial incentive from AIC. (*Id.*) The SB HVAC Program required trade allies to submit all tune-up projects for preapproval (and other projects which were greater than a \$5,000 incentive) before any commitments could be made to customers or any financial incentives would be paid, and the projects later went through a verification process. (*Id.* at 5-6.) The \$119,550 in program costs were related to the financial incentives paid to trade allies implementing the Program. By working with trade allies and incentivizing them and small business customers to learn about energy efficiency, AIC increased further ally and customer awareness and participation in energy efficiency programs in PY2 and, hopefully, future plan years. (*Id.* at 10.) The costs associated with these activities, therefore, were in accordance with Commission precedent and policy and were reasonable and prudent.

b. Ameren Illinois Acted Reasonably and Prudently

PY2 represented the first full year implementation of Ameren Illinois' voluntary gas energy efficiency portfolio, as PY1 was only five months long. (Surrebuttal Testimony of K. Woolcutt, Ameren Ex. 6.0 at 7; Docket No. 08-104, Final Order at 21-22 Oct. 15, 2008.) The two documents "primarily" relied upon as the bases for Staff's disallowance are implementation reports from AIC's third-party implementer, dated August 17, 2009 (Staff Ex. 4.1) and October 12, 2009 (Staff Ex. 4.2), respectively. These reports were written mere months into PY2 and approximately a year after the Final Order issued in Docket No. 08-104. The reports addressed a host of issues, not just TRC values of the various programs, and made suggestions regarding the

implementation and improvement of those programs. Thus, when the third-party implementer included the preliminary, interim TRC results relied upon by Staff, they were a part of a broader picture of portfolio management and implementation. (*See* Staff Ex. 4.1; 4.2.) The reports themselves noted that the SB HVAC Program was in its initial stages, having started only months earlier during a period of the year (the summer time) that customers did not traditionally seek tune-ups to gas furnaces. (Surrebuttal Testimony of K. Woolcutt, Ameren Ex. 6.0 at 7.) Moreover, the implementer did not just calculate a single TRC value, projected or otherwise; it provided multiple TRC values (that at times trended upwards), as well as recommendations on how to modify programs based on a variety of factors, including the TRC values it was calculating internally. (*Id.*)

In fact, in October 2009, AIC's implementer provided an interim TRC for SB HVAC tune-ups for the gas program that was higher than values previously reported (*id.*), though apparently still not high enough to pass Staff's retrospective analysis. Such changes to the TRC values illustrate the volatility and imprecise nature of interim TRC values. And, at the time, the third-party implementer, in that same October 2009 document, did *not* recommend discontinuing the SB HVAC program. Rather, it recommended modifying the program in accordance with the broader modifications recommended to other areas of the portfolio, to include further outreach to program allies, including those in the small business community, and as such mirrored the program's 3-year intent as described in the Plan filing. (*Id.*) As part of these outreach activities, the implementer suggested increasing incentives for HVAC tune-ups and bundling them with other outreach activities. (*Id.*) The goal of these outreach activities was to penetrate the hard to reach and underserved small business market (which the gas program was limited to) so that AIC could hopefully develop, early in its portfolio, a robust customer awareness of (and participation

in) energy efficiency programs. (*Id.* at 7-8.) Such development of the market and increase in customer awareness and participation were important aspects of AIC's energy efficiency portfolio. (*Id.* at 8.) The implementer projected that, with the modifications set forth in its plan, the SB HVAC Program was expected "to yield a TRC" greater than 1.0. (Business Program: Program Year Two Implementation Plan (Oct. 12, 2009), Staff Ex. 4.2 at 5.)

But Staff ignores or discounts these points and instead criticizes the Company for not giving the implementer's preliminary, interim TRC test results dispositive effect on whether the Company should have discontinued the SB HVAC program. Yet Staff admitted that it has been unable to endorse the TRC values calculated by the third-party implementer or verify the benefits the implementer included in its TRC calculation. (Docket No. 11-0341, Hearing Tran. at 139:4-16 ("Q. So you have neither received nor verified the inputs and you are not presenting those, for example, as Staff's calculation, correct? A. Correct. Q. And you would agree with me that the implementer is the one who calculated these TRC values that are cited in your testimony, correct? A. My understanding, I think there is an intern that worked for the implementer who is no longer with the Company." (Mar. 13, 2013).) And, in any event, cutting short the SB HVAC mid-stream simply because of preliminary, interim TRC values (which the Company did not calculate) would have meant disregarding the implementer's specific recommendations to continue the Program with modifications, in addition to disregarding the investment made with and by program allies to develop the program and eliminating pending projects for customers. It also would have meant cutting short AIC's attempt to penetrate the small business market at a time in the year when customers traditionally seek services relating to gas furnaces. (Woolcutt Surreb., Ameren Ex. 6.0 at 8.) AIC's decision to not give TRC values – which Staff to this day does not endorse – dispositive effect over the implementer's recommendation demonstrates

prudence, not imprudence. *See Illinois Commerce Comm'n v. Commonwealth Edison Co.*, Docket 95-0119, 1998 Ill. PUC LEXIS 1018, at *12-14 (Ill. PUC Nov. 5, 1998) (“A utility’s decision is prudent if it was *within the range* of decisions reasonable persons might have made.”) (emphasis added) (citing *Illinois Power Co. v. Illinois Commerce Comm'n*, 245 Ill. App. 3d 367, 376 (3d Dist. 1993) (reversing Commission’s finding of imprudence because the Commission conducted hindsight review of company’s actions)).

Moreover, Staff fails to consider a number of factors relevant to AIC’s decision to continue with the SB HVAC Program. As explained in Docket No. 08-0104, the Commission agreed that Ameren Illinois should have “flexibility to modify” its portfolio “as circumstances warrant.” (Docket No. 08-0104, Final Order at 18.) There are many factors that could be considered when determining if a program should be modified or continued, including: whether there are resources available or market potential to achieve cost effective savings; whether a program could increase participation by allies and customers in energy efficiency programs; and whether emerging technologies, pilot programs appealing to hard to reach sectors, or programs that represent a diverse cross section of opportunities for customers of all rate classes that in and of themselves may not be cost effective are at issue. (Woolcutt Reb., Ameren Ex. 4.0 at 9.) All of these factors require AIC to make judgment calls based on available information, including feedback from implementers and stakeholders, beyond preliminary TRC values. Staff’s criticism fails to account for these other factors and instead tries to second guess the Company’s reasonable decisions made at the time.

In addition, AIC managed the Program as part of the total portfolio, and it knew that at the time the preliminary TRC values were provided by the third-party implementer, the values did not tell the whole picture with respect to Program costs and benefits. (*Id.* at 9-10.) Also,

because the gas programs were still in the initial stages of the multi-year plan, AIC believed the Program would continue to introduce energy efficiency as a concept to allies and increase ally and customer participation in energy efficiency programs as the portfolio progressed. (*Id.* at 10.) Indeed, as explained by Mr. Woolcutt, the gas tune-up measure (of which Staff focuses its criticism) is a standard tactic to cultivate ally participation and educate consumers whereby inefficiency is identified and opportunities for improved efficiency are explained. (*Id.*) Only through introduction and an increase in participation in, and education of, energy efficiency, can AIC achieve market transformation. (*Id.*) So even with a low preliminary, interim TRC value, AIC reasonably believed that the SB HVAC Program would benefit the *overall portfolio*. These other factors outweighed any concerns with a low preliminary TRC value, particularly because the overall portfolio remained cost effective, and the implementer forecasted a positive TRC value at the end of the plan. (*Id.*) Again, all of the above, in and of themselves, entitle the Company to a finding of reasonableness and prudence; under the law, Staff cannot retrospectively try to dictate which factors deserved dispositive weight over others. *Peoples Gas Light*, 2002 Ill. PUC LEXIS 170, at *11.

As set forth above, AIC was faced with a set of factors that it considered when deciding to follow the third-party implementer's recommendation to continue the SB HVAC Program. Because this decision was "within the range of decisions reasonable persons might have made," *Commonwealth Edison Co.*, 1998 Ill. PUC LEXIS 1018, at *12-14, the Company's actions were, as a matter of law, reasonable and prudent.

c. Staff's Arguments Have No Merit.

Staff's arguments for disallowance have no merit and should be rejected. *First*, while Staff appears to base its disallowance recommendation on the fact that Ameren Illinois continued its SB HVAC in any form, Ms. Hinman also criticizes AIC for failing to "exercise its ability to

modify” the program. (Revised Direct Testimony of J. Hinman, Staff Ex. 2.0R at 10.) This criticism is unfounded. AIC did modify the Program. In fact, as explained by Mr. Woolcutt, AIC took steps to cultivate ally participation and installation of equipment. (Woolcutt Reb., Ameren Ex. 4.0 at 10.) And AIC chose to modify rather than discontinue the SB HVAC Program, in part, because the Commission directed it to implement the Program as part of the overall portfolio; and, in part, because the Commission held in the prior Final Order approving the electric portfolio that cost effectiveness should be evaluated at the portfolio level and not at the program or measure level, as advocated by Staff in this situation. (*Id.* at 11; Docket No. 07-0539, Final Order at 21).)

Second, Staff’s argument that the ratepayers have been “harmed” because of the SB HVAC Program also falls short. Staff has never identified a specific harm to “ratepayers” other than that small business customers had to incur costs associated with offering the gas furnace tune-ups to them. (Staff Resp. to AIC-ICC 2.1 (AIC Ex. 6.1).) This should not be considered a “harm” because the costs of trying to develop the energy efficiency market and provide energy efficiency programs across diverse customer classes is consistent with the Public Utilities Act and was approved by the Commission in ICC Docket No. 08-0104 (the three year gas planning docket). Also, small businesses did benefit from money being spent on developing energy efficiency programs that worked with program allies to penetrate the small business market and increase awareness and participation in energy efficiency programs during initial months of a program implementation, which would ultimately yield higher benefits to them in the future as the program developed in later years. Finally, as noted above, the Commission has directed in prior orders that cost-effectiveness should be evaluated on the portfolio and not measure level. It would thus be unfair and improper to now find that AIC “harmed” ratepayers because it followed

the Commission's direction and did not rely solely on preliminary measure level TRC values when deciding to not discontinue the SB HVAC Program. *See Illinois Power Co. v. Illinois Commerce Comm'n*, 339 Ill. App. 3d 425, 439 (5th Dist. 2003) (reversing Commission's finding of imprudence where the utility relied on the Commission's prior decisions because "[the Commission's] decisions are entitled to less deference when it drastically departs from past practice.") (citing *Bus. & Prof. People for Pub. Interest v. Illinois Commerce Comm'n*, 136 Ill. 2d 192, 228 (Ill. 1989)).

Third, while Staff agrees that the TRC value represents only one factor to consider when determining whether to continue a program, it has never identified what other factors should have been considered or why the other facts considered by the Company were incorrect. (Hinman Revised Reb., Staff Ex. 4.0R at 22; Staff Resp. to AIC-ICC 1.6 (AIC Ex. 6.1).) Staff's failure to identify or articulate any clear standard that could be applied in this docket or in the future only highlights the vague, unworkable policy that Staff's proposed disallowance represents. Such a policy, if endorsed by the Commission, needlessly increases regulatory risk and the resources that would be needed to account for this increased risk.

Fourth, it is important to note that Staff has taken issue with only one portion of the SB HVAC Program, those activities relating to gas furnace tune-ups, even though Staff proposes to disallow all of the SB HVAC Program costs. (Hinman Revised Reb., Staff Ex. 4.0R at 4-5.) Staff specifically takes issue with how AIC followed the implementer's recommendation and began "bundling" the gas furnace tune-ups with other SB HVAC activities, like those related to AC tune-ups and the installation of "Smart" thermostats, despite interim TRC less than 1.0. (*Id.* at 21.) But even Staff had to concede at the hearing that "bundling" the tune-ups with other SB

HVAC activities – such that “one person is doing all three” – is “helpful.” (See Docket No. 11-0341, Hearing Tran. at 147:15-16 (Mar. 13, 2013).)

Finally, Staff’s “hindsight review is impermissible.” *Peoples Gas Light*, 2002 Ill. PUC LEXIS 170, at *11. As set forth above, AIC based its decision to continue the SB HVAC Program on the Commission’s approval of the portfolio, the implementer’s suggestions, and the information available at that time. This meant analyzing the TRC values in the proper context, along with the other factors relevant to cost effectiveness mentioned above. Given the information at its disposal, including the implementer’s forecasted cost effectiveness, AIC’s decision to continue the Program consistent with the implementer’s proposed modifications was unquestionably prudent. See *Commonwealth Edison*, 1998 Ill. PUC LEXIS 1018, at *12-14 (“a utility’s decision is prudent . . . if a reasonable person *could have* chosen this course of action.”) (emphasis added). That Staff now disagrees with how the Company made its decision is of no matter. See *Peoples Gas Light*, 2002 Ill. PUC LEXIS 170, at *11 (“Imprudence cannot be sustained by substituting one’s judgment for that of another. The prudence standard recognizes that reasonable persons can have honest differences of opinion without one or the other necessarily being ‘imprudent.’”). In fact, Staff’s near exclusive reliance on the preliminary TRC results (which Staff itself does not endorse), at the expense of the countervailing evidence, exemplifies why it’s after-the-fact, incomplete analysis should be rejected.

For these reasons, AIC’s decision to continue the SB HVAC Program consistent with the implementer’s modifications was proper and the costs incurred were reasonable and prudent.

2. Approving Staff's Recommendation Would Create Bad Policy

Staff recommends that the Commission disallow PY2 costs associated with the SB HVAC Program based on low preliminary TRC values, coupled with the implementer's concern that, without changes to the tune-up activities, that trend could continue. But if the Commission approves Staff's recommendations, the policy implications would be severe – utilities would be faced with increased regulatory risk stemming from uncertainty of cost recovery for energy efficiency programs. This affects current implementation of energy efficiency programs – and, particularly, new or innovative programs – as utilities would be hesitant to implement a measure or program that, in the short term would not be projected to be cost effective, but in the long term could evolve into becoming cost effective or assist the portfolio in other ways to become cost effective as a whole. Such a result runs counter to Illinois law and Commission precedent and should be rejected.

a. TRC Overview

AIC witness Dr. John Chamberlin testified regarding Staff's application of the TRC test and the policy implications of applying Staff's recommendations. (*See* Chamberlin Reb., Ameren Ex. 5.0.) Dr. Chamberlin has over 30 years of experience testifying in regulatory proceedings regarding energy efficiency planning and implementation, cost-effectiveness analysis, and utility policy issues, among others. (*Id.* at 2.) He was one of the early developers of methods to identify, plan, and evaluate energy efficiency, load management, and price response programs. (*Id.*) Contrary to Staff's position, Dr. Chamberlin testified that he is “not aware of any instance where the TRC was applied to determine cost recovery and to do so would be a very dangerous policy.” (*Id.* at 13.)

According to Dr. Chamberlin, the TRC test is the most commonly applied cost effectiveness test. (*Id.* at 5.) The Illinois legislature defines the TRC test as “a standard that is

met if, for an investment in energy efficiency or demand-response measures, the benefit-cost ratio is greater than one” where the “benefit-cost ratio is the ratio of the net present value of the total benefits of the program to the net present value of the total costs as calculated over the lifetime of the measures.” 220 ILCS § 3855/1-10⁴; § 5/8-104(b). Based on this definition, Dr. Chamberlin explained that a program is said to be cost effective, or to “pass” the TRC test, when the ratio of benefits counted by the TRC test exceed the costs counted by the test. (Chamberlin Reb., Ameren Ex. 5.0. at 5.)

But not all costs and benefits associated with an EE program are counted in the TRC test. For example, non-energy benefits such as increased comfort or worker productivity are not included in the TRC test. (*Id.*) Moreover, the Public Utilities Act requires both cost effectiveness and that the portfolio “represent diverse cross-section of opportunities for customers of all rate classes to participate in the programs.” 220 ILCS 5/8-104(f)(5). This means that individual measures or programs may be included in the portfolio if they reach a segment of customers that would otherwise be unable to participate even if the TRC associated with these measures or programs does not appear cost effective. (Chamberlin Reb., Ameren Ex. 5.0 at 7.)

Dr. Chamberlin testified that a program or measure may be valuable even if it does not appear cost effective from a TRC perspective for several additional reasons:

⁴ The Illinois Power Agency Act further provides that: “A total resource cost test compares the sum of avoided electric utility costs, representing the benefits that accrue to the system and the participant in the delivery of those efficiency measures, as well as other quantifiable societal benefits, including avoided natural gas utility costs, to the sum of all incremental costs of end-use measures that are implemented due to the program (including both utility and participant contributions), plus costs to administer, deliver, and evaluate each demand-side program, to quantify the net savings obtained by substituting the demand-side program for supply resources. In calculating avoided costs of power and energy that an electric utility would otherwise have had to acquire, reasonable estimates shall be included of financial costs likely to be imposed by future regulations and legislation on emissions of greenhouse gases.” 220 ILCS § 3855/1-10.

- It involves a trial, particularly for emerging technologies or for a hard to reach market segment. The SB HVAC program falls into this category. The small business market has numerous constraints that limit participation including shortage of capital, frequently leased physical space, and focus on day-to-day operations.
- It is expected to break down market barriers. A good example of such a program is one that leads to the installation of cost effective equipment such as tune-ups. Another example is a residential new construction program. Key to this kind of program is informing the potential participants of the benefits so that first cost becomes less of an issue.
- The measure creates some additional value not easily measured by TRC. This is frequently noted in lighting programs, as workplace productivity is often improved by appropriate light levels.
- A program might not be cost-effective in its early years, but is expected to become cost effective as it matures. This is typical of programs that rely heavily on trade ally coordination. Development of the trade ally network increases expenses in the early years, but costs decline as the network matures.

(Id. at 7-8)

Dr. Chamberlin further testified that it is typical to apply a TRC analysis to individual measures at an early stage of screening for portfolio planning purposes. *(Id. at 8.)* One useful technique is to apply a limited form of TRC analysis to each measure to determine which have the potential to be cost effective under certain circumstances. *(Id.)* In this context, a “measure” is a technology, appliance, or activity (e.g., a high efficiency gas furnace); a “program” consists

of a marketing strategy, rebate or incentive level, the equipment to be utilized, and generally an administrative and evaluation approach. (*Id.*) “Programs” may have multiple “measures,” and some component measures can have multiple purposes. (*Id.*) For example, the program may offer low cost tune ups as both a stand-alone measure (i.e., one that produces some energy savings), but also as a marketing or outreach effort intended to leverage contractor visits to increase installations of new, more efficient HVAC units. (*Id.*) But these preliminary analyses generally include only a portion of costs and exclude common costs such as program administration. (*Id.*)

Dr. Chamberlin explained that while a measure level screening is appropriate when first considering the development of an EE portfolio, utilities should ultimately be responsible for the overall performance of their portfolio. (*Id.* at 9.) Energy efficiency portfolios are best designed to balance multiple considerations. (*Id.*) The first step in determining which of the many potential measures to include in programs could be the TRC screening at the measure level. (*Id.*) This provides guidance, but is not an absolute determinant. (*Id.*) Other factors, such as the distributional impact may suggest that a measure does not appear cost effective from the TRC screen, but nonetheless adds value to the overall portfolio. (*Id.*) Similarly, Dr. Chamberlin testified that when aggregated into programs it may become apparent that certain sectors of customers will not have an opportunity to participate in an energy efficiency program. (*Id.*) Utilities may then determine that it is in the best interest of their customers to add measures or programs that have not passed a TRC screen on a stand-alone basis to maximize the benefits of the overall portfolio and provide opportunities for broader participation. (*Id.*) A strict application of the TRC would result in reduced benefits from the portfolio. (*Id.*)

b. TRC Should be Analyzed at the Portfolio Level

Consistent with Dr. Chamberlin’s testimony, Illinois law and the Commission have repeatedly recognized the benefit of applying the TRC to the portfolio, rather than at the program or measure level. *See, e.g.*, 220 ILCS 5/8-104(f)(5); Docket No. 07-0539, Final Order at 20; Docket No. 10-0568, Final Order at 30 (“The Commission finds that evaluating cost-effectiveness on a portfolio level is necessary to ensure that Ameren not be penalized for planning assumptions that turn out to be inaccurate.”) Further, in the Final Order issued in North Shore Gas Company and The Peoples Light Gas and Coke Company, Docket No. 10-0564, the Commission rejected Staff’s recommendation “that only measures that are cost-effective be included in any programs or the portfolio.” (Docket 10-0564, Final Order at 79 (May 24, 2011).) Specifically, Staff witness Dr. Brightwell had advocated that using a measure level TRC test would allow for an analysis of whether any particular measure has greater expected value to society than it costs. (*Id.*) He argued that if a particular measure is not cost-effective under the TRC test, then it does not have sufficient value to society to make it worthwhile because every unit sold of a measure that is not cost effective serves to reduce the net benefit of the program. (*Id.*) The Commission was very specific in denying Staff’s recommendation. The Commission held: “The Commission agrees with the Utilities that Section 8-104 does not require each measure to meet the TRC test, but it does require the portfolio (except for the low income portion) to meet the TRC test. The Commission declines to make the finding requested by Staff witness Brightwell.” (*Id.* at 92).

These findings make sense. It is often the case that energy efficiency programs benefit from synergies that are created both between measures within programs and frequently between programs themselves. (Chamberlin Reb., Ameren Ex. 5.0 at 11.) For example, the SB HVAC Program’s goals were to increase use of more efficient HVAC units. (*Id.*) While the tune-up

portion was expected to produce some savings on its own, it was essentially an outreach effort intended to accomplish the broader goal of increasing the adoption of energy efficient technology in the small business sector. (*Id.*) This segment is hard to reach and has significant market barriers. (*Id.*) And getting contractors on site to tune up HVAC units will place the contractors in the position to advise customers of the benefits of replacing antiquated units with energy efficient models. (*Id.*)

In addition, as Dr. Chamberlin explained, it is often true that there are significant uncertainties associated with program implementation. (*Id.*) For example, it may not be clear whether trade allies will stock particular technologies, what level of incentive is required to induce customer participation, or whether a particular marketing or outreach strategy would be effective. (*Id.*) The prudent course in such circumstances is to modify programs over time in light of new or evolving information. A program might not be cost effective in its first year, but modifications can lead to improved cost effectiveness. A policy requiring that all measures and programs be cost effective in every year would preclude such improving portfolio results and would exclude measures and programs that increase the value of the portfolio without being cost effective on a standalone basis, such as outreach and education programs. (*Id.* at 12.)

Moreover, a new program may not be cost effective when initially implemented. A program is often not cost effective during its first year or even first several years due to start-up costs. (*Id.*) A cost benefit analysis is premature until a program has reached a level of maturity that is indicative of its long term potential. Developing a robust portfolio of energy efficiency programs is analogous to starting a new business; the early efforts require investments before the first customer walks through the door. (*Id.*) Energy efficiency programs exhibit similar initial costs that are either non-recurring, such as development of marketing collateral, or are

diminishing over time, such as outreach efforts to establish a network of trade allies. (*Id.*) All of these factors can skew preliminary TRC values calculated at the measure or program level.

Finally, while it is important that the portfolio as a whole achieve a TRC greater than 1.0, individual programs may not achieve a TRC greater than 1.0, yet still contribute towards increasing the overall portfolio TRC and savings. (*Id.*) Educational programs often fall into this category as do programs that lead towards greater savings in other programs or other elements of the same program. (*Id.*) The tune-up portion of the SB HVAC program falls into this category. Participants receiving tune-ups are likely to participate in the program and purchase a higher efficient furnace or boiler at the time of replacement. (*Id.*)

The fact that Staff uses the implementer's preliminary and imprecise TRC as a sole determinant to discontinue a program neglects consideration of these factors.

c. Further Policy Implications of Staff's Recommended Disallowance

If the Commission accepts Staff's recommendation, the policy implications would be severe. In essence, each measure and program in a utility's portfolio would require a positive TRC score *at all times* during the life of the plan – regardless of the multiple variables and inputs, regardless of the sensitivities of the TRC test, and regardless of other considerations (with respect to cost effectiveness or otherwise) – or risk disallowance. This result would create significant roadblocks to further energy efficiency development in Illinois and possibly its elimination.

First, Staff's proposal would prevent measures and programs from evolving and thus becoming cost effective as the portfolio matures. New and innovative programs are often less cost effective in the early years than more established programs. (Chamberlin Reb., Ameren Ex. 5.0 at 12.) And modifications are often necessary. For example, in this docket the

implementer's plan forecast did indicate that the preliminary, interim TRC values were lower, but it also indicated that the TRC value could exceed 1.0 by the end of the three-year plan. (Business Program: Program Year Two Implementation Plan, Staff Ex. 4.2 at 5, 43.) More importantly, the plan recommends modifying the Program to increase cost effectiveness in PY2 by limiting the total number of tune-ups and directing the program funds towards incentives for furnace and boiler replacements. (*Id.*) The implementer found that these modifications would likely make AIC's innovative attempt to reach an underserved market cost-effective. But these modifications would not be allowed under Staff's approach. If the Commission approves Staff's recommendation, it would send a clear signal that the focus should *only* be on cost-effectiveness and not innovation or market transformation. AIC would be discouraged from even attempting new or innovative programs that could promote long-term participation in energy efficiency.

Second, Staff's recommendation ignores the fact that preliminary TRC test results vary depending on a number of factors. As Staff witness Jennifer Hinman testified, there are many different definitions of the TRC test, and the same program could have a positive TRC value under one definition of the test and negative TRC under a second definition. (Docket No. 11-0341, Hearing Tran. at 122:18-20, 125:7-12 (Mar. 13, 2013).) Staff further agrees that TRC results may vary depending on when the calculations are performed – a program tested at the initial stages (when costs are high and benefits few) would have a lower TRC value – even at or around zero – than the *same* program tested later in the plan's lifecycle (after costs are expended but benefits begin to increase). (*Id.* at 125:20-126:1, 130:20-131:16, 134:14-135:2.) Finally, Ms. Hinman testified that who is performing the test, and what inputs are part of the calculation, drive a particular TRC calculation. (*Id.* at 135:3-9.) All of this is important because reasonable people could disagree about what should go into a particular TRC calculation. (*Id.* at 136:7-10,

138:1-5.) Given these uncertain variables, it would be improvident to bind utilities solely to TRC values – which even Staff admits are sensitive to a host of factors – by forcing utilities to either discontinue a cost-ineffective measure or program or face disallowance.

Finally, disallowance of costs associated with approved programs would create regulatory uncertainty that the Commission-approved energy efficiency plans were intended to alleviate. Consistent cost recovery policy from the Commission is important to ensure future investment in energy efficiency. (Chamberlin Reb., Ameren Ex. 5.0 at 16.) As explained by Dr. Chamberlin, disallowance of costs based on cost effectiveness testing, particularly initial year preliminary cost effectiveness results (calculated by a third-party) at a program or measure level, would be contrary to the need to align utilities’ incentives for energy efficiency with traditional resources. (*Id.*)

For these policy reasons, as well, the Commission should reject Staff’s recommended disallowance of the SB HVAC program costs.

3. CUB Agrees that The Company Should Recover the SB HVAC Costs

CUB has also filed testimony supporting the Company’s recovery of the SB HVAC costs. (*See* Devens Revised Dir., CUB Ex. 1.0R.) CUB Policy Analyst Rebecca Devens testified that she agreed with the Ameren Illinois witnesses’ testimony and “as a representative of a consumer advocacy organization and a stakeholder in the SAG process, [] felt that it was important to add [her] own testimony to this proceeding.” (*Id.* at 5.) Ms. Devens set forth a number of reasons the Commission should reject Staff’s recommendation.

First, Ms. Devens testified that Staff’s recommended disallowance of costs under the SB HVAC Program “contradicts existing Commission policy granting Ameren discretion to modify programs as the Company sees fit.” (*Id.* at 12.) She explained that flexibility is essential to promoting long-term investments and innovative program design, and Staff’s recommendation

contradicts existing Commission policy requiring programs to pass the TRC only at the portfolio, not measure level. (*Id.*) Ms. Devens testified that this policy “insures that utilities do not have a bias towards measures that only generate savings in the current program year, but instead are able to offer a mix of programs, including measures with long lifetimes.” (*Id.* at 7.)

Second, Ms. Devens testified that Staff’s recommendation would require all individual energy efficiency measures to always pass the TRC. (*Id.* at 13.) According to Ms. Devens, “this would contradict the language of the PUA, and the Commission’s directives in the final orders in Ameren’s first and second energy efficiency three year plan filing.” (*Id.*) She cited the fact that “[p]rograms intended for hard to reach customer segments may not pass the TRC, particularly in a program’s early stages” and “[s]ome programs require time to become cost-effective, perhaps through customer education or market changes.” (*Id.* at 13-14.) Yet, even the less cost-effective programs serve an important function by generating interest in other programs. (*Id.* at 14.) She testified that the analysis turns on whether the portfolio passes the TRC. (*Id.*)

Third, Ms. Devens testified that “a requirement that programs must pass the TRC at the measure level could lead utilities to overemphasize measures that garner short term and perhaps small savings over more comprehensive and long term programs that require time to develop.” (*Id.*) The intention of the legislature in requiring the EEPS programs was to encourage energy efficiency in Illinois. (*Id.*) But, according to Ms. Devens, Staff’s recommendation would hinder energy efficiency, and prevent consumers from reaping the economic and societal benefits. (*Id.*)

Finally, Ms. Devens testified that the annual prudency review is not the appropriate forum to litigate Staff’s recommendations. (*Id.*) Staff’s recommendation would affect the providers of electric energy efficiency programs, as well as program evaluators, and if they are to be addressed at all, they should be addressed on a prospective basis during the utility EEPS

planning cycle. (*Id.*) As a result, Ms. Devens concluded, the Commission should reject Staff's recommendations and find that Ameren Illinois should recover the costs incurred and revenue recovered under SB HVAC.

CUB's testimony arguing against Staff's proposed disallowance is thus consistent with AIC's position set forth above.

III. CONCLUSION

For these reasons, Ameren Illinois Company respectfully requests that the Commission find that the costs Ameren Illinois incurred and the revenue it recovered under Rider EDR and Rider GER for the PY2 were reasonable and prudent and approve the proposed reconciliation statements accordingly.

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Respectfully submitted,

The Ameren Illinois Company

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CERTIFICATE OF SERVICE

I, Mark W. DeMonte, an attorney, certify that on May 7, 2013, I served a copy of the foregoing Ameren Illinois Company's Initial Brief by electronic mail to the individuals on the Commission's Service List for Docket No. 11-0341.

s/ Mark W. DeMonte
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