

**STATE OF ILLINOIS  
ILLINOIS COMMERCE COMMISSION**

Illinois Commerce Commission	:	
On Its Own Motion	:	
vs.	:	
Ameren Illinois Company d/b/a Ameren	:	
Illinois, Commonwealth Edison Company,	:	
The Peoples Gas Light and Coke Company,	:	13-0077
North Shore Gas Company, and Northern	:	
Illinois Gas Company d/b/a Nicor Gas	:	
Company	:	
	:	
Adoption of Policies Concerning the	:	
Illinois Statewide Technical Reference	:	
Manual for Energy Efficiency.	:	

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**STAFF VERIFIED REPLY COMMENTS**

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NOW COME the Staff witnesses (“Staff”) of the Illinois Commerce Commission (“Commission” or “ICC”), through its undersigned counsel, and pursuant to 83 Ill. Adm. Code 200.525, and respectfully submit these Reply Comments in the instant proceeding.

**I. Introduction**

On June 27, 2013, Staff’s Verified Initial Comments on Rehearing, the Verified Initial Comments on Rehearing of the People of the State of Illinois (“AG”) and the Citizens Utility Board (“CUB”) (“AG/CUB IC”), and the Joint Verified Initial Comments of Ameren Illinois Company d/b/a Ameren Illinois (“Ameren Illinois”), Commonwealth Edison Company (“ComEd”), The Peoples Gas Light and Coke Company and North Shore Gas Company (“Peoples Gas/North Shore Gas”), Northern Illinois Gas Company

d/b/a Nicor Gas Company (“Nicor Gas”) (collectively, “Utilities”) were filed in this proceeding related to the following three questions on rehearing:

- (1) Does the TRM cease to be effective at the end of each program year<sup>1</sup>?
- (2) Should an existing measure in the TRM be removed entirely if there is disagreement over any subcomponent of the measure during the TRM Update Process?
- (3) Should measure-level non-consensus issues that have been properly raised and then resolved by the Commission be applied retroactively to the beginning of the current program year or prospectively (and if prospectively, how)?

Staff will address the arguments and recommendations made by the Utilities and AG/CUB (collectively, “Parties”) in their Initial Comments (“IC”). Failure to address any particular statement made in the Parties’ ICs should not be construed as an endorsement of those particular statements.

While Staff addresses the three questions that are subject to rehearing separately below, Staff notes that the issues are substantially interrelated. In the interest of brevity, Staff has attempted to limit duplication of its arguments. Thus, arguments made with respect to overlapping issues may, where application across issues is self-evident, only appear once below.

## **II. Argument**

For the reasons stated herein and in Staff’s Initial Comments, Staff recommends the Commission reject the other Parties’ recommendations and instead adopt Staff’s recommendations in this docket, which Staff believes are consistent with the *IL-TRM*

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<sup>1</sup> Please note that “Plan Year” as used by the Utilities in their Initial Comments is synonymous with “program year” as used by Staff, the AG/CUB and the *IL-TRM Policy Document*.

*Policy Document*<sup>2</sup> adopted by the Commission in this proceeding and Sections 8-103 and 8-104 of the Illinois Public Utilities Act (“Act”). Order at 6-7, *Ameren Illinois Company d/b/a Ameren Illinois, Commonwealth Edison Company, The Peoples Gas Light and Coke Company and North Shore Gas Company, Northern Illinois Gas Company d/b/a Nicor Gas Company: Adoption of Policies Concerning the Illinois Statewide Technical Reference Manual for Energy Efficiency*, Docket No. 13-0077 (March 27, 2013) (hereinafter “*IL-TRM Policy Order*”); 220 ILCS 5/8-103; 220 ILCS 5/8-104.

Further, rehearing was granted to *clarify* the IL-TRM Policies adopted by the Commission, but the Parties’ positions do not clarify the *IL-TRM Policy Document*; instead they advocate a *change* in policy. See Memorandum to the Commission at 3 (May 15, 2013); AG/CUB IC at 6-9; Staff IC at 3-8; Utilities IC at 2-5. Accordingly, the Parties’ recommendations on all the issues exceed the scope of the limited Rehearing.

Staff requests the Commission resolve these questions by finding that:

- (1) Consistent with the annual TRM Update Process articulated in the *IL-TRM Policy Document*, each version of the TRM is applicable only for a specific program year;
- (2) Non-consensus components of measures should not be contained in the consensus Updated TRM and should not be addressed in the consensus TRM Update proceeding, rather non-consensus components should be handled in the non-consensus TRM Update proceeding; and
- (3) Measure-level non-consensus issues that have been properly raised and then resolved by the Commission should be applied to the beginning of the program year for which the TRM was being updated for in the first place.

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<sup>2</sup> Policy Division Staff Report dated December 18, 2012, Attachment A (Policy Document for the Illinois Statewide Technical Reference Manual for Energy Efficiency Final as of October 25, 2012), *Ameren Illinois Company d/b/a Ameren Illinois, Commonwealth Edison Company, The Peoples Gas Light and Coke Company and North Shore Gas Company, Northern Illinois Gas Company d/b/a Nicor Gas Company: Adoption of Policies Concerning the Illinois Statewide Technical Reference Manual for Energy Efficiency*, Docket No. 13-0077 (October 25, 2012) (hereinafter “*IL-TRM Policy Document*”).

As set forth herein, such clarification of these issues will be consistent with the Commission-approved and adopted *IL-TRM Policy Document* and Sections 8-103 and 8-104 of the Act, and will provide appropriate incentives for Program Administrators to implement cost-effective energy efficiency measures and programs in the best interest of the public. *IL-TRM Policy Order* at 6-7; 220 ILCS 5/8-103; 220 ILCS 5/8-104.

**A. Does the TRM cease to be effective at the end of each program year?**

For purposes of these Comments, Staff assumes that each program year, there will be a unique set of consensus and non-consensus<sup>3</sup> changes to the TRM that are associated with that program year. Staff makes this assumption to ease and clarify Staff's exposition below. Whether the TRM changes associated with a program year are implemented: (a) at the beginning of the associated program year; (b) sometime during the program year; or (c) in a future program year depends upon the Commission's resolution of the issues in this rehearing.

Consensus TRM Updates associated with a program year can be submitted to and approved by the Commission either prior to the start of the program year (program years begin on June 1) or after. Staff believes no disagreement exists with respect to cases when consensus TRM Updates associated with a program year are submitted and approved by the Commission prior to the start of the program year. In such cases, these consensus TRM Updates will be used for the program year.

Disagreements occur when the consensus TRM Updates associated with a program year are not approved until after the start of the program year that they are associated with. Staff understands the Utilities and the AG/CUB to argue that the

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<sup>3</sup> Staff notes that there have only been consensus TRM Updates to date.

consensus changes to the TRM associated with a program year approved after the associated program year begins (after June 1) should be effective when the Commission approves them, and that the TRM from the previous program year should continue to apply until such approval occurs. AG/CUB IC at 9; Utilities IC at 3. Staff disagrees.

With respect to non-consensus TRM Updates (questions (2) and (3)), there appears to be significant dispute between the parties. In their Initial Comments, the Utilities take the position that if the Commission issues an Order resolving the non-consensus issues after March 1, then the values emanating from the Commission's resolution of the non-consensus TRM Update issues will not be applied in the program year for which the TRM was developed, but rather in the following program year, even if resolution occurs prior to the beginning of the program year to which the TRM is associated. Utilities IC at 6, fn 5. Because the *IL-TRM Policy Document* specifies that "the TRM administrator shall submit to the ICC Staff and SAG a Comparison Exhibit of Non-Consensus TRM Updates on or about March 1<sup>st</sup>["],] the Utilities' proposal has the effect that non-consensus TRM Update values will never be implemented in their associated program year. That is, the TRM values prepared for a program year will never be implemented in that program year as long as a single party does not agree to them. Further, the Utilities' proposal could result in a situation where the Commission resolution on the non-consensus TRM Update never gets implemented. The reason this occurs is because the implementation of the Commission resolution on the non-consensus TRM Update issue could be subsumed by a subsequent consensus TRM Update based on new

information that becomes available over the course of the program year prior to implementation.<sup>4</sup>

The Utilities' proposal, as it applies, to TRM carryover is somewhat confusing. As Staff understands it, if there are non-consensus TRM Update values associated with a program year, then values from the TRM for the previous program year will carryover unless the previous program year values were disputed. In the case of consecutive and repeated non-consensus values, the actual values used for each program year will always be those that were developed for the previous program year. Significantly, because information is collected and values are developed well before a program year, this has the effect of implementing TRM values based on information that is over one year old, and sometimes over two years old.

The AG/CUB takes a different position on non-consensus TRM Update values (questions (2) and (3)). They argue that new values should apply in the program year to which they are associated, but should not take effect during that program year until 60 days following the Commission's determination on such values or at the beginning of the subsequent program year. AG/CUB IC at 12. As Staff understands the AG/CUB position, if there are non-consensus TRM Update values associated with a program year, then values from the TRM for the previous program year will carry over.

Both Parties' proposed approaches are unsound policy which provides uneconomic and perverse incentives to Program Administrators and their Implementation Contractors,

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<sup>4</sup> If there is a non-consensus TRM Update submitted to the Commission in March of 2014, then under the Utilities' proposal, the Commission resolution on the non-consensus TRM Update would take effect starting June of 2015. However, if new information comes to light during 2014-2015 and a new TRM Update recommendation is submitted that relates to the disputed issue, and consensus is reached among the parties on that TRM Update recommendation, then this consensus TRM Update would take effect starting June of 2015, thus negating the time and effort of the Commission and all the parties in the non-consensus TRM Update proceeding under the Utilities' proposal.

and which do not adequately protect the ratepayers funding these energy efficiency programs.

As noted by the Utilities, the TRM savings values that are “in effect” during program implementation create incentives on how to spend ratepayer funds. Utilities IC at 7-8. In some cases, Implementation Contractors are paid for performance and receive incentives based on the amount of energy savings they achieve. Utilities IC at 7-8. Under the Parties’ proposal, if the TRM values from a previous program year are carried over into the next program year, Implementation Contractors and Program Administrators will know that their performance will be evaluated based upon the previous program year’s TRM values. In the case of either consensus or non-consensus changes, the previous program year’s TRM values do not reflect either known credible information, or the most reliable new information, and, in the case of consensus changes, the parties’ agreement to the changes. Thus, evaluations based on such outdated values will paint an inaccurate picture of the efficacy of the programs in meeting the statutory savings goals. This will create incentives for both Implementation Contractors and Program Administrators to administer the energy efficiency programs in an inefficient manner.

For example, in a situation where the outdated TRM savings values for certain measures are significantly higher than the Updated TRM savings values for the same measures based on the best available and most defensible information that is known prior to the start of the program year, Implementation Contractors will be incented to pursue outdated measures and invest ratepayer funds based on savings reflected in the outdated TRM because the rewards for doing so will be in excess of what recent and the best available information and, in consensus instances, what parties agree should be the

rewards for doing so. Similarly, Program Administrators will be incented to pursue such outdated measures because doing so provides them an increased ability to avoid penalties for underperforming, since their energy efficiency programs will be evaluated based upon outdated illusory savings.

Staff objects to both Parties' positions. Delaying application of both the consensus Updated TRM and Commission resolution on non-consensus TRM Updates to anything other than the start of the program year for which the Updated TRM was supposed to take effect results in perverse incentives that might discourage a Program Administrator from making appropriate program changes to maximize net benefits for ratepayers. The Commission has previously acknowledged these problems associated with "locking-in" or deeming values associated with energy savings for longer than a program year because it would "result in perverse incentives that might discourage a utility from making appropriate program changes to ensure against high free[-]ridership, at least in the short term, by guaranteeing savings claims regardless of the program's true effectiveness." Order at 71-72, *Central Illinois Light Company d/b/a AmerenCILCO, Central Illinois Public Service Company d/b/a AmerenCIPS, Illinois Power Company d/b/a AmerenIP (collectively now Ameren Illinois Company d/b/a Ameren Illinois): Verified Petition for Approval of Integrated Electric and Natural Gas Energy Efficiency Plan*, Docket No. 10-0568 (December 21, 2010) (hereinafter "*Ameren EEP2 Order*"). While the Commission's finding cited here relates specifically to net-to-gross ("NTG") ratio values, the same concept is applicable here because both NTG ratio values and TRM values are inputs into the savings calculations performed to assess Program Administrator compliance with the statutory energy savings goals.

Before the beginning of the program year, the Implementation Contractors and Program Administrators will, in the case of consensus changes, have not only the information that is the basis for the change, but the further knowledge that the changes are based on consensus. While the Commission is certainly not bound to accept such changes, continuing to implement programs in a manner that completely ignores both the information that is the basis for the change and the further knowledge that the changes are based on consensus will result in outcomes that are inefficient and that yield fewer benefits to consumers than should be realized.

Additionally, not only would adoption of the Parties' recommendations incent less-than-optimal management of the energy efficiency programs, it would also, in some cases, incent Program Administrators to take actions to delay updates to the TRM in cases where TRM Updates result in lower savings values for the measures. For example, when certain energy efficiency measures in an energy efficiency program are discovered to be less effective than previously thought, the Program Administrators will be incented to preserve the *appearance* of effectiveness on a going-forward basis so as to appear to meet future statutory savings goals. If the Program Administrators can delay the Commission approval of reduced measure-level energy savings values contained in the TRM, then it is easier for the Program Administrators to appear to comply with the statutory energy savings goals, even when such goals are not actually being met. *IL-TRM Policy Order* at 5.

Not having a Commission Order on an Updated TRM prior to the start of the program year for which it will be applicable is not as risky as the Parties claim. The vast majority of parameters in the older version of the TRM will not change annually. The Utilities argue that it makes little sense to require the Illinois Energy Efficiency Stakeholder

Advisory Group (“SAG”) to essentially start from scratch each program year without any consideration of past work they have undertaken. Utilities IC at 3. The AG/CUB claims that if the TRM expires at the end of a program year, then this means that the TRM must be “re-created, as a whole, on an annual basis.” AG/CUB IC at 7.

In fact, the parties will not be starting from scratch. The parties will know months before the start of the program year which changes are contested and which are not. Importantly, included within the uncontested issues are those portions of the TRM for which no party sought a change. Thus the vast majority (if not all) of the TRM will either carryover from the previous program year or reflect consensus changes. Only for changes that are contested is there any significant uncertainty, and even in those cases the information that is the basis for the contested changes will be known in writing at least several months in advance of the start of the program year.

Additionally, while there is some risk to Program Administrators associated with the uncertainty regarding which change the Commission might adopt with respect to a non-consensus TRM Update value, this needs to be balanced against the certain error that will occur when old TRM values are preserved that the parties agree should be changed. With respect to consensus TRM Update issues, the risk that the Commission might decline to adopt the parties’ proposals is likely modest in light of the consensus surrounding the proposal. In contrast, the error associated with using a value that is not what the parties agree should be the correct value is almost certain.

The Utilities argue that:

If the Utilities must start over completely each Plan Year and wait for new, Commission-approved, TRM values they would face needless uncertainty on key values needed for program implementation decisions. Such a result

would unfairly increase regulatory risk for the Utilities – who are responsible for complying with the applicable energy savings targets set forth in 220 ILCS 5/8-103 or 8-104 – and contradict the purpose of creating “stability and certainty for Program Administrators as they make program design and implementation decisions.”

Utilities IC at 4. The Utilities’ “fairness” argument is misplaced. As explained above, the Utilities need not start over each program year. The Program Administrators need not and should not “wait” to modify their tracking systems until after the Commission issues its Order on the Updated TRM. Upon request by the Utilities, the Commission has previously granted the Utilities with flexibility to prudently manage and adjust their energy efficiency programs as new information becomes available in order to maximize their effectiveness and benefit to consumers. See e.g., *Ameren EEP2 Order* at 86; *IL-TRM Policy Document* at 9; Order at 37-38, *Commonwealth Edison Company: Approval of the Energy Efficiency and Demand Response Plan Pursuant to Section 8-103(f) of the Public Utilities Act*, Docket No. 10-0570 (December 21, 2010) (hereinafter “*ComEd EEP2 Order*”). Thus, the Utilities have an obligation to make prudent adjustments to their energy efficiency programs based on new information that becomes available that warrants such adjustments to be made.

Similarly, it is reasonable to expect the Utilities to update their energy efficiency implementation plans and tracking system based on new information expected to be contained in a program year’s TRM. This new information expected to be contained in the ICC-approved Updated TRM will be available to all parties no later than February prior to the start of the program year for which it (the Updated TRM) would be in effect under Staff’s proposal. For the Utilities to simply ignore new information they have possessed for months (and possibly over one or two years) and wait for the matter to come before the

Commission before making appropriate program changes, does not serve the public interest, and is inconsistent with the Utilities' obligations to prudently manage and adjust their energy efficiency programs as new information becomes available that warrant such adjustments.

Further, the *IL-TRM Policy Document* provides Program Administrators with a significant amount of flexibility by allowing them to deviate from the Commission-approved TRM in a number of situations so long as the SAG Technical Advisory Committee ("TAC") is notified. See *IL-TRM Policy Document* at 9-11. The TAC is notified of all TRM Update recommendations as they occur. *Id.* at 6-7. Since the Program Administrators notify the TAC of all recommended TRM Updates and this notice allows them to deviate from the Commission-approved TRM, Program Administrators have the flexibility to incorporate those TRM Update recommendations into their tracking system before the Commission issues an Order in the TRM Update proceedings.

Adoption of the Parties' proposed policy would also be inconsistent with past Commission Orders where the Commission has indicated that it is not the Commission's job to insulate the Utilities from penalties or loss of the energy efficiency programs by deeming savings values for multiple years: "[t]he gas and electric energy efficiency provisions establish net savings goals, and place performance risk on the utilities through various potential penalties. *It is not the Commission's job to insulate the utilities from such penalties or even loss of the programs.*" *Ameren EEP2 Order* at 71-72 (*emphasis added*).

Allowing Program Administrators to comply with the statutory energy savings goals based on outdated and obsolete TRM values, which may represent fictitious energy savings (based on the best available information known prior to the start of the program year),

contradicts the purpose of Sections 8-103 and 8-104 of the Act which requires actual energy savings to occur in a cost-effective manner to facilitate reductions in direct and indirect costs to consumers. 220 ILCS 5/8-103(a); 220 ILCS 5/8-104(a). Furthermore, it undermines the Commission's ability to ensure the statutory energy savings goals have been met.

Additionally, Staff looked to other states with statewide TRMs that have considered this issue. Staff recommends the Commission consider the Pennsylvania Public Utility Commission's analysis related to this TRM Update issue which supports Staff's position that obsolete TRM savings values should not stay in effect beyond their respective program year:

The purpose of the [energy efficiency] Program is to implement measures to obtain real energy consumption and demand reductions in a cost-effective manner. The amount of the energy consumption and demand reductions measured by the [energy efficiency] Program must be credible in order to determine, not only if the [utilities] meet the mandatory targets, but to determine whether the ratepayers received real energy consumption and demand reductions and whether those reductions were obtained in a cost-effective manner. The Commission believes that these issues are the primary and proper reasons to use in assessing whether the TRM values should be updated.

The Commission believes that the damage to the public's trust would be greater if the Commission and the [utilities'] were to promise greater energy savings than the public realizes when participating in and installing the measures promoted by the Commission and the [utilities]. This is especially true based on the fact that the customers participating in and installing these measures pay the lion's share of the purchase and installation costs for these measures. The trust and confidence of these customers could be irreparably lost if these customers realize far less energy savings than promised after investing significant personal or corporate capital in the offered programs and measures. Whereas, if an [utility] were to fail to meet the mandated energy consumption or demand savings, it is likely that the customers will lose confidence in the [utility's] ability to implement such a program, not the program as a whole, provided the savings realized were credibly predicted by the TRM.

[Order](#) at 48-49, *Implementation of the Alternative Energy Portfolio Standards Act of 2004: Standards for the Participation of Demand Side Management Resources – Technical Reference Manual 2011 Update*, Pennsylvania Public Utility Commission Docket No. M-00051865 (February 28, 2011).

The AG/CUB claims that other jurisdictions of which they are aware do not terminate an existing TRM each year pending re-adoption by the state regulatory body. AG/CUB IC at 8. Staff notes that Pennsylvania has an annual TRM Update Process similar to that in Illinois; however, the final Updated TRM is available 6 months in advance of the applicable program year. Order at 17-18, *Implementation of the Alternative Energy Portfolio Standards Act of 2004: Standards for the Participation of Demand Side Management Resources – Technical Reference Manual Update*, Pennsylvania Public Utility Commission Docket No. M-00051865 (June 1, 2009). The approach used in Pennsylvania has been in place since 2009, and has been working. Notably, Pennsylvania's approach is similar to the alternative recommendation made by Staff in Initial Comments that the Commission require the Updated TRM be submitted by November 1 each year instead of March 1 so the Commission can enter an Order in the TRM Update proceedings by March 1.

The AG/CUB argues that a specific version of the TRM should remain in effect across program years because having the TRM cease to be effective at the end of each program year will create unnecessary planning uncertainty and cost, particularly given that the ICC is unlikely be able to re-adopt the TRM each year by the date it expires. AG/CUB IC at 10. The AG/CUB further argues that there would be nothing for evaluators to use in their evaluations between the end of the program year and Commission Order.

Specifically, the AG/CUB claim that “when a Commission order is not issued by June 1<sup>st</sup>, even if consensus exists among the parties on all parameters in an annual TRM update, a new program year would begin (as of June 1<sup>st</sup>) with a defunct TRM in place. That leaves the Utilities and their evaluators with no parameters to insert in evaluations for the time period between the start of the program year and the issuance of a Commission Order approving the consensus TRM update.” AG/CUB IC at 8. The basis of the AG/CUB’s argument appears to be that Commission approval of the Updated TRM after June 1 results in no parameters to insert in evaluations for the time period between the start of the program year and the issuance of a Commission Order approving the consensus Updated TRM.

Staff disagrees with the AG/CUB contention. The *IL-TRM 1.0*<sup>5</sup> was approved and adopted by the Commission for the purpose of GPY1,<sup>6</sup> GPY2, and EPY5 on January 9, 2013. Order at 5, *Ameren Illinois Company d/b/a Ameren Illinois, Commonwealth Edison Company, The Peoples Gas Light and Coke Company and North Shore Gas Company, Northern Illinois Gas Company d/b/a Nicor Gas Company: Approval of the Illinois Statewide Technical Reference Manual for Energy Efficiency*, Docket No. 12-0528 (January 9, 2013) (hereinafter “*IL-TRM 1.0 Order*”). Gas Program Year 1 (“GPY1”) runs from 6/1/2011 through 5/31/2012. *IL-TRM Policy Document* at 7. Despite the fact that the Commission had not yet approved the *IL-TRM 1.0* as of the

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<sup>5</sup> [Policy Division Staff Report](#) dated September 14, 2012, Attachment (part 1 through part 4) (State of Illinois Energy Efficiency Technical Reference Manual, Final As of September 14<sup>th</sup>, 2012, Effective: June 1<sup>st</sup>, 2012), *Ameren Illinois Company d/b/a Ameren Illinois, Commonwealth Edison Company, The Peoples Gas Light and Coke Company and North Shore Gas Company, Northern Illinois Gas Company d/b/a Nicor Gas Company: Approval of the Illinois Statewide Technical Reference Manual for Energy Efficiency*, Docket No. 12-0528 (September 19, 2012) (hereinafter “*IL-TRM 1.0*”).

<sup>6</sup> The IL-TRM is not required to be applied for Ameren and DCEO GPY1.

start of the program year it was applicable to, June 1, 2011 (GPY1), the *IL-TRM 1.0* was still able to be used in the evaluations of the GPY1 energy efficiency programs for the entirety of the program year. So while the AG/CUB argues that no parameters would be available to insert in the evaluations, our experience to date has been that the Commission-adopted TRM values can be inserted in the evaluations even if the Commission approves the values after the program year has already started. Indeed, as noted above, this occurred for GPY1 where the Commission approved the TRM 18 months after the start of the program year. The evaluations of Nicor Gas and Peoples Gas/North Shore Gas energy efficiency programs for GPY1 contain not only the savings values associated with the Commission-approved TRM, but also the savings values associated with certain “corrections” to TRM mistakes, as provided for in the *IL-TRM Policy Document* and which the Utilities have advocated to apply retroactively to the entire program year, not just have it apply the date it was discovered. *IL-TRM Policy Document* at 10-11; *IL-TRM 2.0*<sup>7</sup> at 9.

The Utilities argue that “the TRM should be a ‘living’ document,” apparently meaning that it should evolve to address changing circumstances. Utilities IC at 5. However, they also argue that “the TRM is not just a static snapshot of a single Plan Year that ceases to exist thereafter.” Utilities IC at 3. Staff is perplexed by these arguments. Staff concurs that the TRM should be a living document to the extent that it should be constantly evolving to reflect the latest energy efficiency measures and savings results

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<sup>7</sup> [Policy Division Staff Report](#) dated June 24, 2013, [Report \(part 1\)](#) (Illinois Statewide Technical Reference Manual for Energy Efficiency Version 2.0, June 7<sup>th</sup>, 2013, Effective: June 1<sup>st</sup>, 2013) at 9, *Ameren Illinois Company d/b/a Ameren Illinois, Commonwealth Edison Company, The Peoples Gas Light and Coke Company and North Shore Gas Company, Northern Illinois Gas Company d/b/a Nicor Gas Company: Approval of the Illinois Statewide Technical Reference Manual for Energy Efficiency*, Docket No. 13-0437 (July 10, 2013) (hereinafter “*IL-TRM 2.0*”)

from the most defensible evaluation studies, as understood by the Commission. The Utilities and the AG/CUB proposal, however, despite their assertions, would render the TRM essentially static, immutable, and subject to little change over time. The evolving nature of the TRM is reflected in the fact that the Commission approves a TRM measure for one program year at a time such that if more recent, credible estimates of the measure's savings values become available over the course of the program year, the TRM Update Process can ensure that appropriate revisions to the measure will be incorporated in the next version of the measure in the Updated TRM, as discussed above and as detailed in the *IL-TRM Policy Document*. *IL-TRM Policy Document* at 5-8. While the Utilities argue that Staff's recommendation means the TRM is a static snapshot, Staff contends that it is the Parties' recommendation to allow the outdated TRM containing obsolete savings values to remain in effect longer than a program year that would result in the TRM being static.

The AG/CUB argue that "ICC orders generally remain in effect until another ICC order is issued that in some way modifies the conclusions in the prior order." AG/CUB IC at 8. Staff responds that its recommendation is entirely consistent with the AG/CUB's statement. In the *IL-TRM 1.0 Order*, the Commission found that "[t]he September 14, 2012 Final Energy Efficiency Technical Reference Manual, filed in this docket as attachments to the Staff Report, is approved and adopted for GPY1,<sup>8</sup> GPY2, and EPY5." *IL-TRM 1.0 Order* at 5. Staff believes this Commission finding remains in effect after the start of GPY3/EPY6, and that the *IL-TRM 1.0* will remain applicable to GPY1, GPY2, and EPY5. Indeed, the evaluators will be relying on that specific version of the TRM during the

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<sup>8</sup> The IL-TRM is not required to be applied for Ameren and DCEO GPY1.

course of their evaluations of the GPY2/EPY5 energy efficiency programs which would generally occur in GPY3/EPY6.

The Parties' proposal should be rejected because it is inconsistent with the measure applicability provisions contained in the consensus *IL-TRM 1.0* and *IL-TRM 2.0*. *IL-TRM Policy Document* at 6-7; *IL-TRM 1.0* at 8, 13; *IL-TRM 2.0* at 8-9, 17. As noted in the Commission-approved *IL-TRM 1.0*, each measure in the TRM contains a unique measure code. *IL-TRM 1.0* at 13. As measures are updated, the version number and the effective date of each measure both are updated. Since the date of Commission approval (which is the effective date under the Parties' proposal) cannot be known in advance of submitting the Updated TRM to the Commission, it would not be possible to accurately specify the effective date within the TRM measure code for each revised measure under the Parties' proposal. It is only if the Commission adopts Staff's position that this effective date can be accurately specified in the measure codes contained in the Updated TRM submitted to the Commission for approval.

Finally, the Parties' arguments are inconsistent with the *IL-TRM Policy Document* sections that are not at issue on rehearing. See Staff IC at 3-4. The *IL-TRM Policy Document* specifies that the TRM Administrator submits to the SAG and Staff the consensus and non-consensus TRM Updates around March 1 of each year, and after receipt of these, Staff submits them along with Staff Reports to the Commission to initiate the annual TRM Update proceedings wherein the Commission would consider officially approving the Updated TRM. *IL-TRM Policy Document* at 8. Assuming compliance with this timeframe specified in the *IL-TRM Policy Document*, and given the procedural restraints on the Commission, it is literally impossible for the Commission to enter an

Order in the consensus and non-consensus TRM Update proceedings by March 1 given the timeframes currently specified in the *IL-TRM Policy Document*. *IL-TRM Policy Document* at 8. The *IL-TRM Policy Document*, however, states:

The process of *incorporating new and better information into the TRM occurs annually. Prior to the start of the **program year for which the Updated TRM will be in effect***, the Program Administrators will make portfolio adjustments and tracking system updates *based in part on changes reflected in the Updated TRM*. In order to provide the Program Administrators adequate time for making these pre-program year changes, the consensus *Updated TRM* shall be transmitted to the ICC Staff and SAG *by March 1<sup>st</sup>*. The ICC Staff will then submit a Staff Report (with the consensus *Updated TRM* attached) to the Commission with a request for expedited review and approval. In the event that non-consensus TRM Updates exists, the TRM Administrator shall submit to the ICC Staff and SAG a *Comparison Exhibit of Non-Consensus TRM Updates* on or about March 1<sup>st</sup>. After receipt of the Comparison Exhibit of Non-Consensus TRM Updates, the ICC Staff would submit a Staff Report to the Commission to initiate a proceeding *separate from the consensus TRM Update proceeding to resolve the non-consensus TRM Update issues*.

*IL-TRM Policy Document* at 8 (*emphases added*); See also, AG/CUB IC at 7. These provisions of the *IL-TRM Policy Document* simply cannot be met under the Parties' proposals.

The *IL-TRM Policy Document* further supports Staff's position that updated versions of the TRM are applicable to specific program years. The *IL-TRM Policy Document* states:

The TRM Administrator reviews and responds<sup>9</sup> to all formal TRM Update recommendations by a date specified in advance by the TRM Administrator, when **updating the TRM for a specific program year**. The TRM Administrator prepares the *Updated TRM document* (redlined and clean versions) *each year* for filing with the ICC based on recommended TRM Updates vetted through the TAC and the SAG. The TRM Administrator prepares a list of all the changes incorporated in the redlined *Updated TRM document* with rationale for each change. The TRM

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<sup>9</sup> The TRM Administrator's "response" to a formal recommendation for a TRM Update shall explain whether the TRM Administrator agrees with the formal TRM Update recommendation (either in its entirety or as modified by the TRM Administrator) and the justification for the TRM Administrator's recommendation.

Administrator shall make any necessary revisions to the TRM to reflect the Commission Order from the *annual TRM Update proceeding*.

*IL-TRM Policy Document* at 6 (*emphases added*). The *IL-TRM Policy Document* clearly specifies that the TRM will be updated annually by “incorporating new and better information . . . annually [reflecting the March submission of the Updated TRM (consensus and non-consensus portions), which occurs months prior] to the start of the program year for which the Updated TRM will be in effect” and that the Updated TRM (consensus and non-consensus portions) submitted in March each year will be in effect for the entire next program year. *IL-TRM Policy Document* at 8. Importantly, the *IL-TRM Policy Document* provides no dates by which the Commission must issue an Order approving the Updated TRM; it does, however, specify which Commission-approved version of the TRM (e.g., 2<sup>nd</sup> ICC-approved TRM, 3<sup>rd</sup> ICC-approved TRM, etc.) applies to which program year, in its entirety. *Id.* at 7-8. For example, the 2<sup>nd</sup> ICC-approved TRM applies in evaluation and implementation of EPY6/GPY3 beginning June 1, 2013 and ending May 31, 2014, a duration that spans the entirety of electric program year 6 and gas program year 3. *Id.* at 7.

**B. Should an existing measure in the TRM be removed entirely if there is disagreement over any subcomponent of the measure during the TRM Update Process?**

Staff understands that the Parties recommend that the energy efficiency measures contained in the previous version of the TRM should be included in their entirety (with all the same parameters from the previous version of the TRM) in the consensus Updated TRM submitted to the Commission for those energy efficiency measures that contain any

non-consensus components. The Parties recommend the Commission adopt their position on question (2) for many of the same reasons used to support their position on question (1). Thus, Staff recommends the Commission reject the Parties' position on question (2) for the same reasons that Staff recommends the Commission reject the Parties' position on question (1).

### **Staff Response To The AG/CUB**

The AG/CUB argues that an existing measure should not be removed entirely from an Updated TRM during the litigation of contested parameters. Staff concurs in part with the AG/CUB position on this matter; however, Staff disagrees with the AG/CUB summary of the Staff position on this matter. As noted in Staff's Initial Comments, Staff does not believe that an *entire measure*<sup>10</sup> would necessarily need to be removed from the consensus Updated TRM if there is disagreement over any subcomponent of the measure during the TRM Update Process, *only the parameters in dispute should be removed*. Staff IC at 8.

Staff believes that it is clear from the *IL-TRM Policy Document* that during the TRM Update Process, if any component of an energy efficiency measure in an old version of the TRM is in dispute, then the non-consensus components of the measure should not be addressed in the consensus TRM Update proceeding but rather should be separated from the consensus Updated TRM and addressed in the separate filing for the non-consensus TRM Update issues and the Commission findings from both of these

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<sup>10</sup> Staff believes that if the entire measure is in dispute or nearly every component in the measure is in dispute, then it would be appropriate and cleaner to simply exclude the measure entirely from the consensus Updated TRM. Further, if Staff's alternative recommendation is adopted, Staff believes it would be easier to simply exclude the measure from the consensus Updated TRM submitted in November.

proceedings will be considered the ICC-approved Updated TRM for the program year under consideration. Staff IC at 10. Depending on the complexity of the non-consensus issue for a particular energy efficiency measure, a simple placeholder such as “TBD” could be included in the measure characterization in place of specifying a particular value for the non-consensus parameter in the consensus Updated TRM. *Id.*

However, if the non-consensus issue covers nearly every component of the measure characterization, then the entire measure should be removed from the consensus Updated TRM and should be filed in the non-consensus TRM Update proceeding for the Commission to decide for that program year. *Id.*

Further, the Parties’ proposal may be unworkable in practice because the disputed TRM measure component may contain very specific applicability dates for specific parameter values to apply and the program year for which the Updated TRM would be in effect could be missing from the date ranges specified in the old TRM measure component. See *e.g.*, *IL-TRM 1.0* at 425. Thus, including the old TRM measure component in the consensus Updated TRM would be meaningless in this situation.

Finally, while the AG/CUB acknowledge the problematic incentives caused by delaying application of revised savings values to a future program year in their discussion of question (3), Staff notes that these are the exact same problematic incentives that will occur if the AG/CUB’s position on questions (1) and (2) are adopted. See AG/CUB IC at 12.

### **Staff Response To The Utilities**

The Utilities state that “the TRM should be a ‘living’ document comprised of Commission-approved measure values to be used in a *current Plan Year*, as well as in

future Plan Years until updated or modified in accordance with Commission Final Orders. . . . Furthermore, there already exists a protocol built into the TRM process by which non-consensus issues are resolved, and this process does not require removal of the values from the *current TRM*.” Utilities IC at 5 (*emphases added*). The Utilities indicate that the TRM is comprised of Commission-approved measure values to be used in a *current program year* and that the *IL-TRM Policy Document* contains a protocol built into the TRM process for how to resolve non-consensus issues, which does not require removal of the values from the *current TRM*.

Taken literally, Staff agrees that non-consensus issues would not be removed from the *current TRM* (though they would be removed from the consensus Updated TRM applicable to the following program year) as the *IL-TRM Policy Document* contains provisions to protect the Utilities from any adverse changes over the course of the program year for which the Commission approved that version of the TRM. In the event that a party takes issue with using one of the TRM values in effect for the *current* program year, the *IL-TRM Policy Document* provides the following potential recourse:

If a SAG or TAC participant believes that the TRM measure characterization does not adequately reflect savings of a measure, then it should inform the TAC of its concern and present an alternative. If consensus is reached that the alternative is more appropriate, then the TRM Administrator shall inform the Evaluators to also calculate savings under this alternative, in addition to performing savings verification using the Commission-approved TRM. If such alternative calculation is stipulated for acceptance by all the parties in the Program Administrator’s savings docket, this alternative value may be used in measuring savings toward compliance with the Program Administrator’s savings goals.

*IL-TRM Policy Document* at 10.

Staff also agrees with the Utilities that an entire measure should not be removed from the consensus Updated TRM simply because a party (or parties) disagrees with a

subcomponent of that measure. However, Staff believes that the non-consensus subcomponents should be excluded from the consensus Updated TRM filing. Staff believes that the non-consensus subcomponents should be handled in the non-consensus TRM Update filing. Finally, Staff believes that only in the event that the Commission resolves the non-consensus TRM Update issues by finding that the subcomponents contained in the previous version of the TRM should be approved, should the subcomponents contained in the previous version of the TRM remain applicable or in effect at the start of the program year for which the TRM was being updated.

The Utilities argue that subjecting all measures to an annual consensus requirement undercuts certain TRM policy objectives that the Utilities desire, such as 100% certainty. Utilities IC at 5. Staff believes that an annual consensus requirement is consistent with the Commission's direction provided in its Orders<sup>11</sup> directing a statewide TRM be created. In particular, the Utilities argued in the last energy efficiency plan filing dockets that they should be responsible for developing their own utility-specific TRM. However, the Commission rejected the Utilities' arguments that they should be solely responsible for determining the values contained in a TRM, and instead the Commission ordered that the Utilities must work with the SAG to develop a statewide TRM. *Id.*

Staff believes this Commission decision is based on the fact that it would be unreasonable for the Utilities to have complete control over what savings values will be

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<sup>11</sup> See *ComEd EEP2 Order* at 59-60; *Order on Rehearing* at 19, *Central Illinois Light Company d/b/a AmerenCILCO, Central Illinois Public Service Company d/b/a AmerenCIPS, Illinois Power Company d/b/a AmerenIP (collectively now Ameren Illinois Company d/b/a Ameren Illinois): Verified Petition for Approval of Integrated Electric and Natural Gas Energy Efficiency Plan*, Docket No. 10-0568 (May 24, 2011); *Order* at 30, *Northern Illinois Gas Company d/b/a Nicor Gas Company: Application pursuant to Section 8-104 and Section 9-201 of the Illinois Public Utilities Act for consent to and approval of an Energy Efficiency Plan and approval of Rider 30, Energy Efficiency Plan Cost Recovery and Related changes to Nicor Gas' tariffs*, Docket No. 10-0562 (May 24, 2011); *Order* at 76, *North Shore Gas Company and The Peoples Gas Light and Coke Company: Petition pursuant to Section 8-104 of the Public Utilities Act to Submit for Approval an Energy Efficiency Plan*, Docket No. 10-0564 (May 24, 2011).

used by the Commission to assess utility compliance with the statutory savings goals. There is clearly a tension between corporate and ratepayer interests in such a situation, as the Utilities have a natural incentive to want to make it easier to achieve the statutory energy savings goals by using measure-level unit savings values that have an upward bias (i.e., overstating actual savings from the measure). Thus, by requiring SAG consensus on the TRM development and updates, the Commission is helping to ensure that the TRM contains credible energy savings values over time based on the most recent, defensible, and relevant studies available, while also reasonably balancing the interests of various stakeholders. See Section 2.4: SAG Consensus on TRM Development and Updates, *IL-TRM Policy Document* at 8.

If the Commission rejects Staff's recommendations and adopts the other Parties' proposal, then Program Administrators will be greatly incentivized to oppose and/or delay any TRM Update recommendations that reduce savings for the energy efficiency measures. Thus, Commission adoption of the other Parties' proposal would result in a TRM that does not fairly balance the interests of various parties as Staff believes the Commission originally intended to do by ordering the Utilities to work with the SAG in developing a statewide TRM.

**The Parties' Proposal Undermines the Consensus-Seeking Process By Having The Entire Outdated Measure Stay In Effect In The Event There Is Dispute On Only One Component Of The Updated Version Of The Measure**

Based on the Parties' Initial Comments, Staff understands the AG/CUB and the Utilities position to be that if any single parameter contained in a measure in the old version of the TRM is in dispute during the TRM Update Process, then the entire

outdated measure including *all* the old parameters must be included in the consensus Updated TRM, regardless of whether consensus has been reached among the parties on how to update many of the other parameters contained in the energy efficiency measure. AG/CUB IC at 9-11; Utilities IC at 5. Based on the Initial Comments, Staff believes the AG/CUB and the Utilities position to be unreasonable, harmful to ratepayers, inefficient, and likely to undermine the annual consensus seeking process.

If parties have worked through and achieved consensus regarding a number of updates to various parameters in a single energy efficiency measure through the TRM Update Process, then Staff believes it would be reasonable to include those consensus updated parameters in the consensus Updated TRM. To do otherwise could inappropriately promote investment of ratepayer funds in certain energy efficiency measures based on parameter values everyone agrees are incorrect. This is clearly problematic since the Program Administrators would be allowed to be credited with energy savings using the obsolete and incorrect savings for the measure toward achievement of their statutory energy savings goals. Thus, under the Parties' proposal, ratepayers would not be adequately protected.

It would be unsound policy to revert to the old outdated measure in its entirety simply because there is disagreement on one parameter in the energy efficiency measure. If recent evaluation studies show many of the other parameters to be outdated and inaccurate and everyone agrees that the other parameters should be updated and there is agreement on how each of those other parameters in the energy efficiency measure should be updated exactly, it would be unsound policy to revert to

the outdated measure in its entirety simply because there is disagreement on one parameter in the energy efficiency measure.

**C. Should measure-level non-consensus issues that have been properly raised and then resolved by the Commission be applied retroactively to the beginning of the current program year or prospectively (and if prospectively, how)?**

The positions on question (3) taken in the Initial Comments in this proceeding consist of three different positions:

AG/CUB Position: The AG/CUB recommend that “[t]he approved and revised measure would apply prospectively to the existing program year from the date of the ICC Order forward plus a Grace Period of 60 days or the end of the current program year, whichever comes first. In exceptional cases where the measure is ‘high-impact’ and the ability of the Program Administrator to get out of the market within 60 days is unrealistic, the Program Administrator may petition the ICC for a longer grace period. In addition, measures that are in progress (“i.e. an end customer application in hand”) but not yet completed are / are not considered ‘at risk’ in terms of the savings claim.” AG/CUB IC, Attachment at 2-3.

Utilities Position: The Utilities recommend that: “[t]he values related to measure-level non-consensus issues that have been properly raised by March 1 under the TRM Update Process and then later resolved by the Commission should be applied prospectively to the following Plan Year. . . . Moreover, consistent with the TRM Update Process, in the event that the Commission order approving new values is issued after March 1 of Plan Year ‘X,’ the Utilities propose that the new values should not take effect

less than two months later on June 1 of Plan Year X+1. Rather, the new values should take effect beginning on June 1 of Plan Year X+2 to ensure the utilities have time to make the required planning and implementation changes.” Utilities IC at 6.

Staff Position: Measure-level non-consensus issues that have been properly raised and then resolved by the Commission should be applied to the program year for which the TRM was being updated in the first place. Measure-level non-consensus TRM Update issues are based on information that became available months before the start of the program year for which the TRM was being updated. Thus, Staff’s recommendation is not retroactive in application.

As described below, the other Parties’ proposals do not serve the public interest and should therefore be rejected. The Parties recommend the Commission adopt their position on question (3) for many of the same reasons used to support their position on questions (1) and (2). Thus, Staff recommends the Commission reject the Parties’ position on question (3) for the same reasons that Staff recommends the Commission reject the Parties’ position on questions (1) and (2).

### **Staff’s Proposal Is Not Retroactive**

The Utilities argue against (1) retroactive application and (2) implementation of a prospective measure-level value with very short lead time because they claim it would be “unfair.” Utilities IC at 10-11. Staff disagrees with the Utilities’ allegations.

The Utilities have supported retroactive application in situations where it benefits them. The consensus Updated TRM (*IL-TRM 2.0*) states: “[s]pecifically, when a measure error was identified and the TAC process resulted in a consensus, the measure is identified here as an ‘Errata’. In these instances the measure code indicates that a new

version of the measure has been published, and that the effective date of the measure dates back to June 1<sup>st</sup>, 2012.” *IL-TRM 2.0* at 9. The Utilities wanted retroactive application for 13 items.

More importantly, Staff’s recommendation does not result in retroactive application in the sense the Utilities are alleging. While Staff agrees that Commission approval of the Updated TRM may occur after the start of the program year for which the Updated TRM would be in effect under Staff’s proposal, the changes reflected in the Updated TRM are based on information the Program Administrators possessed no later than February of the program year before the Updated TRM takes effect under Staff’s proposal. Specifically, under the current TRM Update Process, where the Updated TRM (both consensus and non-consensus components) is submitted by early March, the Updated TRM values (which would take effect June 1 under Staff’s proposal) reflect changes based on the best available information known in February prior to the March submission.

The Utilities argue that “[i]f, on the other hand, measure-level values were to unpredictably change mid-Plan Year, or worse, be applied retroactively, a new and unanticipated level of uncertainty would be injected into the planning and implementation process, which would result in increased costs to account for these contingencies.” Utilities IC at 7. Staff contends that the measure-level values would not “unpredictably change” mid-program year. Further, there would not be an “unanticipated level of uncertainty” if the Commission adopts Staff’s position. As noted in Staff’s Initial Comments, the Program Administrators actively participate in the TRM Update Process, and they have easy access to all proposed TRM Updates well in advance of the March 1

submission of the Updated TRM (and the Comparison Exhibit of Non-Consensus TRM Updates, if any exist). *IL-TRM Policy Document* at 8.

Staff also notes that the Program Administrators' Implementation Contractors are actively involved in the TRM Update Process as well. The Program Administrators and Implementation Contractors will know the details underlying any non-consensus components of measures and have them in writing, and the impact that each party's position on the non-consensus component would have on the measure's unit savings value. Thus, prior to Commission resolution of a non-consensus component of a measure, the Program Administrators will already have a good idea of the potential range in unit savings estimates for the measure pending the outcome in the non-consensus TRM Update docket. The Program Administrators will have ample opportunity to review and plan with the applicable version of the TRM and its measures in mind before the beginning of each new program year for which the Updated TRM would be in effect. Staff IC at 6.

### **AG/CUB Position Is Not A Reasonable Compromise**

The AG/CUB "urge the Commission to reject any argument that seeks delaying application of the new Commission-ordered value until the following program year. Such an approach creates an incentive for Utilities to continually identify TRM parameter values as non-consensus, knowing that any Commission order in those dockets that is issued after the June 1<sup>st</sup> start date will not be implemented for another year." AG/CUB IC at 12. Staff concurs with the AG/CUB in this regard. However, Staff believes the AG/CUB position allowing for a 60-day grace period for implementing new Commission-ordered TRM values on non-consensus items does not represent a reasonable compromise, and is not in the best interest of ratepayers. Not only does the AG/CUB grace period position

continue to create “an incentive for Utilities to continually identify TRM parameter values as non-consensus, knowing that any Commission order in those dockets that is issued after the June 1<sup>st</sup> start date will not be implemented for” at least 60-days after the issuance of the Commission Order resolving the non-consensus TRM Update issues, but it creates additional perverse incentives for the Utilities to delay (1) finalizing the Comparison Exhibit for Non-Consensus TRM Updates that pursuant to the *IL-TRM Policy Document* would be filed as an attachment to the Staff Report to the Commission to initiate the non-consensus TRM Update proceeding as this would allow the Utilities to “lock-in” the outdated TRM values for a longer period of time the later the proceeding gets initiated; and (2) the non-consensus TRM Update proceeding once it has been initiated (e.g., scheduling issues, motions for rehearing).

In the event the AG/CUB’s recommendation is adopted, Staff recommends certain modifications such as directing Staff to submit a Staff Report to the Commission to initiate a proceeding to resolve the non-consensus TRM Update issues without having a Comparison Exhibit of Non-Consensus TRM Updates (in the event the final version of the Comparison Exhibit of Non-Consensus TRM Updates is not submitted to SAG by March 1) as this can help limit the number of delays the Program Administrators could create. Further, Staff recommends that the Commission direct Staff to include in the Staff Report a recommendation that the Commission’s Initiating Order establish a schedule for the submission of Initial and Reply Comments such that the Commission can resolve the non-consensus TRM Updates by March 1. For example, in Pennsylvania parties are required to file Initial Comments within 10 days, and Reply Comments within 20 days of notice.

The timeline concerning these policy issues may be somewhat confusing given the inherent delay in incorporating new and better information into the TRM under all the parties' positions. To provide a greater understanding of the implication of the parties' positions, Staff provides a hypothetical situation below demonstrating these implications.

Suppose there is an evaluation study of a TRM measure parameter (e.g., hours of operation) that is released in April of 2013 that shows the current TRM parameter value (TRM Version 1.0) in effect during April of 2013 is unreasonably high, and the evaluators submit a TRM Update recommendation ("evaluators' TRM Update recommendation") to reduce the parameter value by 90%, resulting in a significant reduction in energy savings from the energy efficiency measure if ultimately adopted by the Commission. Under the *IL-TRM Policy Document* timeline, the evaluators' TRM Update recommendation based on information that became available in April of 2013 would not have a chance to get incorporated into the TRM until June of 2014 (TRM Version 3.0), over a year later. In the event the Utilities dispute the evaluators' TRM Update recommendation through the annual TRM Update Process, the evaluators' TRM Update recommendation becomes a non-consensus TRM Update. This non-consensus TRM Update would be submitted to the Commission to resolve in a proceeding initiated in March or April of 2014. Commission resolution on the non-consensus TRM Updates would occur after the proceeding is initiated, either before or during the effective program year.

Under the Utilities' proposal, the Commission resolution on the non-consensus TRM Update occurring after March of 2014, which was based on information that became available in April of 2013 in this hypothetical example, would not take effect until June of 2015 (TRM Version 4.0), *over two years* after the evaluation study became available.

Since the Program Administrators and their Implementation Contractors invest ratepayer funds based on the values contained in the TRM, the Utilities' proposal is not in the best interest of ratepayers because it involves delaying until June of 2015, incorporating new and better information into the TRM that became available during the time period, February of 2013 through February of 2014. The Utilities' proposal could provide the perverse incentive for Program Administrators and Implementation Contractors to invest ratepayer funds for over two years on truly ineffective energy efficiency measures on the basis of obsolete and disputed savings values contained in an outdated version of the TRM (TRM Versions 1.0 through 3.0).

Indeed, the Utilities' proposal could result in a situation where the Commission resolution on the non-consensus TRM Update never is implemented. For example, suppose a new evaluation study of the measure parameter (e.g., hours of operation) is released in January of 2015. It is entirely possible that consensus could develop on a new TRM Update recommendation for this previously disputed measure parameter (e.g., an average of the April 2013 evaluation estimate and the January 2015 evaluation estimate). In such a situation, per the *IL-TRM Policy Document* timeline, this consensus TRM Update recommendation would get incorporated into the Updated TRM in June of 2015 (TRM Version 4.0), thus negating the time and effort of the Commission and all the parties in the non-consensus TRM Update proceeding under the Utilities' proposal. The Utilities' position delays implementation of Commission resolved non-consensus TRM Update values so far into the future that the Commission's resolution on the non-consensus TRM Update values is muted by the new information that becomes available over the course of the program year prior to implementation.

Under the AG/CUB's proposal, the Commission resolution on the non-consensus TRM Update occurring after June of 2014, which was based on information that became available in April of 2013, would not take effect until at least 60 days after the Commission enters an Order resolving the non-consensus TRM Update issues (likely sometime after August of 2014). However, the AG/CUB proposal provides that in exceptional cases where the measure is 'high-impact' and the ability of the Program Administrator to get out of the market within 60 days is unrealistic, the Program Administrator may petition the Commission for a longer grace period. Thus, the AG/CUB proposal could provide the perverse incentive for Program Administrators and Implementation Contractors to invest ratepayer funds for much longer than a year on truly ineffective energy efficiency measures on the basis of obsolete and disputed savings values contained in an outdated version of the TRM (TRM Versions 1.0 through 3.0).

Under Staff's proposal, which is consistent with the *IL-TRM Policy Document*, the Commission resolution on the non-consensus TRM Update occurring after March of 2014, which was based on information that became available in April of 2013 in this hypothetical example, would take effect starting June of 2014 (TRM Version 3.0), over a year after the evaluation study became available, on the basis that the information that became available in April of 2013 did not make the March 1 cut off time to be incorporated in the Updated TRM Version 2.0.

Under Staff's alternative recommendation where the TRM Updates are submitted by November 1, the Commission resolution on the non-consensus TRM Update could be issued before March of 2014 and it would take effect starting June of 2014 (TRM Version 3.0), over a year after the evaluation study became available.

In an *ideal situation*, the Program Administrators would respond to the information that became available through the evaluation study in April of 2013 and make appropriate adjustments to their energy efficiency programs no later than the start of the following program year, June of 2013 (TRM Version 2.0), in order to maximize net benefits for ratepayers.

Under a pay-for-performance contracting approach, ratepayers will be forced to pay for ineffective measures for the most extended period of time under the Utilities' approach. This is clearly not in the best interest of ratepayers and it is reason enough to reject the Utilities' proposal. While Staff's proposal is not the *ideal situation*, it does reduce the amount of time that ratepayers will be forced to pay for ineffective measures in comparison to the AG/CUB approach. Thus, Staff's proposal represents a reasonable compromise and Staff recommends the Commission adopt it.

### **III. Staff Alternative Proposal**

In order to address the uncertainty concerns raised by the Parties in their Initial Comments, the Commission could adopt Staff's alternative recommendation presented in its Initial Comments. See Staff IC at 13-15. Staff, as an alternative, recommends the Commission modify the date of submission of the Updated TRM to an earlier date in the program year (November 1 prior to the start of the applicable program year), which will provide the Commission with adequate time to process the non-consensus technical issues and rule on those issues by March 1 prior to the start of the applicable program year. Requiring this earlier date of submission of the Updated TRM could address the Parties' concerns regarding a Commission-approved Updated TRM not being available at the start of the program year for which it is applicable. Under Staff's alternative

recommendation, Staff would propose the Commission mandate that it be put into effect starting November 2014 with the submission of the TRM Version 4.0, with the TRM Version 3.0 still being submitted in March of 2014. Staff believes the Commission could also set a deadline in the Initiating Order for the TRM Updates to ensure that both components of the Updated TRM (consensus and non-consensus components) are approved by March 1. More specifically, Staff recommends the Commission require Staff to file, as a compliance filing within 45 days of the date of the Commission Order on Rehearing in this docket, a revised *IL-TRM Policy Document* that reflects the following changes:

Each program year, the consensus and non-consensus TRM Updates that will comprise the Updated TRM applicable to the following program year shall be submitted to the SAG by November 1 such that Staff can submit the consensus and non-consensus portions of the Updated TRM with the Staff Reports it submits to the Commission to initiate proceedings to consider approval of the Updated TRM (consensus and non-consensus TRM Updates) on an expedited basis. Such Staff Reports shall also recommend that the Commission's Initiating Order establish a schedule for the submission of Initial and Reply Comments such that the Commission can approve the Updated TRM (consensus and non-consensus TRM Updates) by March 1. In the event that the Comparison Exhibit of Non-Consensus TRM Updates that appropriately reflects each party's position is not submitted to the SAG by November 1, then Staff shall move forward without such document and submit a Staff Report to the Commission describing the non-consensus TRM Update issues such that the Commission's Initiating Order can appropriately limit the scope of the non-consensus TRM Update proceeding to only those areas of non-consensus.

#### **IV. Conclusion**

WHEREFORE, for the reasons stated above, Staff respectfully requests that the Commission ignore the arguments made by the Parties, and approve Staff's positions in their entirety.

Respectfully submitted,

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July 23, 2013

*Counsel for Staff of the  
Illinois Commerce Commission*

VERIFICATION

STATE OF ILLINOIS )  
 )  
COUNTY OF SANGAMON )

I, Jennifer L. Hinman, do on oath depose and state that I am competent to testify, that, if called as a witness herein, I would testify that the facts contained in the foregoing Staff Verified Reply Comments are true and correct, based upon personal knowledge.

Jennifer L. Hinman  
Jennifer L. Hinman

Signed and Sworn Before me this 23<sup>rd</sup> day of July, 2013

Elizabeth A. Rolando  
Notary Public

