

**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,)	Docket No. 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.)	

**VERIFIED REPLY COMMENTS ON REHEARING
OF THE PEOPLE OF THE STATE OF ILLINOIS
AND THE CITIZENS UTILITY BOARD**

The People of the State of Illinois, by and through Lisa Madigan, Attorney General of the State of Illinois (“the People”), and the Citizens Utility Board (“CUB”), through one of its attorneys, in accordance with the schedule established by the Administrative Law Judge in the instant docket, hereby file their Reply Comments on Rehearing to the Initial Comments on Rehearing filed by 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” or “PG/NSG”), and Northern Illinois Gas Company d/b/a Nicor Gas Company (“Nicor”) (collectively, referred to herein as the “Utilities”); and the Commission Staff (“Staff”). As discussed below, the Commission should clarify its March 27, 2013 Order and find that (1) the TRM and the Commission-approved measure savings values recorded therein remain in effect until otherwise modified by the ICC in a future TRM update order; (2) existing parameters and measures in a TRM should not be

removed from an updated TRM during the litigation of contested parameters; and (3) ICC-ordered conclusion on measure level non-consensus items should be applied prospectively within 60 days of its Order.

I. RESPONSE TO STAFF AND UTILITY ARGUMENTS ON ISSUES ON REHEARING

A. Staff's Position That The TRM Ceases To Be Effective At The End of A Program Year Is Inefficient And Creates Uncertainty For Program Administrators.

Stakeholder Advisory Group ("SAG") members, including the AG, CUB and the Utilities, all agree that the TRM is a living, continuous document that requires that the previously approved version of the existing TRM, and the savings values contained therein, remain in effect until the ICC rules on the annually updated TRM. *See* AG/CUB Comments at 8-9; Utilities' Comments at 2-5. The Initial Comments filed by the Commission Staff assert that the fact that the Order approves the TRM for specific designated years means that each annual TRM "cease(s) to be effective at the end of each program year." Staff Comments at 3. Staff suggests that any disagreement on this point implies a belief that no updates should occur, noting that "it is important from a policy standpoint that the Commission rely on the updates values contained in the annually updated version of the TRM when measuring whether Program Administrators' (sic) have achieved their statutory savings goals." The implication here is that AG/CUB and the Utilities reject the notion of an annual update process.

To be clear, no party disputes that under the TRM Policy document attached to the Staff report that initiated this proceeding, the process of incorporating new and better information into the TRM occurs annually. Policy Division Staff Report, Attachment A at 8 ("TRM Policy document"), filed January 24, 2013. All SAG members have made clear their commitment to the

annual update process, as evidenced by the Commission's approval of the first TRM, approved in Docket No. 12-0528. The Commission's Order in this docket directs that the independent evaluation of the Utilities' statutory energy efficiency programs perform savings verification based on the Commission-approved TRM and present these savings verification values within the appropriate annual independent evaluation reports of the Program Administrators' energy efficiency portfolios, filed in the statutory compliance proceedings. *See* 220 ILCS 5/8-103(f)(7) and 220 ILCS 5/8-104(f)(8); Final Order at 5. The Commission further directed that these TRM savings verification values be used where applicable for the purpose of measuring savings toward compliance with Program Administrators' energy savings goals set forth in Sections 8-103 and 8-104 of the Illinois Public Utilities Act. *Id.*

The annual updates are based upon a review of annual evaluations of the program measures by third-party evaluators and members of the Technical Advisory Committee ("TAC") subcommittee of the SAG. As noted in the TRM Policy document attached to the Staff report that initiated this proceeding, the process of incorporating new and better information into the TRM occurs annually. Policy Division Staff Report, Attachment A at 8 ("TRM Policy document"), filed January 24, 2013. 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 that begin June 1 of each year, the TRM Policy Document provides that the consensus updated TRM shall be transmitted to the ICC Staff and SAG by March 1st. The ICC Staff will then submit a Staff Report (with the consensus updated TRM attached) to the Commission, presumably in that same month, with a request for expedited review and approval. *Id.* 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.

Likewise, no party disputes that the evaluation findings from one program year will be put into effect for the first time at the beginning of the program year following their incorporation (as determined by the TRM update Process) into the TRM. That process, however, likewise anticipates the possibility that consensus may not be achieved on every input for every measure.

As noted in the AG-CUB Comments, Staff's assumption that a TRM ceases to be in existence at the end of each program year (May 31st) creates problems under either of two scenarios: (1) when the expedited proceeding for approval of the updated TRM extends beyond the May 31st end date, and (2) when a non-consensus filing is not resolved before the May 31st end-of-program-year date. *See* AG/CUB Comments at 8-9. Again, under the first scenario, when a Commission order is not issued by June 1st, even if consensus exists among the parties on all parameters in an annual TRM update, a new program year would begin (as of June 1st) 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. That state of limbo is potentially exacerbated under the second scenario, when a non-consensus TRM parameter is litigated. Presumably, this docket will last longer than any consensus TRM update docket because litigation is involved, which may necessitate the filing of testimony, hearings and the filing of briefs. Here again, if the prior TRM expires as of May 31st each year, the Utilities and evaluators

will operate without any specific values for the period beginning June 1, 2013 and ending as of the date of the Commission order in the non-consensus docket.

On the other hand, if the TRM is viewed as a continuous document (albeit one that is annually updated) when individual measure values are contested, the Utilities can assume during any period after the start of a new Plan Year that the existing value remains applicable for energy savings calculation purposes. Then, when a Commission order is issued, as discussed *infra*, the Utilities can adopt the new value within 60 days of the Commission order.

As noted in the AG/CUB Initial Comments, other facts justify Commission clarification of the Order in this docket to require a continuous TRM process, rather than the annual termination that Staff suggests. First, ICC orders generally remain in effect until another ICC order is issued that in some way modifies the conclusions in the prior order. Second, other jurisdictions of which the People and CUB are aware do not terminate an existing TRM each year pending re-adoption by the state regulatory body.

The Staff assumption of expiration of the TRM document each May 31st is inefficient, and would leave utilities uncertain as to whether even *agreed-upon* TRM parameters will be applied in a program year. As the Utilities note in their Comments, “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.” Utilities’ Comments at 4. The main point of the TRM, as recognized by the Commission, is to eliminate the inefficiencies of litigating these policies in each of the utilities’ separate three-year EE Plan dockets and to provide certainty regarding the use and application of the TRM on an on-going basis. Final Order at 3. Staff’s insistence that the TRM as a whole expires as of a certain date undermines these goals. Their position should be rejected.

B. Non-Consensus Measure Parameters Should Not Be Removed From The Consensus TRM Submitted to the Commission.

Consistent with the notion of the TRM being a living, continuous document that remains valid until another Commission order is entered approving a new, updated TRM, non-consensus parameters should not be extracted from a Consensus TRM submitted during the annual update process simply because agreement has not been reached during the update process on a measure value.

In their Comments, Staff clarified its position that they “do not believe that an entire measure 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.” Staff Comments at 8. This hardly fixes the problem created by removal of even individual parameters of a single efficiency measure. As the Utilities note in their Comments, removal of non-consensus parameters would undermine the goal of providing certainty to the Utilities as they plan their energy efficiency portfolios. As noted in the AG/CUB Initial Comments, removal of a non-consensus item – whether it be a single parameter or an entire measure -- from the updated TRM leaves Utilities and evaluators with no values to assess energy savings for the time period between the start of the Program Year and the data of a Commission order that settles the non-consensus item. AG/CUB Comments at 10.

Staff points to the Final Order in this docket’s reference to the filing of a Comparison Exhibit of Non-Consensus TRM updates on or about March 1st of each year as support for their position. Staff Comments at 9-10. No party disputes the need to file that important document as part of the Non-consensus litigation. However, the filing of that document should not eradicate the existing parameter value in effect until the issuance of a new Commission order. In addition,

Staff's view that non-consensus measures remain intact and only the disputed parameter be removed is inconsistent with its stated view that the *entire* TRM expires each year upon June 1st.

Likewise, as noted in part A *supra*, ICC Order generally remain in effect until another ICC order is issued that in some way modifies the conclusion in the prior order. That principle applies to individual parameters and program measures as well. Second, as noted previously, other jurisdictions of which the People and CUB are aware do not remove measures included in previously approved TRMs when non-consensus exists among parties and pending re-adoption by the state regulatory body.

For all of these reasons, the Commission should reject Staff's proposal to remove non-consensus measure parameters during the TRM update and approval process.

C. The Commission Should Clarify Its Order To Find That ICC-Ordered Conclusions On Measure-Level Non-Consensus Issues Should Be Applied Prospectively Within 60 Days of Its Order.

Once a Commission order is issued that settles what is likely to be the uncommon litigation of non-consensus efficiency measure parameter values, the question arises as to which numeric value should be applied by evaluators for the parameter at issue when that order is entered after the June 1st start of a program year. As noted in the AG/CUB Comments, in SAG discussions to date, the Staff has argued that any Commission-ordered resolution of a measure savings value should be applied retrospectively to the beginning of the program year, or June 1st, no matter what the date of the non-consensus order. Other parties believe the new value should be applied prospectively, but there is additional disagreement as to how far into the future that prospective application should begin.

Prior to the filing of Initial Comments on Rehearing, the AG, CUB, Ameren, ComEd, Nicor and other stakeholders who are not parties to this docket concurred that "the

(Commission)-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.” See Illinois Statewide TRM Version 2.0: Comparison Exhibit of Non-Consensus Policy Items, prepared by the TRM administrator, attached to AG/CUB Initial Comments as Appendix A.¹ Peoples Gas/North Shore was the only utility to argue that the approved and revised measure, as ordered by the Commission, would apply to the *next* program year. *Id.*

Apparently, however, the Utilities as a group have altered their position for purposes of their Initial Comments. The Utilities as a group now argue that not only should the new Commission-ordered value be applied prospectively, that new value should not be applied *until the following Plan Year*. As their footnote 5 on page 6 makes clear, under that scenario, 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, when the new program year begins, but rather a full year later when Plan Year X + 1 occurs. Utilities Comments at 6, footnote 5. The Utilities assert that “practical planning and implementation realities facing the Utilities and Contractors” justify the delay in implementing new, Commission-ordered values. In addition, the Utilities claim that program costs might increase as a result of not waiting a full year to incorporate the new parameter value, and would even impact the delivery of programs in that year. Utilities’ Comments at 7-10.

As noted in the AG/CUB Comments, this position represents a significant alteration of the position that the Utilities (other than PGL/NS) articulated during the SAG, as evidenced by

¹ This position also provides Utilities with the opportunity, in exceptional cases, where the measure is ‘high-impact and the Utilities desire to abandon the measure, to petition the Commission for application of the new value to the following program year. See Appendix B.

the document that is attached to the AG/CUB Initial Comments as Appendix A. This position should be rejected for several reasons.

First, practically speaking, it would be highly unlikely that the Commission could or would issue an order before June 1st in a litigated docket that would not likely be opened by the Commission until late March, after a Staff's March 1 Report on the Non-consensus item(s) is issued. Thus, the Utilities' position virtually *guarantees* that Commission-ordered values would not be applied for a full year.

Second, Staff's position that a Commission-ordered value be implemented retroactively is not unreasonable per se. The People and CUB understand Staff's position to be based on the desire to ensure that ratepayers continue to fund cost-effective programs based upon reliable and verified assumptions that help to ensure that energy savings calculations are accurate. The People and CUB agreed to endorse the 60-day-post-ICC Order grace period position in good faith that this represented a compromise that serves both the Commission's and ratepayers' interest in ensuring cost-effective programs. Application of this new value at that time serves the goal of ensuring cost-effective programs by not falsely ascribing inappropriate savings values for an entire year, as the Utilities now recommend, and provides the Utilities with the time to adjust the affected measure's program delivery, should that be necessary, based on the updated parameter value. The AG/CUB position, in effect, represents a reasonable compromise affecting the evaluation and delivery of utility programs.

Third, the Utilities' "wait a full year" 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 1st start date will not be implemented for another full year. Adoption of the AG/CUB compromise position helps incent all parties to

come to the TRM negotiating table with a desire to fairly evaluate and endorse efficiency measure values.

Fourth, the Utilities claim that adoption of Commission-ordered values cannot be easily subsumed with program assumptions, program planning costs will increase and that “there will likely be a corresponding decrease regarding the use of that measure or the level of investment in that measure” are overstated at best. *See* Utilities’ Comments at 7-10. Under the AG/CUB approach, utility program planners could assume the continuation of the previous year’s measure values or an opposing party’s assumed value for purposes of planning and program implementation. Adjustment of parameter values in a Commission order that went against a utility position would then not impact an evaluator’s assessment of utility program performance. Likewise, a utility might prevail in a non-consensus docket – a point that the Utilities Comments seem to ignore. In those instances, additional energy savings would be counted for the affected measure during the remainder of the Program Year. No harm would come to any utility forecast of energy savings performance.

The position allowing for a 60-day grace period for implementing new Commission-ordered TRM values on non-consensus items represents a reasonable compromise to Staff’s retroactive application position and the PGL/NS-recommended, inequitable full-year prospective application of Commission-ordered values. It helps ensure that efficiency programs remain cost-effective and maximum energy savings be delivered by ensuring that the evaluation of those programs be based on the most accurate data available. Adoption of the Utilities position, on the other hand, would lock in for up to a full 12-month period parameter values that all parties know are no longer valid. For all of these reasons, the AG/CUB compromise position, which would apply the (Commission)-approved and revised measure 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, should be adopted by the Commission in its Order on Rehearing.

III. CONCLUSION

For the reasons stated above, the People and CUB urge the Commission to enter an Order on Rehearing consistent with the recommendations included in these Reply Comments and the AG/CUB Initial Comments.

Respectfully submitted,

THE PEOPLE OF THE STATE OF ILLINOIS

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THE CITIZENS UTILITY BOARD



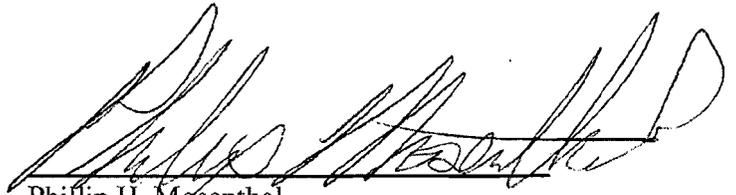
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Dated: July 23, 2013

VERIFICATION

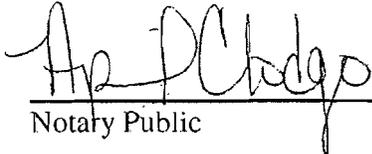
STATE OF ILLINOIS)
)
COUNTY OF COOK)

I, Phillip H. Mosenthal, state that I am a founding partner in Optimal Energy, Inc., a consultancy specializing in energy efficiency and utility planning that advises numerous parties including utilities, non-utility program administrators, government and environmental groups, including the Illinois Attorney General's Office. I have been actively engaged in the Illinois Stakeholder Advisory Group (SAG) since its inception, representing the People of the State of Illinois. I have read the foregoing **Reply Comments on Rehearing** in ICC Docket No. 13-0077, that I know the contents there of, and that to the best of my knowledge, information and belief, based upon reasonable inquiry, the contents are true and correct.

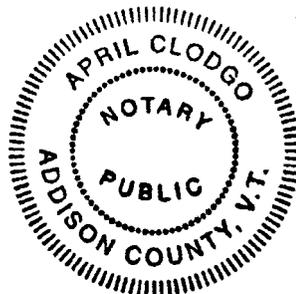


Phillip H. Mosenthal

Signed and sworn to before me
this 23rd day of July, 2013



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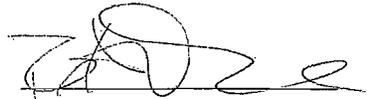
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**Docket No. 13-0077
On Rehearing**

Verification

I, Rebecca Devens, first being duly sworn, state that I have read the foregoing "Reply Comments on Rehearing of the People of the State of Illinois and the Citizens Utility Board," and that the facts contained therein are true and correct to the best of my knowledge and belief.



Rebecca Devens, Policy Analyst

Sworn and subscribed to me this 23rd day of July, 2013.



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STATE OF ILLINOIS)
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COUNTY OF COOK)

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