

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

Illinois Commerce Commission)	
On Its Own Motion)	
-vs-)	
Ameren Illinois Company d/b/a Ameren Illinois,)	Docket No. 13-0077
Commonwealth Edison Company, The Peoples Gas)	
Light and Coke Company, 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)	

APPENDIX A:

JOINT UTILITY DRAFT PROPOSED ORDER ON REHEARING

Dated: August 6, 2013

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JOINT UTILITY DRAFT PROPOSED ORDER ON REHEARING

By the Commission:

I. Procedural History

Pursuant to Sections 8-103 and 8-104 of the Illinois Public Utilities Act (“Act” or “PUA”), certain Illinois electric and gas utilities, in coordination with the Department of Commerce and Economic Opportunity (“DCEO”), are required to file three-year Energy Efficiency (“EE”) Plans with the Illinois Commerce Commission (“Commission”) to meet applicable EE standards specified in the statute. 220 ILCS 5/8-103, 8-104. Between September 29, 2010 and October 1, 2010, Ameren Illinois Company d/b/a Ameren Illinois (“Ameren”), Commonwealth Edison Company (“ComEd”), The Peoples Gas Light and Coke Company and North Shore Gas Company (“PG/NSG”), and Northern Illinois Gas Company d/b/a Nicor Gas Company (“Nicor Gas”) (collectively referred to herein as the “Utilities”) filed petitions in separate proceedings for approval of EE plans subject to Sections 8-103 and 8-104 of the Act, which would be implemented by the Utilities in coordination with DCEO.

On December 21, 2010, the Commission entered Orders in Docket Nos. 10-0568 (Ameren) and 10-0570 (ComEd). On May 24, 2011, the Commission entered Orders in Docket Nos. 10-0562 (Nicor), 10-0564 (PG/NSG), and an Order on Rehearing in Docket 10-0568 (Ameren). In these Orders, the Commission directed stakeholders to collaborate through the Illinois Energy Efficiency Stakeholder Advisory Group (“SAG”) to develop a statewide Technical Reference Manual for Energy Efficiency (“TRM”). The first edition of the Illinois Statewide Technical Reference Manual (“IL-TRM”) for EE dated September 14, 2012 was developed to comply with the Commission’s Orders and was approved by the Commission in Docket No. 12-0528.

Subsequently, Commission Staff (“Staff”) submitted a report dated December 18, 2012 (“Policy Division Staff Report”) recommending that the Commission initiate a proceeding to consider adoption of policies concerning the IL-TRM and to make the policies applicable to Illinois Program Administrators, including the Utilities.¹ Staff’s report stated that the policies pertain to (1) the applicability of the IL-TRM in planning, implementing and evaluating EE measures; and (2) the process for annually updating the IL-TRM, including: (i) identification of roles and responsibilities for stakeholders in the TRM Update Process; (ii) requirements surrounding the TRM Administrator; and (iii) a timeline for updating the IL-TRM. On January 24, 2013, the Commission entered an order initiating the instant proceeding.

On January 30, 2013, the Citizens Utility Board (“CUB”) filed a Petition to Intervene which was granted, and on February 4, 2013, the People of the State of Illinois (“AG”) filed a Notice of Appearance. Staff filed testimony on March 8, 2013. There were no contested issues, and on March 27, 2013, the Commission issued a Final Order in this docket approving the IL-TRM Policy Document.

On April 29, 2013, the Utilities and the AG and CUB (jointly, “AG/CUB”) filed Applications for Rehearing (“Applications”). The Applications sought clarification of key TRM Policies approved by the Commission in the Final Order. The Commission granted Rehearing on May 15, 2013.

The Utilities, Staff and AG/CUB filed Verified Initial Comments on Rehearing on June 27, 2013 and Verified Reply Comments on July 23, 2013.

II. Background

In the Commission Orders relating to the Utilities’ petitions for approval of their EE plans, the Commission directed the Utilities to collaborate with SAG and DCEO to develop an Illinois TRM. ICC Docket No. 13-0077 (Initiating Order January 24, 2013) at 2-3 *citing* Final Orders in ICC Docket Nos. 10-0570, 10-0562, 10-0564, and Order on Rehearing in ICC Docket No. 10-0568. The purpose of the IL-TRM is to provide a transparent and consistent basis for calculating energy and capacity savings generated by the State of Illinois’ EE program, which are administered by the Utilities and DCEO. ICC Docket No. 13-0077 (Order March 27, 2013) at 3.

During the development of the IL-TRM, the SAG participants concluded that a consistent set of TRM policies should also be adopted by the Commission in order to ensure that the recorded TRM values and calculation of energy savings are applied and calculated consistently across the state. *Id.* The TRM policies would also provide transparency of and consistency in the applicability of TRM values so that all stakeholders would have a common reference document for measure, program and portfolio savings. *Id.* This resulted in two separate filings – the “technical” TRM was filed

¹ In the IL-TRM and the IL-TRM Policy Document, the term “Program Administrators” refers to the entities that administer energy efficiency programs in Illinois pursuant to Sections 8-103 and 8-104 of the Illinois Public Utilities Act. 220 ILCS 5/8-103; 220 ILCS 5/8-104.

and approved in Docket No. 12-0528, while the instant docket was initiated on January 24, 2013 to consider the TRM Policy Document.

Specifically, this docket is designed to consider and approve TRM Policies that are intended 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. *Id.* There were no contested issues in this docket, and therefore at the time of the Final Order, the parties to this proceeding believed that a consensus view had been reached regarding the TRM Policies, which are attached to the Staff Report in this proceeding. Subsequent to the issuance of the Final Order, however, SAG participants discovered that fundamental disagreements exist among them regarding three core questions of the TRM's application. In response to the Applications, the Commission granted rehearing to resolve the following questions:

(1) Does the TRM cease to be effective at the end of each Plan Year?

(2) Should an existing measure in the TRM be removed entirely if there is disagreement over any subcomponent of the measure during the 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 plan year or prospectively and, if prospectively applied, how?

As described more fully in Section III *infra*, the Utilities and AG/CUB are in accord that the Commission should conclude that the answer to the first two questions is "no" while Staff takes the opposite view. Concerning the third question, although the Utilities and AG/CUB agree that Commission resolutions of measure level non-consensus issues should be applied prospectively, the Utilities recommend that the measures should be applied beginning with the following Plan Year while AG/CUB posits that prospective application should begin within 60 days of the Commission's Final Order on the issues. Only Staff advocates for retroactive application.

III. Contested Issues

A. Determination of Effective Period of TRM

1. Utilities' Position

AG/CUB and the Utilities recommend that the Commission clarify that the TRM remain in effect following the end of each Plan Year until modified or updated in accordance with a Commission Final Order. This is because the TRM reflects years of work by various stakeholders and contains the best and most current information available. Utilities Init. Comments at 3; Utilities Rep. Comments at 3. The Utilities state that all parties agree that the TRM is "a living document" that must "keep[] pace with change[]." Utilities Init. Comments at 3; Utilities Rep. Comments at 3; see Policy

Division Staff Report, Attachment A at 5 (Section 2 “TRM Update Process”). Consequently, to balance the TRM’s goals of continuity and updating, the Utilities conclude that it would reflect sound policy to allow continued use of a Commission-approved TRM until a new TRM is approved. Utilities Rep. Comments at 3. The Utilities observe that it makes little sense to require the SAG and Technical Advisory Committee (“TAC”) to start from scratch each Plan Year without any consideration of past work they have undertaken and that was previously approved. *Id.*

Despite the agreement among the parties about the ongoing, continuous nature of the TRM and the fact that Staff concedes that after initial TRM development there will always be a version of the TRM in effect, the Utilities note that Staff nevertheless erroneously maintains that a specific version of the TRM ceases to be effective at the end of each program year. Utilities Rep. Comments at 3-4. According to the Utilities, neither of the aspects of the policy documents that Staff identifies to support its position – the TRM implementation cycles identified in Table 2.2 and the reference to annual updates – demonstrate that the TRM ceases to be effective at the end of the program year. *Id.*

First, the Utilities state that Table 2.2 simply summarizes the regulatory implementation cycles in place in Illinois and identifies how the TRM works within those existing cycles. Policy Division Staff Report, Attachment A at 7; Utilities Rep. at 4. The Utilities observe that Table 2.2 does not indicate that the TRM expires at any point in time or describe what would happen if the TRM were to expire. Rather, the cycles shown in Table 2.2 reflect an assumption that the TRM remains in effect continuously. Utilities Rep. Comments at 4. According to the Utilities, the paragraph preceding Table 2.2 reiterates the nature of the TRM as a living document in stating that the ongoing TRM update process is necessary “[b]ecause technology and markets are so dynamic.” Policy Division Staff Report, Attachment A at 7; Utilities Rep. Comments at 4.

Second, the Utilities explain that the TRM’s repeated references to annual updates underscore its continuous nature and support the position advanced by AG/CUB and the Utilities. Utilities Rep. Comments at 4; see, e.g., Policy Division Staff Report, Attachment A at 5,6,8,11. Indeed, there can be no updates to a document that is created from scratch. Utilities Rep. Comments at 4. The Utilities further note that the “TRM Update Process” – which builds on and continues the collaborative and comprehensive development process for future Plan Years – in and of itself exhibits an intention by the parties to have the TRM remain in effect for future Plan Years. Utilities Init. Comments at 3-4; Utilities Rep. Comments at 4.

Under the TRM, the Utilities, as Program Administrators, are “responsible for tracking program participation, reporting estimates of energy savings using TRM values (where such values exist), estimating cost effectiveness, and implementing the TRM savings values, including TRM Measure Codes and other information necessary to apply the TRM, through their tracking systems.” Policy Division Staff Report, Attachment A at 6; Utilities Init. Comments at 4; Utilities Rep. Comments at 5. As a result, the Utilities must account for any updated values in their respective tracking systems and/or

cost-effectiveness analyses and adjust their respective energy efficiency programs accordingly. Utilities Init. Comments at 4; Utilities Rep. Comments at 5. The Utilities further explain that if they must start over completely each Plan Year and wait for new, Commission-approved TRM values, as suggested by Staff's position, they would face needless uncertainty on key values needed for the multi-month program design and implementation decisions. Utilities Init. Comments at 4; Utilities Rep. Comments at 5. This result, they explain, would unfairly increase regulatory risk for the Utilities under 220 ILCS 5/8-103 or 8-104, lead to expending precious resources dealing with that needless risk, and contradict the purpose of creating "stability and certainty for Program Administrators as they make program design and implementation decisions." ICC Docket No. 13-0077 (Order March 27, 2013) at 3; Policy Division Staff Report, Attachment A at 4 (Section 1.1 "Objectives and Purpose of the TRM Policy Document"); Utilities Init. Comments at 4; Utilities Rep. Comments at 5.

2. Staff's Position

3. AG/CUB's Position

4. Commission Analysis and Conclusions

As all parties acknowledge, the TRM was intended to be a "living" document designed to keep pace with change. See Policy Division Staff Report, Attachment A at 5 (Section 2 "TRM Update Process"). It is evident from the record that the TRM's repeated references to annual updates and the "TRM Update Process" emphasize its continuous nature and demonstrates an intention by the parties to have the TRM remain in effect for future plan years until modified or updated pursuant to a Commission order.

Further, we agree with the Utilities and AG/CUB that to require that the Utilities start over each Plan Year and wait for new, Commission-approved TRM values, as suggested by Staff, would cause the Utilities to face needless uncertainty regarding the key values needed for program design and implementation decisions. This would consequently increase regulatory risk for the Utilities under Sections 8-103 or 8-104, lead to expending resources dealing with that risk, and contradict the purpose of creating "stability and certainty for Program Administrators as they make program design and implementation decisions." ICC Docket No. 13-0077 (Order March 27, 2013) at 3; Policy Division Staff Report, Attachment A at 4 (Section 1.1 "Objectives and Purpose of the TRM Policy Document").

For these reasons, we agree with the recommendation advanced by the Utilities and AG/CUB and conclude that the TRM's goals of continuity and updating would be better served if the TRM remains in effect following the end of each Plan Year until it is modified or updated in accordance with a Commission Final Order.

B. Impact of Disagreement Regarding Subcomponent of TRM Measure

1. Utilities' Position

Because the TRM should be viewed as a “living” document comprised of Commission-approved measure values to be used in a current Plan Year and in future Plan Years until changed, the Utilities and AG/CUB recommend the Commission should find that existing Commission-approved TRM measures should not be removed from the TRM if there is a subsequent disagreement over a subcomponent of a measure. Utilities Init. Comments at 5; Utilities Rep. Comments at 5. The Utilities assert that this position is supported by the same reasons and policy objectives that support the position that the TRM remain in effect following the end of each Plan Year until new values are approved. See Utilities Init. Comments at 5; Utilities Rep. Comments at 5. They contend that any other outcome would run contrary to those policy objectives, including the objective that the Commission-approved TRM should provide certainty regarding the values to be used by Utilities and evaluators when planning, implementing and evaluating energy efficiency programs. Utilities Init. Comments at 5; Utilities Rep. Comments at 6. The Utilities assert that subjecting all measures to an annual consensus requirement would undercut these objectives. Utilities Init. Comments at 5; Utilities Rep. Comments at 6.

The Utilities observe that the uncertainties that would result from the adoption of Staff’s recommendation are underscored by Staff’s suggestion that a placeholder could be included in the measure characterization of a particular value. *Id.*; see also Staff Init. Comments at 10. A change in any one of the many inputs used in TRM calculations, including “deemed” values, will cause the use of the measure at issue to become uncertain as all of the components are needed to calculate a result. For this reason, the Utilities explain, if there is a dispute about a particular data input, that input should not be removed; instead, the dispute should be resolved by the Commission while the Commission-approved calculation remains intact and the corresponding measure remains part of the TRM until the Commission approves a new value to take its place. Utilities Rep. Comments at 6.

According to the Utilities, Staff’s recommendation also seems to imply urgency in Commission action on a non-consensus item but provides no basis to invoke quick action by the Commission. *Id.* While no detrimental impacts necessarily result from the existence of a disputed item within a measure, removing the entire measure or a subcomponent as suggested by Staff would result in a waste of public resources. *Id.* at 6-7. Staff’s position, the Utilities state, will cause the Utilities to incur costs to account for uncertainty and to ramp-up new measures to replace the lost value of the removed measures. The Utilities further state that they would incur costs related to system programming changes to reflect the removal of certain measures and implementation of new measures as well as possibly having to dispose of surplus equipment if it is no longer used in connection with a measure. *Id.* at 7.

The Utilities also explain that their customers and participating EE program vendors (“Contractors”) need controlled, predictable measure changes that premise

themselves upon Commission-approved values. Indeed, the drain on public resources would be exacerbated by the negative impact that the adoption of Staff's recommendation would have on these groups. Utilities Rep. Comments at 7, 8. The Utilities also contend that the removal of an entire measure would result in program interruption and confusion that would cause long-term damage, including damage to relationships with Contractors and trade allies. *Id.* at 7. For example, the Utilities state that Staff's position, if adopted, could result in Utilities having to terminate or suspend contracts that no longer provide adequate savings, which could lead to Contractors and trade allies terminating relationships with the Utilities. *Id.* Significant customer confusion and backlash may also result when incentives do not remain consistently available. *Id.* Specifically, for customers whose adoption of energy efficiency measures constitutes a multi-month program requiring a customer to enter into contractual agreements with a Utility and a variety of vendors, a sudden removal of an entire measure due to a TRM dispute may result in a series of contractual defaults and resulting contractual damages. *Id.* at 7-8.

Finally, the Utilities observe that a protocol already exists in 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 Init. Comments at 5; see Policy Division Staff Report, Attachment A at 5-8 (Sections 2-2.4).

2. Staff's Position

3. AG's Position

4. Commission Analysis and Conclusions

The Utilities and AG/CUB recommend that the Commission conclude that existing Commission-approved TRM measures should not be removed from the TRM if there is a subsequent disagreement over a measure or a subcomponent of a measure. Utilities Init. Comments at 5; Utilities Rep. Comments at 5; AG/CUB Init. Comments at 9. We agree.

As we concluded in the previous section, the TRM is a "living" document designed to have continuity. As the Utilities correctly recognized, the same reasons and policy objectives that support the position that the TRM remain in effect following the end of each Plan Year until new values are approved also support not removing TRM measures due to a subsequent disagreement over a component.

The Commission further concurs that Staff's recommendation would run contrary to the TRM's stated policy objectives, including the objective that the Commission-approved TRM should provide certainty regarding the values to be used by Utilities and evaluators when planning, implementing and evaluating energy efficiency programs. As evidenced by the record, removal of entire measures, or even subcomponents of measures, would result in program interruption and confusion that would likely discourage Contractor and customer participation and be antithetical to the controlled

measure changes required for successful implementation of Commission approved EE measures.

We therefore agree with AG/CUB and the Utilities that in the event of a dispute about an input to a measure or its subcomponent, that input should not be removed but instead the Commission-approved calculation should remain intact and the affected measure remain as part of the TRM until the Commission approves a new value to take its place. The Commission adopts the recommendation of the Utilities and AG/CUB.

C. Application of Resolved Measure Level Issues

1. Utilities' Position

The Utilities recommend that the Commission find that the 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. Utilities Init. Comments at 6; Utilities Rep. Comments at 8. This would allow the Utilities and their respective Contractors time to incorporate new values into the Utilities respective portfolios. Utilities Init. Comments at 6. According to the Utilities, while AG/CUB properly recognize that the Commission should apply any resolution of non-consensus issues prospectively, AG/CUB incorrectly posit that such prospective application should begin within 60 days of the Commission's Final Order on the issues. Utilities Rep. Comments at 8; AG/CUB Init. Comments at 11-12. The Utilities also contend that Staff's recommendation that the application be retroactive to the start of the program year for which the updated TRM is in effect is also flawed and should be rejected as it fails to consider that there is no statutory timeframe or deadline for Commission action to resolve non-consensus issues. Utilities Rep. Comments at 8; Staff Init. Comments at 11-12.

As an initial matter, the Utilities note that the Commission may not resolve non-consensus issues until well into a Plan Year, or not within the Plan Year at all because non-consensus issues are likely to involve technical subject matters requiring complex evidentiary submissions, evidentiary hearings and briefing before a Final Order is issued. Utilities Rep. Comments at 8-9. The Utilities further explain that by the time the procedural process is completed and a Final Order issued by the Commission, the Plan Year may well be near completion or completed. Utilities Rep. Comments at 9. They opine that under Staff's interpretation, the resolved issue would be applied to a closed Plan Year, thereby reducing savings and potentially penalizing Program Administrators and their respective Contractors. *Id.*

The Utilities go on to posit three primary reasons why the Commission should clarify this issue. First, they state that prospective application is consistent with a primary purpose of the TRM Policy Document – to provide clarity and certainty to the Utilities, as well as their respective Contractors, in an effort to promote the growth of robust energy efficiency program offerings. Utilities Init. Comments at 6-7; Utilities Rep. Comments at 9; Policy Division Staff Report, Attachment A at 4. The Utilities explain

that stability and certainty for assessing the relative value of differing program measures provides them and their Contractors with clear signals regarding where to invest limited program resources. Utilities Rep. Comments at 9.

Second, the Utilities state that the importance of the TRM's purpose becomes apparent when the Utilities and Contractors practical planning and implementation realities are considered. Utilities Init. Comments at 7; Utilities Rep. Comments at 9. They explain that planning for an upcoming program year is a multi-month project requiring significant lead time, where the previous year's savings and costs are assessed against the relative risks and values of a variety of energy efficiency measures. *Id.* A wide variety of program variables must be assessed prior to devoting limited resources to new and existing programs. Utilities Init. Comments at 7; Utilities Rep. Comments at 9-10. Thus, if the measure-level values are known by March 1 for an upcoming Plan Year, the Utilities claim that they and their Contractors can efficiently invest in the highest value (i.e., greatest savings for the resource-input) options and their Contractors can then cost-effectively plan for the upcoming year, confidently contract with the Utilities on estimated program savings for the Plan Year, and provide accurate program availability to customers and trade allies. Utilities Init. Comments at 7; Utilities Rep. Comments at 10.

The Utilities also express concern that if measure-level values were to unpredictably change mid-Plan Year, as proposed by AG/CUB, or be applied retroactively as proposed by Staff, that would add a new and unanticipated level of uncertainty into the planning and implementation process, which would increase costs in order to account for these contingencies. *Id.* Other possible unintended consequences of mid-Plan Year changes that concern the Utilities include a decrease in the use of or level of investment in a measure with uncertain value, and reallocation of utility resources from implementing and deploying energy efficiency programs to planning functions to readjust a portfolio in order to meet Plan Year or three-year Plan goals. Utilities Init. Comments at 7-8; Utilities Rep. Comments at 10.

In addition, the Utilities believe that retroactive or mid-Year application of a Commission-resolved value would likely force the Utilities and their Contractors to abandon or dramatically curtail customer community development and trade ally programs designed to cultivate customers and trade allies, if the mid-Year change causes such programs to have lower value relative to alternative program measures. Utilities Init. Comments at 8; Utilities Rep. Comments at 10.

The Utilities also explain that in many cases Contractors, subcontractors, and program allies have invested in a business model that includes appropriations for labor and resources; if the risk of retroactive application were introduced, this model would no longer be viable because of the new uncertainty regarding those appropriations. Utilities Init. Comments at 8-9. The Utilities further note that those customers who were participating or planning to participate in a program may be prevented or discouraged from participating if the program is dropped or the incentive changed as a result of a change in the measure value. Utilities Init. Comments at 8; Utilities Rep. Comments at

10-11. According to the Utilities, this can lead to customer and vendor dissatisfaction and distrust, and ultimately produce a chilling effect on program participation, energy savings achievement and the growth of EE in Illinois. Utilities Init. Comments at 9; Utilities Rep. Comments at 11.

The Utilities contend that the other parties' recommendations also fail to address how a mid-Year measure value change could be accounted for when evaluating a program's annual savings as part of the independent evaluation process. Utilities Init. Comments at 9; Utilities Rep. Comments at 11. They posit that because many business projects are applied for and approved during the first half of the Plan Year based on then-known budget and measure values, it would be difficult to track and evaluate if mid-Year value changes are allowed. Utilities Init. Comments at 9; Utilities Rep. Comments at 11. The Utilities state that a mid-Year value change could mean that some projects would be disqualified or agreed-to incentive values would need to be changed, which in turn would call into question how the evaluator would apply the measure value adjustment and determine its effect on the savings after the conclusion of the project. Utilities Init. Comments at 9; Utilities Rep. Comments at 11. Thus, the Utilities contend it would be more appropriate and encourage continued growth of EE in the marketplace if adjusted program values were to be applied at the start of the next Plan Year where program offerings and project completion can be appropriately planned for and implemented, as well as consistently evaluated. Utilities Init. Comments at 9; Utilities Rep. Comments at 11.

According to the Utilities, Contractors also could be discouraged from proposing new and innovative programs if the values on which they base their proposals are subject to change. Utilities Init. Comments at 9; Utilities Rep. Comments at 11. This is because a Contractor may have performance incentives for achieving a set level of savings (or other measures of performance) and, by introducing regulatory uncertainty into measure level values through retroactive application, previously deployed Contractor and subcontractor resources (and the corresponding savings values ultimately calculated) may either be unduly penalized (if the "value" of a particular measure falls) or overly rewarded (if the "value" of a particular measure increases). Utilities Init. Comments at 9-10; Utilities Rep. Comments at 11-12. Accordingly, the Utilities conclude that to mitigate uncertainty, Commission-resolved values should be applied beginning with the next Plan Year. Utilities Init. Comments at 10; Utilities Rep. Comments at 12.

In the alternative, the Utilities request that if the Commission adopts AG/CUB's recommendation for prospective application, the Commission should confirm that such prospective application would apply only to future Contractor applications submitted to the Utilities. Specifically, all current applications and programs that were started under the previous values should continue and be evaluated using those previous values; new applications and programs would apply the Commission-resolved value after the 60 day "grace period." Utilities Rep. Comments at 12.

Third, the Utilities state that adoption of other parties' recommendations would result in unfairness. Utilities Init. Comments at 10; Utilities Rep. Comments at 12. Specifically, the Utilities and their Contractors need certainty by March 1 preceding a given Plan Year to appropriately plan, contract and then implement programs based on fixed, Commission-approved values. Utilities Rep. Comments at 12. They explain that their customers and trade allies are educated and incented to adopt programs through the Utilities' program decisions; sudden, after-the-fact changes in a measure level value create significant uncertainty for all parties and lead to confusion and distrust in the marketplace. Utilities Init. Comments at 10; Utilities Rep. Comments at 12. The Utilities further note that if a measure-level value were to be applied retroactively, it could create a gap in expected savings for a program where a utility has devoted significant resources during a time when the utility relied on the information available to it. Utilities Init. Comments at 10; Utilities Rep. Comments at 12. Under such circumstances, the Utilities assert that they and their Contractors would be forced to address that shortfall in the near term, and there would be ongoing implications for a utility potentially missing its statutorily required savings goals. Utilities Init. Comments at 10; Utilities Rep. Comments at 12.

The Utilities also urge the Commission to disregard Staff's and AG/CUB's argument that prospective application of new Commission-ordered values will improperly incentivize the Utilities. Utilities Rep. Comments at 12; see Staff Init. Comments at 12; see *also* AG/CUB Init. Comments at 12. The Utilities contend that Staff and AG/CUB fail to recognize the years of cooperation and collaboration that is reflected in the TRM, which at times resulted in lower savings values being used. Utilities Rep. Comments at 13. They also observe that there is no benefit to the Utilities to drive savings values up or down – a change in either direction is problematic for the Utilities for the reasons previously discussed, and such conduct would rob the Utilities, Contractors and customers of the certainty the Utilities believe is necessary. *Id.*

The Utilities also urge the Commission to reject Staff's alternate recommendation of moving up the deadline for consensus between SAG and TAC members. Utilities Rep. Comments at 13; see Staff Init. Comments at 13-14. They contend that it is being offered without allowing sufficient opportunity to fully vet the proposal with all interested parties, including the independent evaluators. Utilities Rep. Comments at 13. The Utilities also contend that Staff's proposal assumes that the evaluators, who are not participants in this proceeding, can meet an accelerated November 1 deadline and effectively conduct separate evaluations of (1) program level gross annual savings values and (2) measure-level unit savings values. Utilities Rep. Comments at 13; Staff Init. Comments at 13-14. And, assuming the November deadline were achievable by the evaluators, the Utilities note that there has been no opportunity to determine what costs may be associated with Staff's proposal. Utilities Rep. Comments at 13.

Finally, while the Utilities do not disagree with the concept of an earlier deadline, the two-part evaluation as proposed by Staff would fail to provide the Utilities with the certainty intended by the TRM. *Id.* They therefore request that if the Commission embraces an earlier deadline, it should direct that all evaluations be completed at that

same earlier time in order to provide the needed certainty and allow the Utilities to adjust their respective portfolios to account for the accelerated timeframe and increased expenses that they believe will be required. Utilities Rep. Comments at 13-14.

2. Staff's Position

3. AG's Position

4. Commission Analysis and Conclusions

The parties propose three different recommendations regarding when Commission-resolved measure level non-consensus issues should be applied. Although AG/CUB and the Utilities advocate for prospective application, the Utilities recommend that the measures should be applied to the following Plan Year while AG/CUB posits that prospective application should begin within 60 days of the Commission's Final Order on the issues. Only Staff advocates for retroactive application.

As a preliminary matter, we agree with the Utilities and AG/CUB that retroactive application of Commission-resolved measure level non-consensus issues is improper. Because there is no statutory deadline by which the Commission must resolve non-consensus issues, there is a significant risk that under Staff's recommended retroactive application the resolved issue would be applied to a closed year and would therefore reduce savings and possibly penalize Program Administrators and their Contractors for information that became available after the close of the year. Moreover, moving up the deadline for consensus between SAC and TAC members is not supported by the record. Specifically, there is no evidence that this proposal is a workable solution or that interested parties, such as the program evaluators, could accommodate this earlier deadline. Further, there is no evidence that the parties could complete evaluations in time to meet a November 1 deadline – a date that has been selected and suggested only by Staff – and there has been no opportunity to determine what costs may be associated with accelerating such a deadline.

We further conclude that prospective application of Commission-resolved measure level non-consensus issues is consistent with the purpose of the TRM—to provide clarity and certainty to the Utilities and their Contractors so that energy efficiency programs will flourish and be effective. The Utilities provided sufficient support as to why this certainty is critical in light of their planning and implementation realities. Lack of certainty in measure application would likely result in a host of negative consequences, including limiting customer community development and program participation, discouraging appropriations for labor and resources, and creating a chilling effect on energy savings and the growth of EE in Illinois. Applying resolved measure level issues in the following Plan Year would allow the Utilities to invest in the highest value options and permit the Utilities and their Contractors to properly plan and implement programs.

For these reasons, we also agree with the Utilities that a mid-Year measure value change, as may occur under AG/CUB's recommendation, presents significant timing obstacles for evaluating a program's annual savings as part of the independent evaluation process, and would create uncertainty in many of the same ways as Staff's proposal, which we discussed earlier.

Finally, no evidence has been presented to support AG/CUB's and Staff's claim that prospective application of new Commission-ordered values will improperly incentivize the Utilities. Indeed, the opposite result has occurred given the collaboration on the TRM, which has at times resulted in lower savings values. Moreover, the record indicates that the Utilities would realize no benefit to changing savings values as such conduct would undercut the certainty that successful application of the measures requires.

For these reasons, we conclude that the objectives of the TRM and the promotion of EE can best be achieved if Commission-resolved measure level non-consensus issues are applied beginning with the following Plan Year. The Utilities' recommendation is adopted.

IV. Findings and Orderings Paragraphs

The Commission, having given due consideration to the entire record and being fully advised in the premises, is of the opinion and finds that:

- (1) The Commission has jurisdiction over the subject matter hereof and the parties hereto;
- (2) The recitals of fact set forth in the prefatory portion of this Order are supported by the record and are hereby adopted as findings of fact;
- (3) Commission-approved TRM values shall remain in effect following the end of each Plan Year until modified or updated in accordance with a Commission Final Order;
- (4) A Commission-approved TRM measure shall not be removed from the TRM on the basis that there is a subsequent disagreement over a subcomponent of that measure; and
- (5) Commission-determined resolutions of TRM measure level non-consensus matters that are issued during a Plan Year shall be applied beginning with the next Plan Year.

IT IS THEREFORE ORDERED by the Illinois Commerce Commission that the IL-TRM Policies, as filed in this docket and as clarified under finding three (3) through five (5), are approved and adopted.

IT IS THEREFORE ORDERED by the Illinois Commerce Commission that the parties shall comply with findings three (3) through five (5).

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

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

By order of the Commission this _____ day of _____, 2013.

(SIGNED) DOUGLAS P. SCOTT

Chairman