

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

Illinois Commerce Commission	:	
On Its Own Motion	:	
-vs-	:	
Ameren Illinois Company	:	
d/b/a Ameren Illinois	:	
	:	
Reconciliation of revenues collected	:	
under Rider EDR with the actual	:	
costs associated with energy	:	11-0341
efficiency and demand-response	:	
plans. Reconciliation of revenues	:	
collected under Rider GER with the	:	
actual costs associated with natural	:	
gas energy efficiency plans.	:	

ORDER

DATED: October 2, 2013

TABLE OF CONTENTS

I.	INTRODUCTION AND PROCEDURAL HISTORY	1
II.	BACKGROUND; STATUTORY FRAMEWORK.....	2
III.	ELECTRIC EEDR EXPENDITURES	3
IV.	GAS ENERGY EFFICIENCY EXPENDITURES.....	4
A.	Staff Position.....	4
1.	Overview; AIC’s Gas Energy Efficiency Plan; Prudence Standard..	5
2.	Flexibility; Cost-Effectiveness	6
3.	Response to AIC Witness Chamberlin	13
4.	Staff Reply Brief and Brief on Exceptions	13
B.	Ameren Illinois Position.....	20
1.	SB HVAC Costs: Background; Prudency; Response to Staff.....	20
2.	Policy Considerations; TRC Overview; Analysis at Portfolio Level	25
3.	Ameren Illinois Reply Brief and RBOE	29
C.	Recommendations of CUB and the AG	33
1.	Testimony and Initial Brief.....	33
2.	CUB/AG Reply Brief and RBOE.....	39
D.	NRDC Position.....	42
E.	Commission Analysis and Conclusions	46
V.	FINDINGS AND ORDERING PARAGRAPHS.....	50

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

Illinois Commerce Commission	:	
On Its Own Motion	:	
-vs-	:	
Ameren Illinois Company	:	
d/b/a Ameren Illinois	:	
	:	
Reconciliation of revenues collected	:	
under Rider EDR with the actual	:	11-0341
costs associated with energy	:	
efficiency and demand-response	:	
plans. Reconciliation of revenues	:	
collected under Rider GER with the	:	
actual costs associated with natural	:	
gas energy efficiency plans.	:	

ORDER

By the Commission:

I. INTRODUCTION AND PROCEDURAL HISTORY

The Illinois Commerce Commission ("Commission") entered an Order ("Initiating Order") commencing the instant reconciliation proceeding. The Initiating Order directed Ameren Illinois Company, d/b/a Ameren Illinois ("Ameren Illinois" or "AIC") to present evidence to show the reconciliation of revenues collected under "Rider EDR," Energy Efficiency and Demand-Response Cost Recovery, and "Rider GER," Gas Energy Efficiency Cost Recovery, with costs prudently incurred in connection with proper energy efficiency and demand response activities as defined in the tariffs of the utility. The reconciliation period was the 12 months ended May 31, 2010.

Pursuant to due notice, hearings were held in this matter before a duly authorized Administrative Law Judge of the Commission at its offices in Springfield, Illinois. Appearances at the hearings were entered by respective counsel for Ameren Illinois and the Commission Staff ("Staff"). Appearances were also entered by respective counsel the Citizens Utility Board ("CUB"); the People of the State of Illinois by and through the Attorney General Lisa Madigan ("the People" or "the AG"); and the Natural Resources Defense Council ("NRDC"), whose petitions for leave to intervene were granted. An appearance was also entered by the Illinois Department of Commerce and Economic Opportunity ("DCEO").

For Ameren Illinois, the testimony of Kenneth Woolcutt, Dominic Perniciaro, Leonard Jones and Dr. John Chamberlin was presented, along with documentary

evidence. For Staff, the testimony of Jennifer Hinman and Scott Tolsdorf was presented, along with documentary evidence. For CUB, the testimony of Rebecca Devens was presented. At the conclusion of the hearings, the record was marked "Heard and Taken." Initial briefs ("IBs") and reply briefs ("RBs") were filed by Ameren Illinois, Staff and NRDC, and jointly by CUB and the AG. A proposed order was served on the Parties. Briefs on exceptions ("BOEs") were filed by Staff and Ameren Illinois. Reply briefs on exceptions ("RBOEs") were filed by Ameren Illinois and NRDC, and jointly by CUB and the AG.

II. BACKGROUND; STATUTORY FRAMEWORK

With respect to electric customers, the Commission entered an Order in Docket No. 07-0539 on February 6, 2008 which approved, with modifications, the initial series of tariffs, including Rider EDR, under which Central Illinois Light Company d/b/a AmerenCILCO, Central Illinois Public Service Company d/b/a AmerenCIPS, and Illinois Power Company d/b/a AmerenIP (collectively, "Ameren utilities" or "Ameren") would offer energy efficiency and demand-response programs to its electric customers over a multi-year period beginning with the June 2008 monthly billing period. The Rider EDR program year runs from June 1 through May 31. With regard to the statutory framework, the Order in Docket No. 07-0539 cites Section 12-103 of the Public Utilities Act ("Act" or "PUA").

For its natural gas operations, Ameren received Commission approval on October 15, 2008, in Docket No. 08-0104 to implement certain gas energy efficiency measures for its residential and small business customers over a multi-year period consisting of three "plan years" ending May 31, 2009, May 31, 2010 and May 31, 2011. Under Rider GER, Ameren recovers the cost of energy efficiency programs from its residential and small business gas customers receiving service under rates GDS-1 and GDS-2, respectively. This filing by Ameren was not statutorily mandated.

As result of a merger effective October 1, 2010, the three Ameren utilities are now known as Ameren Illinois company, d/b/a Ameren Illinois.

Because of the timing of Docket No. 08-0104, the first plan year for the gas energy efficiency programs, Plan Year 1 ("PY 1"), ending May 31, 2009, spanned only five months as the Commission approved AIC's request that the electric and gas plan years run concurrently from June 1 through May 31. (Ameren IB at 5)

The second and third plan years contemplated in those proceedings were the 12-months period ended May 31, 2010 and May 31, 2011, respectively. The plan years are sometimes referred to as "program years."

Pursuant to Docket Nos. 07-0539 and 08-0104, Ameren Illinois hired third-party energy efficiency ("EE") program implementation contractors to assist with implementing AIC's EE portfolio, which comprised both Residential and Business EEDR Programs. (*Id.*)

Ameren's Rider EDR and Rider GER reconciliations for PY 1 were reviewed and approved, subject to adjustments proposed by Staff, in Docket No. 09-0535.

The reconciliations in the current docket are for PY 2, which is the 12-month period ended May 31, 2010.

With respect to applicable statutory provisions, the Initiating Order states that the riders provide that the Commission will conduct a hearing to review the reconciliation report pursuant to the provisions found in Sections 8-103(e) and 8-104(e) of the Act. Similarly, Staff states that the Commission issued an order initiating this proceeding pursuant to the provisions of Sections 8-103(e) and 8-104(e) of the Act.

Other statutory sections in the Act that were cited by the Parties are discussed below, as are Commission and court decisions.

III. ELECTRIC EEDR EXPENDITURES

For Plan Year 2, electric energy efficiency and demand response ("EEDR") expenditures, recovered under Rider EDR, were \$27,548,057. There were no disputed issues with regard to those costs.

Electric programs for low-income customers and publicly funded customers were implemented by the Department of Commerce and Economic Opportunity. (Ameren Ex. 1.0 at 6) Staff witness Tolsdorf stated that under Section 8-103(e) the Public Utilities Act, DCEO is responsible for implementing 25% of the electric energy efficiency measures approved by the Commission, and that the utility shall include, in its recoverable cost, the costs of measures for both the utility and DCEO. The utility reimburses DCEO for its share of costs as the energy efficiency charge is collected. (Staff Ex. 1.0 at 2-3)

A breakdown of costs for each program, for residential and business customers, is shown in Ameren Exhibit 2.1. (See also Ameren Ex. 1.0 at 6-10)

Residential programs included Home Energy Performance, Appliance Recycling, Light and Appliances, New Construction, New HVAC/HVAC Diagnostics & Tune-Up, Multi-Family, Direct Load Control/ Demand Response, DCEO - Lighting for Learning, and DCEO Low Income.

Business programs included Commercial and Industrial Prescriptive (a/k/a Standard), Commercial and Industrial Retro-Commissioning, Commercial and Industrial Custom, Commercial New Construction, Demand Credit, DCEO – Prescriptive, DCEO – Custom, DCEO – New Construction, DCEO - Retro-Commissioning, and DCEO – Low Income.

Mr. Tolsdorf proposed an adjustment of \$35,770 to reflect a true-up of DCEO costs arising from a difference between estimated costs and actual costs. This adjustment was not disputed.

The Commission finds that the reconciliation schedule presented in Schedule 3.1 of Staff Exhibit 3.0, and in Appendix A to this Order, properly reflects the reconciliation of revenues collected under Rider EDR with costs prudently incurred in connection with proper energy efficiency and demand response activities as defined in Rider EDR for the 12 months ended May 31, 2010.

IV. GAS ENERGY EFFICIENCY EXPENDITURES

For Plan Year 2, Rider GER expenditures, sometimes referred to as gas energy efficiency or “GEE plan” expenditures, were \$3,710,637.

A breakdown of costs for each program, for residential and business customers, is shown in Ameren Exhibit 2.2. (See also Ameren Ex. 1.0 at 6-10)

Residential programs included Home Energy Performance, ENERGY STAR New Homes/New Construction, Multi-Family, Low Income, New HVAC and Demand Response.

Business programs included Small Business Food Service, Small Business HVAC Tune-Up, and Demand Response.

As discussed below, Staff proposes a disallowance of \$119,550 to remove the costs associated with the Small Business (“SB”) HVAC Program. AIC, CUB, the AG and NRDC oppose the Staff adjustment.

The positions of the Parties regarding Rider GER and Staff’s proposed disallowance are summarized below. The Commission observes that the descriptions and summaries of the AIC, Staff, CUB, AG and NRDC positions and arguments on these issues, wherever they may be contained in Section IV of this order, are not intended to reflect the opinions of or determinations by the Commission unless otherwise indicated.

A. Staff Position

Staff Exhibit 3.0, Schedule 3.2 provides the reconciliation of the revenues accrued through Rider GER with the incremental costs incurred for the reconciliation period, as proposed by Staff. The schedule reflects Staff’s adjustment to remove the costs of \$119,550 associated with the Small Business HVAC Program. As indicated above, the descriptions and summaries of the positions of Staff and other Parties regarding Rider GER are not intended to reflect the opinions of or determinations by the Commission unless otherwise noted.

1. Overview; AIC's Gas Energy Efficiency Plan; Prudence Standard

Section III.A of Staff initial brief is titled, "Overview." Staff witness Ms. Hinman testified that AIC was in possession of evidence early in PY2 that the first program year ("PY1") results were extremely poor, and that continuation of the tune-up portion of the SB HVAC Program was expected to substantially reduce net benefits to customers during PY2. She maintains that AIC acted imprudently and unreasonably by continuing to spend ratepayer funds on the SB HVAC Program, despite "clear evidence" that the projected benefits of the program did not exceed the projected costs for Plan Year 2. Accordingly, Staff recommends that the Commission approve the adjustment to Rider GER recoverable costs to disallow all SB HVAC Program costs recovered through Rider GER for PY2, \$119,550. (Staff IB at 4, Staff Ex. 2.0R at 4, 18)

In its approval of AIC's Natural Gas Energy Efficiency Plan ("GEE Plan") in Docket No. 08-0104, the Commission authorized AIC to prudently modify the portfolio at its discretion as additional information regarding the effectiveness of particular programs, and regarding market conditions, became available. (Staff IB at 4, citing Docket 08-0104 Order, also referred to as "GEE Plan Order," at 18) A copy of the GEE Plan was presented in the instant docket as Joint Cross Exhibit 1.

Information became available that made it clear that the planning assumptions were not reasonable. According to Staff, AIC failed to act on this information to minimize detrimental impacts to ratepayers during PY2. As a result, ratepayers were harmed. The record is clear that AIC knew that the HVAC tune-up measures in the SB HVAC Program were not cost-effective, knew those measures were unlikely to become cost-effective, and yet took no actions to eliminate or limit the tune-up measures to make the SB HVAC Program cost-effective in PY2. In Staff's view, "It is unreasonable to allow AIC to cite portfolio level cost-effectiveness as its defense and entire basis for alleging prudent management of the SB HVAC Program." (Staff IB at 4-5)

Section III.B of Staff's initial brief is titled, "AIC's Gas Energy Efficiency Plan (08-0104)." In that docket, AIC filed its Petition for Approval of its GEE Plan and Rider GER pursuant to Section 9-201 of the Act and 82 Ill. Adm. Code 200.100. AIC sought approval to market and deliver natural gas energy efficiency programs to residential and small business customers in conjunction with its statutorily-mandated electric efficiency and demand response programs. AIC made its request for the Commission to approve its gas energy efficiency programs contingent upon Commission approval of AIC's proposed "decoupling" rider in AIC's gas rate cases filed November 2, 2007. (Staff IB at 5, citing Docket 08-0104 Order at 1-2)

In approving the GEE Plan, the Commission agreed with Staff's proposal to require AIC to monitor projected benefits and costs of certain specific gas efficiency measures and to only market those specific measures if and when projected benefits exceed projected costs. (*Id.* at 5-6, citing Docket 08-0104 Order at 11) According to Staff, "As a general matter, there is agreement that 'cost-effective' means the projected

benefits exceed the projected costs (i.e., positive net benefits), the Total Resource Cost (“TRC”) test benefit-cost ratio is above 1.0, and the TRC test net present value is greater than zero.” (*Id.* at 5-6) Although the Order in Docket 08-0104 did not identify the SB HVAC measure as being subject to measure-specific scrutiny, Staff argues that the flexibility granted to AIC in Docket 08-0104 requires the Company to monitor all measures and only market those that are projected to be cost-effective. Staff also suggests that in Docket No. 08-0104, AIC never presented the Commission with the cost-effectiveness results of the gas tune-up measures. (Staff BOE at 3, 9)

With respect to the PY2 SB HVAC Program, AIC “chose to market gas efficiency measures in which the projected benefits did not exceed the projected costs of implementing the measures.” (*Id.* at 6; citing Staff Ex. 4.1 at 21) Thus, ratepayers were harmed in PY2 due to AIC’s decision to continue marketing measures which produced negative net benefits. Accordingly, Staff recommends that the Commission apply its “sound reasoning” in the Order in Docket No. 08-0104 and disallow the costs associated with the SB HVAC Program. (*Id.*, citing Docket 08-0104 Order at 10-11 and Joint Cross Ex. 1 at 346-348)

In Section III.C of its initial brief, Staff addresses the “Prudence Standard.” The Commission has relied upon the following definition of prudence in past Commission orders:

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

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

(Staff IB at 6, citing Final Order at 17, Docket No. 84-0395 (October 7, 1987))

In making recommendations in this proceeding, Staff relied upon this prudence standard in addition to the requirements the Commission set in the GEE Plan Order. (Staff IB at 7, citing Docket 08-0104 Order at 10-11)

2. Flexibility; Cost-Effectiveness

Section III.D of Staff’s initial brief is titled, “Flexibility.” In Staff’s view, the GEE Plan Order makes it clear that the Commission granted AIC the flexibility and the responsibility to modify ineffective programs and measures. Staff cites the following language in that Order:

Once the programs have been rolled out, [AIC] says it will retain flexibility to modify them as circumstances warrant. [AIC] believes this is consistent with the Commission's [EDR Plan] Order ... which recognized that flexibility is key to the success of energy efficiency programs. For example, [AIC] states that the delivery mechanisms, incentive levels and/or types and overall projected load reductions could change as a result of bid proposals from prospective third-party implementers... In [AIC]'s view, flexibility is also necessary to address market risk - the risk that, either because of a poor economic climate or the availability of better investments, customers choose not to participate in energy efficiency programs.

The Commission agrees that this approach and recommended language are appropriate.

(Staff IB at 7, citing Docket 08-0104 Order at 18)

Staff also cites language in page 11 of that order:

[AIC] indicates that its agreement with Mr. Zuraski's recommendations would not be based solely on the rise and fall of natural gas futures prices. In other words, [AIC] would like to retain the flexibility to offer these measures "if and when projected benefits exceed projected costs," taking into account projected natural gas prices and other cost factors as well. [AIC] insists this flexibility is necessary because other cost factors may influence benefit/cost ratios for these measures... The Commission further agrees that allowing [AIC] flexibility to take into account both projected natural gas prices and other cost factors will benefit the programs (and ultimately, customers) and is not inconsistent with Staff's position and recommendations.

In August of 2009, the implementer provided AIC with analysis "showing the PY2 projected costs for the SB HVAC Program were significantly higher than the PY2 projected benefits, resulting in a projection that the SB HVAC Program would provide negative net benefits to Illinois ratepayers." (Staff IB at 8, citing Staff Ex. 4.2 at 5) The TRC test had a value of 0.34 meaning that the projected cost of the SB HVAC Program was nearly three times its projected benefits in PY2. At that time, the current PY2 TRC value was 0.08 indicating the costs of the SB HVAC Program were over 12 times the benefits. The projected TRC value was "resoundingly insufficient" to justify continuation of the SB HVAC Program. (*Id.*, citing Staff Ex. 4.2 at 3, 5)

At the same time, the implementer informed AIC that PY1 results for the SB HVAC Program were extremely poor and that the program had not provided net benefits to Illinois ratepayers. In fact, the TRC test benefit-cost ratio for the SB HVAC Program in PY1 was only 0.22, indicating the cost of the program was over 4.5 times the

benefits. According to Staff, “Proposals to significantly increase the PY2 budget with no concomitant increase in savings, not surprisingly continued to result in the projected costs exceeding the projected benefits of the SB HVAC Program for PY2.” (*Id.*)

AIC had no expectation that the SB HVAC Program would provide net benefits to ratepayers in PY2. Since AIC was provided “clear evidence” that the SB HVAC Program was not forecasted to provide net benefits to Illinois ratepayers in PY2 and AIC could have quickly and easily discontinued the program, AIC’s decision to continue spending ratepayer funds on the program was imprudent and the Commission should disallow recovery of expenses associated with the SB HVAC Program. (Staff IB at 8-9)

At AIC’s request, the Commission granted AIC flexibility to modify its GEE programs should market forces warrant such modification. (Staff IB at 9, citing Docket 08-0104 Order at 18) In the Commission-approved GEE Plan, AIC stated that the SB HVAC Program could be dropped or modified quickly and easily if it proved ineffective. The GEE Plan contains an “Exit Strategy” for the SB HVAC Program, which states in part that “exit from this program can occur quickly if it proves to be ineffective.” (*Id.*, citing Joint Cross Ex. 1 at 75) In Staff’s view, given the flexibility the Commission granted AIC in implementing its GEE programs, the “dismal projections” for the SB HVAC Program under the TRC test, and the ease at which the Company could exit the SB HVAC Program, it was unreasonable for AIC to continue operating the SB HVAC Program in PY2.

AIC “has not shown itself to be afraid to use this flexibility” when it would appear to be beneficial to the Company. For example, AIC exercised this flexibility when it significantly increased spending on its Residential New HVAC Program from \$1.3 million to \$4.67 million. (*Id.*)

Section III.E of its initial brief, Staff addresses “Cost-Effectiveness.” According to Staff, the Commission made clear its concerns regarding the cost-effectiveness of GEE programs and measures and its desire that AIC monitor the cost-effectiveness of these programs and measures and react appropriately to changes in various market or other program-related factors. In the GEE Plan Order, the Commission concluded that AIC should monitor the projected benefits and costs of “some” proposed gas efficiency measures and AIC should only market the efficiency measures if and when projected benefits exceed projected costs. (*Id.* at 9-10) The Order states on page 11:

The Commission agrees with Staff’s proposal to monitor projected benefits and costs of the proposed gas griddles and spray valve measures and to only market these efficiency measures if and when projected benefits exceed projected costs. The Commission further agrees that allowing AIU flexibility to take into account both projected natural gas prices and other cost factors will benefit the programs (and ultimately, customers) and is not inconsistent with Staff’s position and recommendations.

The “dismal projected benefit-cost ratio for PY2 for the SB HVAC Program” should have prompted AIC to exercise the flexibility granted by the Commission and not market or implement the cost-ineffective measures and programs. Instead, AIC continued to spend ratepayer funds on this program throughout PY2. (Staff IB at 10)

AIC continued the SB HVAC Program despite the fact that it faced no financial penalties if it did not meet the savings goals set forth in its GEE Plan. Further, AIC did not have any legislatively mandated therm-savings goals for PY2. (*Id.* at 10-11, citing Staff Ex. 2.0R at 12) As such, there was no “compelling reason” for AIC to implement cost-ineffective measures and programs in order to increase therm savings at the expense of its ratepayers. AIC’s decision to continue spending ratepayer funds on the program was imprudent and the Commission should hold AIC responsible by disallowing recovery of expenses associated with the SB HVAC Program. (*Id.*)

The Commission approved a reasonably developed GEE Plan that sought to screen out measures and programs that would not provide net benefits to Illinois ratepayers. (*Id.* at 11) The GEE Plan Order in Docket No. 08-0104 states, on page 8, “According to [AIC], it determined which energy efficiency measures should be included within its energy efficiency plan by first screening measures for cost-effectiveness, and then including all applicable and cost-effective measures in one or more programs.”

On page 16, the Order states, “[AIC] states that drawing from those programs that passed the TRC test, ICF worked with [AIC] to build a portfolio that was designed to achieve its gas savings and spending objectives, taking into account other important considerations, such as how fast certain programs can be ramped up.”

On page 18, the Order states, “[AIC]’s preference for a single EM&V contractor is aligned with its intent to integrate both its natural gas and electric energy efficiency programs in a seamless manner for customers, and to maximize overall cost-effectiveness.”

Nevertheless, AIC permitted a large number of cost-ineffective HVAC tune-ups to occur as part of its SB HVAC Program. (Staff IB at 12, citing Staff Ex. 2.0R at 9) These tune-ups “are extremely labor intensive, costly, provide a small amount of energy savings, and ultimately contribute to the SB HVAC Program’s cost-ineffectiveness.” (*Id.*, citing Staff Ex. 4.2 at 3) AIC was aware of this information early enough to stop providing the cost-ineffective measures in PY2, in order to ensure ratepayers receive net benefits from the energy efficiency expenditures. Additionally, based on AIC’s GEE Plan, “as part of AIC’s ongoing program management post-Commission approval,” AIC reasonably should have known about the cost-ineffectiveness of the tune-up measures prior to implementation in PY1: “Therefore the final step in program will be a recalculation of program element cost-effectiveness to ensure that the program continues to pass the TRC test.” (*Id.*, citing Joint Cross Ex. 1 at 85)

Further, AIC explained that as part of its internal revised energy efficiency expenditures budget development process, its energy efficiency program implementers

provide program budget and savings estimates to AIC by June 1 of each year, which is the first day in the program year, and each energy efficiency program's progress and necessary adjustments occur monthly and are reviewed by the Program Manager, Managing Supervisor, Department Manager, and the entire AIC staff. (*Id.*)

AIC was counseled by its implementer in August of 2009 to focus on and maximize delivery of and participation in the most cost-effective GEE programs, and to focus on market segments that continue to invest in energy efficiency, given limited budgets for implementation of the GEE Plan and the economic downturn. (Staff IB at 12-13) Notwithstanding the implementer's initial advice, AIC chose to continue the cost-ineffective SB HVAC Program throughout PY2 with an increased budget. AIC believes prudence can be demonstrated, in part, simply by AIC following some of the implementer's recommendations. AIC acknowledges that the SB HVAC Program was not projected to be cost-effective in PY2 and that the SB Food Service Program was projected to be highly cost-effective. Rather than focusing on the highly cost-effective SB Food Service Program, AIC chose to increase funding for the cost-ineffective SB HVAC Program. In Staff's view, "It is unreasonable to require ratepayers to fund energy efficiency investments for which they are projected to receive negative net benefits. AIC failed to utilize the flexibility granted upon it by the Commission when it did not act on information that it had readily available and ratepayers should not be held accountable for the Company's imprudence." (*Id.*)

The cost-effectiveness analysis that AIC included in its GEE Plan filing for the SB HVAC Program did not include participation and savings estimates associated with HVAC tune-ups. AIC's GEE Plan acknowledges that there were only four small business measures screened that were found to be cost-effective. AIC included two of these cost-effective measures in its SB HVAC Program in the Commission-approved GEE Plan and forecasted that savings for the program would come from cost-effective installations of Efficient Boilers and 85% Efficient Commercial Furnaces. AIC failed to notify the Commission that tune-ups were cost-ineffective measures when they were proposed in the GEE Plan. (Staff IB at 13-14) Staff had expressed concern with all cost-ineffective gas energy efficiency measures proposed in the GEE Plan in Docket No. 08-0104. Mr. Woolcutt "conceded" that certain statements in the GEE Plan seemed to imply that tune-ups were cost-effective measures. (*Id.* at 14, citing Tr. 93-94)

For the measures "that Staff expressed concern with in the GEE Plan docket due to cost-ineffectiveness and an effort to protect ratepayers," the Commission agreed with Staff that AIC would only be allowed to market those gas efficiency measures if and when those measures were projected to be cost-effective. (*Id.*, citing Docket 08-0104 Order at 10-11) After the Commission approved AIC's GEE Plan, cost-ineffective tune-up measures became commonplace during PY1 and PY2, despite the Company's knowledge that these particular measures were projected to yield low TRCs. As a result, it was forecasted that ratepayers would receive negative net benefits from the SB HVAC Program in PY2. (*Id.* citing Staff Ex. 2.0R at 16)

In Section III.F of its initial brief, Staff addresses “AIC Awareness that the SB HVAC Program was Cost-Ineffective.” According to Staff, the record is clear that AIC knew that the HVAC tune-up measures in the SB HVAC Program were not cost-effective, knew those measures were unlikely to become cost-effective, and yet took no actions to eliminate or limit the tune-up measures to make the program cost-effective in PY2. The Company actually took actions to increase the number of gas tune-ups performed by offering them free of charge if the small business would permit AIC to install a thermostat that the Company could control during peak summer hours. (Staff IB at 14)

Numerous members of AIC management knew by the start of PY2 that the program was not projected to be cost-effective “as the record shows that as part of AIC’s internal revised energy efficiency expenditures budget development process, its energy efficiency program implementers provide program budget and savings estimates to AIC by June 1 of each year, which is the first day in the program year.” (*Id.* at 14-15) AIC explained that the Program Manager, Managing Supervisor, Department Manager, and the entire AIC staff monitor the progress of each of the energy efficiency programs and make necessary adjustments to the energy efficiency programs on a monthly basis. (*Id.*)

At least as early as August 17, 2009, based upon the implementer’s concerns, AIC was faced with an urgent decision to include or exclude the projected cost-ineffective gas tune-up measures from the SB HVAC Program. In a presentation to AIC on that date, AIC’s implementer stated “[f]urnace tune-ups will ultimately yield low TRCs” for the SB HVAC Program. (*Id.* at 15, citing Staff Ex. 4.1 at 21) AIC did not direct its implementer to remove the cost-ineffective gas tune-ups from the SB HVAC Program “despite the implementer’s warning that the cost-ineffective gas tune-up measures would ultimately result in a program producing negative net benefits to ratepayers.” (*Id.*)

On September 3, 2009, the implementer provided its review of planning assumptions to AIC for the SB HVAC Program for PY2. The implementer noted that an initial analysis for the SB HVAC Program showed the TRC at 0.34 or 0.91 “depending on whether one assumed 100% of the savings came from tune-ups or a 50/50 split between savings from tune-ups and equipment installation.” (Staff IB at 15) In order for the SB HVAC Program to forecast any small amount of net benefits to ratepayers for PY2, the implementer stated that it would be required to limit the number of tune-ups to 150, with an assumed split of 25/75 between tune-ups and equipment installations, respectively. The implementer acknowledged concerns about being able to limit the number of tune-ups in the event AIC chose to still offer the gas tune-up measure and posed the following question to AIC: “How do we/do we need to limit participation to 150 tune-ups?” (*Id.* at 15-16)

In response to this question, on September 9, 2009, AIC directed the implementer to conduct the cost-effectiveness analysis for the SB HVAC Program for a three-year period, as opposed to a single-year PY2 cost-effectiveness analysis. After

performing the three-year analysis, the implementer indicated that if the number of tune-ups over the three-year period is limited to about 300 and the balance of the incentive dollars for the SB HVAC Program over the three-year period goes to the cost-effective new high efficiency equipment installation measures instead of the cost-ineffective tune-up measures, then the SB HVAC Program may be able to achieve a TRC greater than 1.0. (*Id.* at 16, citing Joint Cross Ex. 1 at 158, 289) AIC relied in part upon this three-year cost-effectiveness analysis to justify continuing the SB HVAC Program. Staff requested this three-year cost-effectiveness analysis in discovery; however, it could not be provided to Staff or become a part of the record, as the Company and/or the implementer has been unable to locate it. (Staff IB at 16; Staff BOE at 6)

At the time the cost-effectiveness analysis was performed, 109 customers had received a tune-up incentive through the SB HVAC Program and only two customers had received an incentive for new high efficiency equipment installations. Thus, of the customers who had received a SB HVAC Program incentive at the time the cost-effectiveness analysis was performed, 98.2% of the customers opted for a tune-up of their existing equipment, with only 1.8% of the customers opting for purchase of a new high efficiency equipment installation. (*Id.* at 16-17, citing Joint Cross Ex. 1 at 288)

AIC could not provide, in this proceeding, the forecast of new equipment installations that were expected to be achieved over the remaining three-year period at the time the three-year cost-effectiveness analysis of the SB HVAC program was performed. AIC could not provide a forecast of new equipment installations which would have formed the basis for the assumptions used in the three-year cost-effectiveness analysis of the SB HVAC Program which the Company relied upon because the “forecasts prepared in September, 2009 only considered the PY2 planning period (June, 2009 through May, 2010).” (*Id.*, citing Joint Cross Ex. 1 at 288)

Staff believes it is unreasonable for the Company, without any forecast or basis, to simply assume a large percentage of equipment installations would be likely to occur, especially given the poor economic conditions at the time which the Company was well aware of. Staff “found no evidence to support, and in fact found evidence to the contrary, the Company’s assumption that the following was reasonably likely to occur: the number of tune-ups over the three-year period is limited to about 300 and the balance of the incentive dollars for the SB HVAC Program over the three-year period goes to new equipment installations.” (Staff IB at 17, citing Joint Cross Ex. 1 at 289) At the time the three-year cost-effectiveness analysis was performed, the evidence suggests that AIC had plans to complete 340 gas tune-ups within PY2, which contradicts the limitation of 300 gas tune-ups over the three-year period which AIC relied upon to justify continuing the program. Further, Staff believes a reasonable person would have conducted a forecast of expected new equipment installations for the remaining three-year period to provide a basis for the assumptions included in the three-year cost-effectiveness analysis of the SB HVAC Program that the Company relied upon. (*Id.* at 17-18)

3. Response to AIC Witness Chamberlin

Section III.G of Staff's initial brief is titled, "Response to Ameren Witness Chamberlin." Dr. Chamberlin alleges that Staff mischaracterized and misinterpreted AIC's responses to data requests, contained in Staff Exhibits 4.1 and 4.2, upon which Staff relied in reaching its conclusion that the SB HVAC PY2 costs be disallowed. (Staff IB at 18, citing AIC Ex. 5.0 at 19) Dr. Chamberlin asserts that over the entire three-year period, the program was projected to be cost-effective. Staff again requested in discovery, and the Company failed to provide, the cost-effectiveness analysis which supports Dr. Chamberlin's assertion. (*Id.*, citing Staff Ex. 4.0R at 5) The cost-effectiveness analysis which AIC states it relied upon when it decided to continue the SB HVAC Program is not a part of the record and has not been reviewed by Staff.

What is contained in the record is that in PY2, the Company made no efforts to limit the number of cost-ineffective tune-ups. (*Id.*, citing Tr. at 157) The Company continued marketing the cost-ineffective tune-ups through the SB HVAC Program in addition to offering these tune-ups free of charge if the small business would permit AIC to install a thermostat that AIC could control during peak summer hours. Where the implementer informed AIC that to offer cost-ineffective tune-up measures would ultimately lead to a cost-ineffective SB HVAC Program, the implementer admits projections for program participation in PY3 were unavailable at the time the three-year analysis was allegedly performed, and the Company fails to provide evidence of an analysis showing otherwise. (Staff IB at 18) Staff cannot find any evidence in the record which tends to indicate the possibility that the SB HVAC Program could have been reasonably projected to be cost-effective with the continuation of the tune-up portion of the program. (*Id.* at 18-19)

Staff maintains that since the Commission provided AIC with the flexibility to implement specific measures as they become cost-effective in Docket No. 08-0104, AIC should be attuned to information on the efficiency programs as it becomes available, and use that information to make reasonable and prudent modifications to its GEE Plan. In fact, AIC has testified in past energy efficiency dockets that "Ameren Illinois agrees with Ms. Hinman's statement that all planned measures should be cost-effective." (Staff IB at 19, citing Staff Ex. 4.0R at 8) Staff believes that unless the circumstances warrant an expectation that the cost-effectiveness would change in the future or benefits elsewhere in the program were tied to cost-ineffective measures, the ineffective measures should not continue.

4. Staff Reply Brief and Brief on Exceptions

In Section II of its reply brief, Staff states that AIC and intervening parties argue at length that adoption of Staff's position in this proceeding would be detrimental to energy efficiency in Illinois and could result in elimination of energy efficiency programs in Illinois.

In response, Staff states that Sections 8-103(i) and 8-104(i) provide that if the utilities fail to spend funds to achieve savings goals then either the IPA will take over administration of the portfolio of EE programs (8-103(i)) or a third-party program administrator chosen by the Commission (8-104(i)) will take over administration of the EE portfolio. Thus, the statutes make it clear that funds will be spent on cost-effective EE in Illinois, and a Commission finding of imprudence in this docket will not change that. A Commission decision regarding imprudence of a utility's expenditures on energy efficiency can only serve to increase net benefits to ratepayers in Illinois for the years to come. (Staff RB at 3-4)

Section III of Staff's reply brief is titled, "Reasonableness and Prudence of AIC's Expenditures on the SB HVAC Program." (Staff RB at 5-12)

Staff claims the other parties "mischaracterize the evidence ... and argue that AIC actually modified the SB HVAC Program in PY2 based on the implementer's recommendations, based upon the testimony of AIC Witness Woolcutt that 'Ameren Illinois took steps to limit the number of tune-ups and cultivate ally participation and installation of the equipment.'" (Staff RB at 5-6, citing AIC Ex. 4.0 at 10) In Staff's view, Mr. Woolcutt's testimony is contradicted by the implementer's final version of the PY2 implementation plan which indicates the incentives for the cost-ineffective gas tune-up measures have not been eliminated or reduced and the SB HVAC Program was projected to be cost-ineffective for ratepayers in PY2. To Staff, it is clear that AIC made no modifications to the SB HVAC Program in PY2 that would minimize risk to ratepayers by limiting or eliminating the cost-ineffective gas tune-ups. (Staff RB at 5-7; see also Staff BOE at 4-5)

Staff submits that AIC did not increase funding for incentives for the cost-effective furnace and boiler replacements and did not make any effort to limit the total number of cost-ineffective gas tune-ups in PY2. As AIC witness Dr. Chamberlin points out, it was not until PY3 (which is over nine months after the implementer "emphasized" to AIC that gas tune-ups will ultimately lead to low TRCs) that AIC made any effort to limit the number of cost-ineffective gas tune-up measures. (Staff RB at 7)

The other parties "misconstrue" the bundling of the cost-ineffective gas tune-up measure with other measures "which they argue demonstrates a modification of the SB HVAC Program in PY2 and accordingly, the costs were prudently incurred." (Staff RB at 8) AIC added the cost-ineffective tune-up measure to a different program (Demand Control Program) in PY2, while keeping the cost-ineffective gas tune-up measure unchanged in the SB HVAC Program in PY2. AIC added the cost-ineffective tune-up measure to a bundled offer in the Demand Control Program and offered the bundle free of charge in order to increase participation in the failing Demand Control Program. The decision to bundle the gas tune-up measure was made before the implementer gave the presentation to AIC that indicated that furnace tune-ups will ultimately lead to a low TRC for the SB HVAC Program. Thus, it is clear that the bundling of the tune-ups was not a modification that AIC made in response to the implementer's concerns about the SB HVAC Program. (*Id.* at 8-9; see also Staff BOE at 8-9)

While AIC alleges the implementer recommended continuation of the SB HVAC Program, Staff states that before the implementer provided the cited recommendations, the implementer made recommendations to AIC to focus on cost-effective energy efficiency programs given limited budgets and the economic downturn. (Staff RB at 10) The implementer also emphasized that gas tune-ups will ultimately lead to a low TRC, yet AIC made the decision to keep the cost-ineffective tune-ups in the SB HVAC Program. Based on AIC's decision, the implementer looked into how the cost-effectiveness of the energy efficiency program could be improved if gas tune-ups continued to be offered. Due to how cost-ineffective the gas tune-up measures are, the result of that analysis was that the number of cost-ineffective gas tune-ups performed would need to be limited. AIC took no steps to limit the number of cost-ineffective gas tune-ups in PY2 at the expense of ratepayers. (*Id.*; Staff BOE at 4-5)

One of AIC's main arguments that it was prudent to continue the SB HVAC Program is that AIC was simply following the implementer's advice. Staff takes issue with this concept. To require that an implementer recommend, to the utility, termination of an energy efficiency program that it is paid to implement in order for the decision to be deemed prudent is an unreasonable basis for the determination of prudence. Accordingly, it is also unreasonable to deem an energy efficiency program as prudent based simply upon a lack of a recommendation by an implementer to terminate an energy efficiency program. There is a conflict of interest in using a paid implementer's recommendations as the sole means of determining prudence, which is why it is the utility's responsibility to prudently manage their contracts with energy efficiency program implementers to ensure ratepayers are protected. (Staff RB at 10-11)

For PY2 at least, AIC structured the implementer's contract in such a way that the implementer still gets paid for running the energy efficiency program regardless of whether it is cost-effective. While the implementer pointed out that continuing the cost-ineffective gas tune-ups would lead to a low TRC, it is AIC who ultimately had the responsibility to make a prudent decision about whether the cost-ineffective tune-ups should be discontinued. The fact that it is the utility's responsibility for deciding whether to continue or discontinue an EE program is further demonstrated by the implementer's major doubts expressed about the Demand Control Program. (*Id.* at 11-12)

Staff also disagrees with the argument brought by the AG and CUB that discontinuation of the SB HVAC program "would not have provided benefits to the small business customers who were paying for Ameren's energy efficiency programs and would not have created a foundation to engage those customers in programs in future years." (Staff RB at 12, citing AG/CUB IB at 11)

Staff asserts that "customer engagement with those small business customers would have continued even if the SB HVAC Program was dropped through AIC's other small business program offerings and through the much larger electric energy efficiency programs available to the customer class." (Staff RB at 12) By definition, had AIC discontinued the cost-ineffective SB HVAC Program, net benefits for the small business

customers would actually substantially increase since they would no longer have to fund the SB HVAC Program that produced negative net benefits. The SB Food Service Program was very cost-effective, and despite the implementer's recommendation to focus on cost-effective energy efficiency programs, AIC made the decision to increase funding on the cost-ineffective SB HVAC Program during PY2 without limiting or eliminating the cost-ineffective gas tune-up measures. (*Id.*)

Section IV of Staff's reply brief is titled, "Energy Efficiency Portfolio Standard Programs (Sections 8-103 and 8-104) Versus Other Energy Efficiency Programs in Illinois." (Staff RB at 13-22)

Staff believes there is a clear distinction between the energy efficiency programs mandated under Sections 8-103 and 8-104 of the Act and all other energy efficiency programs offered in Illinois. In support of their positions, the other parties cite Commission orders from proceedings convened under Sections 8-103 and 8-104 of the Act rather than energy efficiency proceedings that are not governed by those sections of the Act. Sections 8-103 and 8-104 contain very specific statutory requirements which govern the Commission's approval of the energy efficiency plans. (*Id.* at 13)

According to Staff, AIC's GEE Plan was filed with the Commission for approval pursuant to Section 9-201 of the Act and 83 Ill. Adm. Code 200.100, not Section 8-104. Section 9-201 does not contain specific statutory requirements for energy efficiency plans. In its Order approving the GEE Plan, the Commission stated that "[AIC's] proposed gas energy efficiency plan, as modified and described in the prefatory portion of this Order is reasonable and will promote the public interest and should be approved." Docket 08-0104, Order at 22. In Staff's view, cost recovery pertaining to Rider GER is governed by the provisions contained in the GEE Plan Order, the Commission-approved GEE Plan, and the Rider GER tariff applicable to the PY2 reconciliation period. AIC deviated from its Commission-approved GEE Plan, the GEE Plan Order, and the Rider GER tariff when it decided to promote cost-ineffective measures at the expense of ratepayers in PY2. (Staff RB at 13)

In their initial briefs, AG/CUB, NRDC, and AIC appear to be inappropriately treating the Rider GER energy efficiency programs implemented during PY2 as Section 8-104 energy efficiency programs. The Commission is required under its rules to ensure reconciliation of revenues under Rider GER occurs in the manner specified in the tariff in effect during the reconciliation period PY2. For PY2, the applicable Rider GER tariff explicitly provides for cost recovery based on the GEE Plan Order and the Commission-approved GEE Plan. Nowhere in the Rider GER tariff in effect during PY2 that governs cost recovery related to PY2 is Section 8-104 referenced. Section 8-104 did not apply when the Commission approved the GEE Plan. The provisions of Section 8-104 only apply to the EE plans that the utilities file with the Commission pursuant to subsection (f) of Section 8-104 of the Act. It is the provisions of the GEE Plan Order, Commission-approved GEE Plan, and Rider GER tariff in effect during PY2 that govern the reconciliation of revenues under Rider GER in this docket. Staff urges the

Commission to reject the arguments presented in other parties IBs that would appear to ignore these provisions in favor of those specified in Section 8-104. (*Id.* at 13-14)

Additionally, other parties to this matter contend that the TRC test applies at the portfolio level only, rather than at the individual program or measure level under the GEE Plan Order. The Commission-approved GEE Plan states that cost-effectiveness is measured at the measure, program, and portfolio level. (Joint Cross Ex. 1 at 23) The Commission-approved GEE Plan states that the portfolio is cost effective at all three levels. (Staff RB at 14)

Staff recognizes the parallel made by other parties between the Rider GER portfolio and portfolios developed under Sections 8-103 and 8-104; however, Staff does not believe that the same requirements apply here, as the Rider GER portfolio was not developed under Section 8-104. The energy efficiency portfolios established under Sections 8-103 and 8-104 are standalone amalgamations of programs and measures that are assembled to meet specific statutory energy savings goals. Ultimately, the utilities are measured on the energy savings delivered under Section 8-103/8-104 and are subject to penalties for failure to meet goals, but the portfolio must also address additional concerns such as the carve-outs that are administered by the Illinois Department of Commerce and Economic Opportunity (“DCEO”). The significant differences in the programs leave room for interpretation that the same standards do not necessarily apply to both. (Staff RB at 15)

In addition, Section 8-103/8-104 EE plans must adhere to a capped budget specified in statute in order to achieve the energy savings goal or be subject to penalties or loss of EE programs to either the IPA or a third-party program administrator of the Commission’s choosing. 220 ILCS 5/8-103(i); 220 ILCS 5/8-104(i). While the Commission capped the budget in the GEE Plan Order, the Commission did not mandate that AIC had to achieve annual energy savings goals for the voluntary gas EE programs to avoid penalties. (Staff RB at 15-16)

While funding was not approved for emerging technologies under the GEE Plan Order and thus the Rider GER tariff in effect during PY2 does not provide cost recovery for such expenses, the Parties nevertheless argue that adoption of Staff’s position in this proceeding would limit expenditures on emerging or innovative technologies in future years; however, Staff would note that in future years the provisions of Sections 8-103 and 8-104 apply and those statutes already specifically limit funding on these items. (*Id.* at 16) By the definition of “cost-effective” in Section 8-103(a), the policy objectives in Section 8-103(a) can only be achieved if energy efficiency investments are cost-effective. In other words, promoting cost-ineffective measures and programs only serves to reduce the likelihood of achieving this policy objective, with the exception that under certain extenuating circumstances which are not present in this case, it may be warranted to offer a cost-ineffective measure if it is tied to highly cost-effective measures. (*Id.* at 16-17)

Section 9-201, the Commission-approved GEE Plan, and the GEE Plan Order contain no requirement that the “overall portfolio... represent a diverse cross-section of opportunities for customers of all rate classes to participate in the programs”; whereas, Sections 8-103(f)(5)/8-104(f)(5) specifically link the “diverse cross-section of opportunities for customers of all rate classes to participate requirement to the minimum requirement that the EE portfolio must be shown to be cost-effective, excluding low-income programs, in order for the EE plan to be approved by the Commission.” (Staff RB at 17-18) These two provisions – (i) diverse cross-section for customers of all rate classes to participate and (ii) portfolio level cost-effectiveness – are listed together as one of the seven filing requirements for Section 8-103 EE plan approval. 220 ILCS 5/8-103(f)(5); 220 ILCS 5/8-104(f)(5).

Thus, one “could interpret” Section 8-103(f)(5)/8-104(f)(5) to mean that part of the reason one of the minimum requirements for EE plan approval under Section 8-103/8-104 is for the EE plan to be cost-effective at the portfolio-level is due in part to the fact that the EE plan has to ensure there is an opportunity for customers of all rate classes to participate in the EE programs, of which it is well known that the costs of EE vary across rate classes. In contrast, AIC did not propose to offer the EE programs under the GEE Plan to all customer classes. In 2008, AIC voluntarily sought and received Commission approval in Docket No. 08-0104 to provide natural gas energy efficiency programs to certain other eligible retail customers, limited to residential and small business customers. (Staff RB at 18)

As a result, it is sound policy to avoid “over-construing” the provisions specified in Sections 8-103 and 8-104 as being applicable to the voluntary gas EE program that is at issue in this proceeding, especially given the lack of other limiting factors in the GEE Plan that Section 8-103/8-104 EE plans require such as statutory savings goals, penalties, carve-outs, limitations on expenditures on emerging technologies and evaluation, and requirement that the EE plan must provide an opportunity for all customer classes to participate. (*Id.* at 18-19)

Given that the contested costs at issue in this proceeding relate to an EE program that was not subject to Sections 8-103 and 8-104, Staff believes other Commission Orders would be more relevant. (*Id.* at 19)

With respect to other voluntary EE programs, the Commission has previously concluded that regardless of whether the portfolio is cost-effective, if a program or measure reduces net benefits to ratepayers then it should not continue, even for an additional year. (Staff RB at 20-21) Staff cites the Commission Order of October 17, 2012 in Docket No. 12-0132, MidAmerican Energy Company: Evaluation of MidAmerican Energy Company Energy Efficiency Programs, where the Commission stated, in part, on pages 15-16:

MidAmerican now proposes to continue its current programs for one additional year and to file, on July 1, 2013, a new energy efficiency plan

for the Commission's approval. The Commission finds MidAmerican's proposed process to be reasonable.

Two of MidAmerican's energy efficiency programs were shown to be cost-ineffective for Illinois ratepayers: the Residential Equipment Program and the New Construction Program. For the transition year, the Company proposes to provide the Commission by December 3, 2012 with an updated Residential Equipment program, which will include only cost effective measures. Although Staff complains that the Company should have already provided this information, the Commission accepts the Company's proposal to file a waiver request on December 3rd to eliminate the cost-ineffective measures.

The Commission further stated, in part, on page 16:

It is clear from the record that the Residential New Construction Program has failed a post-plan evaluation cost-benefit analysis under both the TRC Test and the Societal Test and, therefore, the Commission cannot in good conscience require Illinois ratepayers to continue to fund this program - even on an interim basis. Moreover, unlike the Residential Equipment Program, the Company makes no suggestion for ensuring the cost-effectiveness of the program for the transitional year. MidAmerican can, of course, include this program in its 2013 filing, but it must demonstrate at least a reasonable probability that it will be cost-effective in the future and any proposal will be scrutinized carefully by the Commission.

In Section V of its reply brief, Staff addresses "Policy." (Staff RB at 22-23) According to Staff, the parties misconstrue Staff's recommendation in this case and allege that Staff is recommending that the Company rely solely on the TRC test without considering other factors. Staff believes the "likely source for this misinterpretation" is AIC's testimony, as Staff noted in rebuttal testimony, the Company repeatedly mischaracterizes Staff's position as recommending the Company rely solely on the TRC test without considering other factors. As provided in Staff's responses to the Company's data requests, Staff believes other factors should be considered. (Staff RB at 22-23)

Staff also contends that the Commission should not be persuaded "by the arguments of AIC and Intervenors that the cost-ineffective gas tune-up measure program at issue is necessary to meet the policy goals in Section 8-104(f)(5)." (Staff BOE at 10)

In Section VI of its reply brief, Staff argues, "Rejection [of] Staff's Recommendation Would Reduce Net Benefits to Ratepayers." Staff maintains that "since the Commission provided AIC with the flexibility to implement specific measures as they become cost-effective in Docket No. 08-0104, AIC should be attuned to information on the efficiency programs as it becomes available, and use that information

to make reasonable and prudent modifications to its GEE Plan.” (Staff RB at 23-24; see also Staff BOE at 8)

B. Ameren Illinois Position

Staff initially proposed to disallow \$131,771 in SB HVAC costs. On rebuttal, AIC noted that the disallowance calculated by Staff included SB HVAC costs for PY1 that had already been approved by the Commission as prudent and reasonable in Docket No. 09-0535. On rebuttal, Staff adjusted the SB HVAC costs by \$12,221, such that Staff’s proposed disallowance of the costs that AIC incurred through the SB HVAC Program was \$119,550.

AIC opposes the adjustment proposed by Staff. As indicated by AIC, CUB, the AG and NRDC also disagree with Staff’s adjustment.

1. SB HVAC Costs: Background; Prudency; Response to Staff

Section II.B.1.a of AIC’s initial brief describes the “SB HVAC Background.” (Ameren IB at 11-12) As explained by AIC witness, Mr. Kenneth Woolcutt, the SB HVAC Program was one of the voluntary gas programs that passed the TRC test submitted by AIC and reviewed and approved by the Commission to be implemented during PYs 1-3 through Docket No. 08-0104. The SB HVAC Program has also been referred to as the Small Business Tune-Up Program. Consistent with the other programs reviewed and approved by the Commission, the SB HVAC Program met certain criteria, including having an acceptable TRC test result for planning purposes and the potential to penetrate the small business market such that small businesses would eventually make energy-efficient choices. (Ameren Ex. 4.0 at 3-4)

The SB HVAC Program was designed specifically to target small businesses in PY1 through PY3, with the goals of penetrating the market and incentivizing small businesses to tune up or replace old, less-efficient furnaces. To meet the program’s goals, AIC relied heavily on trade allies that already provided HVAC service to small businesses. While developing the plan that was ultimately approved by the Commission, AIC anticipated that small businesses were a particularly difficult market to penetrate because they traditionally have limited funds to spend on energy efficiency investments. Yet, AIC believed it was consistent with Commission precedent and a good investment to try and penetrate this market and offer programs to small businesses, particularly because they were a part of the target customer class approved by the Commission as being eligible to participate. (Ameren IB at 11-12, Ameren Ex. 4.0 at 3-5)

AIC worked with trade allies, comprised primarily of plumbing or HVAC service providers, to offer furnace tune-ups and new efficient equipment purchases coupled with a financial incentive from AIC. The SB HVAC Program required trade allies to submit all tune-up projects for preapproval, as well as other projects which were greater than a \$5,000 incentive, before any commitments could be made to customers or any

financial incentives would be paid, and the projects later went through a verification process. The \$119,550 in program costs were related to the financial incentives paid to trade allies implementing the Program. By working with trade allies and incentivizing them and small business customers to learn about energy efficiency, AIC increased further ally and customer awareness and participation in energy efficiency programs in PY2 and, hopefully, future plan years. (Ameren IB at 12)

Section I.C of AIC's initial brief is titled "Legal Standard." (Ameren IB at 3-4) Consistent with AIC's Commission-approved Riders EDR and GER, the Commission annually reviews proposed energy efficiency and demand-response measures "to ensure the recovery of the prudently and reasonably incurred costs of Commission-approved programs." 220 ILCS 5/8-103(f); 220 ILCS 5/8-104(f).

AIC cites the same definition of prudence as did Staff, which is quoted above. (AIC IB at 3-4, citing Orders in Dockets Nos. 00-0720 and 84-0395)

Section II.B.1.2 of AIC's initial brief is titled, "Ameren Illinois Acted Reasonably and Prudently."

PY2 represented the first full year implementation of AIC's voluntary gas energy efficiency portfolio, as PY1 was only five months long. The two documents "primarily" relied upon as the bases for Staff's disallowance are implementation reports from AIC's third-party implementer, dated August 17, 2009 (Staff Ex. 4.1) and October 12, 2009 (Staff Ex. 4.2), respectively. These reports were written "mere months" into PY2, which began June 1, 2009, and approximately a year after the Final Order issued in Docket No. 08-0104. The reports addressed a host of issues, not just TRC values of the various programs, and made suggestions regarding the implementation and improvement of those programs. Thus, when the third-party implementer included the preliminary, interim TRC results relied upon by Staff, they were a part of a broader picture of portfolio management and implementation. (Ameren IB at 12-13)

The reports themselves noted that the SB HVAC Program was in its initial stages, having started only months earlier during the summer when customers did not traditionally seek tune-ups to gas furnaces. Moreover, the implementer did not just calculate a single TRC value, projected or otherwise; it provided multiple TRC values (that at times trended upwards), as well as recommendations on how to modify programs based on a variety of factors, including the TRC values it was calculating internally. (*Id.*; Ameren Ex. 6.0 at 7)

In October 2009, AIC's implementer provided an interim TRC for SB HVAC tune-ups for the gas program that was higher than values previously reported. Such changes to the TRC values illustrate the volatility and imprecise nature of interim TRC values. At the time, the third-party implementer, in that same October 2009 document, did not recommend discontinuing the SB HVAC program. Rather, it recommended modifying the program in accordance with the broader modifications recommended to other areas of the portfolio, to include further outreach to program allies, including those

in the small business community, and as such mirrored the program's three-year intent as described in the Plan filing. As part of these outreach activities, the implementer suggested increasing incentives for HVAC tune-ups and bundling them with other outreach activities. (Ameren IB at 13)

The goal of these outreach activities was to penetrate the hard-to-reach and underserved small business market, to which the gas program was limited, so that AIC could hopefully develop, early in its portfolio, a robust customer awareness of and participation in energy efficiency programs. The implementer projected that, with the modifications set forth in its plan, the SB HVAC Program was expected "to yield a TRC" greater than 1.0. (*Id.* at 13-14)

Staff criticizes the Company for not giving the implementer's preliminary, interim TRC test results dispositive effect on whether the Company should have discontinued the SB HVAC program. Staff has been unable to endorse the TRC values calculated by the third-party implementer or verify the benefits the implementer included in its TRC calculation. (Tr. 139) Cutting short the SB HVAC midstream simply because of preliminary TRC values would have meant disregarding the implementer's specific recommendations to continue the Program with modifications, in addition to disregarding the investment made with and by program allies to develop the program and eliminating pending projects for customers. It also would have meant cutting short AIC's attempt to penetrate the small business market at a time in the year when customers traditionally seek services relating to gas furnaces. (Ameren IB at 14-15; Ameren Ex. 6.0 at 8) In AIC's view, its decision to not give TRC values dispositive effect over the implementer's recommendation demonstrates prudence, not imprudence.

Staff also fails to consider a number of factors relevant to AIC's decision to continue with the SB HVAC Program. As explained in Docket No. 08-0104, the Commission agreed that Ameren Illinois should have "flexibility to modify" its portfolio "as circumstances warrant." (Docket 08-0104, Order at 18) There are many factors that could be considered when determining if a program should be modified or continued, including: whether there are resources available or market potential to achieve cost effective savings; whether a program could increase participation by allies and customers in energy efficiency programs; and "whether emerging technologies, pilot programs appealing to hard-to-reach sectors, or programs that represent a diverse cross section of opportunities for customers of all rate classes that in and of themselves may not be cost effective are at issue." (Ameren IB at 15, citing Ameren Ex. 4.0 at 9) All of these factors require AIC to make judgment calls based on available information, including feedback from implementers and stakeholders, beyond preliminary TRC values. Staff's criticism fails to account for these other factors and instead tries to second-guess the Company's decisions made at the time. (Ameren IB at 15)

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

benefits. (Ameren Ex. 4.0 at 9-10) Also, because the gas programs were still in the initial stages of the multi-year plan, AIC believed the Program would continue to introduce energy efficiency as a concept to allies and increase ally and customer participation in energy efficiency programs as the portfolio progressed. (*Id.* at 10) As explained by Mr. Woolcutt, the gas tune-up measure is a standard tactic to cultivate ally participation and educate consumers whereby inefficiency is identified and opportunities for improved efficiency are explained. (*Id.*) Only through introduction and an increase in participation in, and education of, energy efficiency, can AIC achieve market transformation. (*Id.*)

Thus, even with a low preliminary TRC value, AIC reasonably believed that the SB HVAC Program would benefit the overall portfolio. These other factors outweighed any concerns about a low preliminary TRC value, particularly because the overall portfolio remained cost-effective, and the implementer forecasted a positive TRC value at the end of the plan. In AIC's view, all of the above entitle the Company to a finding of reasonableness and prudence; Staff cannot retrospectively try to dictate which factors deserved dispositive weight over others. (Ameren IB at 16)

As set forth above, AIC was faced with a set of factors that it considered when deciding to follow the third-party implementer's recommendation to continue the SB HVAC Program. Because this decision was "within the range of decisions reasonable persons might have made," the Company's actions were reasonable and prudent. (*Id.*, citing Docket No. 95-0119, Order at 12-14)

Section II.B.1.c of AIC's initial brief is titled, "Staff's Arguments Have No Merit."

Staff witness Ms. Hinman criticizes AIC for failing to "exercise its ability to modify" the program. (Staff Ex. 2.0R at 10) According to AIC, this criticism is unfounded. (Ameren IB at 16-17) AIC did modify the Program. In fact, as explained by Mr. Woolcutt, AIC took steps to cultivate ally participation and installation of equipment. (Ameren Ex. 4.0 at 10)

AIC chose to modify rather than discontinue the SB HVAC Program, in part, because the Commission directed it to implement the Program as part of the overall portfolio; and, in part, because the Commission held in the prior Final Order approving the electric portfolio that cost-effectiveness should be evaluated at the portfolio level and not at the program or measure level, as advocated by Staff in this situation. (Ameren IB at 17; Ameren Ex. 4.0 at 11; Docket No. 07-0539, Final Order at 21)

Second, Staff's argument that the ratepayers have been "harmed" because of the SB HVAC Program also falls short in AIC's view. Staff has never identified a specific harm to "ratepayers" other than that small business customers had to incur costs associated with offering the gas furnace tune-ups to them. This should not be considered a "harm" because the costs of trying to develop the energy efficiency market and provide energy efficiency programs across diverse customer classes is consistent with the PUA and was approved by the Commission in the three-year gas planning

proceeding, Docket No. 08-0104. Also, small businesses did benefit from money being spent on developing energy efficiency programs that worked with program allies to penetrate the small business market and increase awareness and participation in energy efficiency programs during initial months of a program implementation, which would ultimately yield higher benefits to them in the future as the program developed in later years. (Ameren IB at 17)

Further, the Commission has directed in prior orders that cost-effectiveness should be evaluated on the portfolio and not measure level. It would thus be unfair and improper to now find that AIC “harmed” ratepayers because it followed the Commission’s direction and did not rely solely on preliminary measure-level TRC values when deciding to not discontinue the SB HVAC Program. *Illinois Power Co. v. Illinois Commerce Comm’n*, 339 Ill. App. 3d 425, 439 (5th Dist. 2003) (reversing Commission’s finding of imprudence where the utility relied on the Commission’s prior decisions because “[the Commission’s] decisions are entitled to less deference when it drastically departs from past practice.”) (citing *Bus. & Prof. People for Pub. Interest v. Illinois Commerce Comm’n*, 136 Ill. 2d 192, 228 (Ill. 1989)). (Ameren IB at 17-18)

Third, while Staff agrees that the TRC value represents only one factor to consider when determining whether to continue a program, it has never identified what other factors should have been considered or why the other facts considered by the Company were incorrect. (Ameren IB at 18)

Staff has taken issue with only one portion of the SB HVAC Program, those activities relating to gas furnace tune-ups, even though Staff proposes to disallow all of the SB HVAC Program costs. Staff specifically takes issue with how AIC followed the implementer’s recommendation and began “bundling” the gas furnace tune-ups with other SB HVAC activities, like those related to AC tune-ups and the installation of “Smart” thermostats, despite a TRC less than 1.0. According to AIC, Staff “concede[d]” that “bundling” the tune-ups with other SB HVAC activities – such that “one person is doing all three” – is “helpful.” (*Id.* at 18-19, citing Tr. 147)

According to AIC, “hindsight review is impermissible.” (Ameren IB at 19) AIC based its decision to continue the SB HVAC Program on the Commission’s approval of the portfolio, the implementer’s suggestions, and the information available at that time. This meant analyzing the TRC values in the proper context, along with the other factors relevant to cost-effectiveness. Given the information at its disposal, including the implementer’s forecasted cost effectiveness, AIC’s decision to continue the Program consistent with the implementer’s proposed modifications was prudent. (Ameren IB at 19, citing Order in Docket 95-0119 at 12-14) That Staff now disagrees with how the Company made its decision is of no matter.

2. Policy Considerations; TRC Overview; Analysis at Portfolio Level

In Section II.B.2 of its initial brief, AIC argues that “approving Staff’s recommendation would create bad policy.” (Ameren IB at 20-28)

According to AIC, if the Commission approves Staff’s recommendations, the policy implications would be severe. Utilities would be faced with increased regulatory risk stemming from uncertainty of cost recovery for energy efficiency programs. This affects current implementation of energy efficiency programs –particularly new or innovative programs – as utilities would be hesitant to implement a measure or program that, in the short term, would not be projected to be cost-effective, but in the long term could evolve into becoming cost effective or assist the portfolio in other ways to become cost effective as a whole. (Ameren IB at 20)

Section II.B.2.a of AIC’s initial brief is titled “TRC Overview.” (Ameren IB at 20-23)

AIC witness Dr. John Chamberlin testified regarding Staff’s application of the TRC test and the policy implications of applying Staff’s recommendations. (Ameren Ex. 5.0.) Dr. Chamberlin has over 30 years of experience testifying in regulatory proceedings regarding energy efficiency planning and implementation, cost-effectiveness analysis, and utility policy issues. Contrary to Staff’s position, Dr. Chamberlin testified that he is “not aware of any instance where the TRC was applied to determine cost recovery and to do so would be a very dangerous policy.” (*Id.* at 13; see also Ameren RBOE at 8)

According to Dr. Chamberlin, the TRC test is the most commonly applied cost-effectiveness test. (*Id.* at 5) The PUA defines the TRC test as “a standard that is met if, for an investment in energy efficiency or demand-response measures, the benefit-cost ratio is greater than one” where the “benefit-cost ratio is the ratio of the net present value of the total benefits of the program to the net present value of the total costs as calculated over the lifetime of the measures.” 220 ILCS 3855/1-10; 5/8-104(b). Based on this definition, Dr. Chamberlin explained that a program is said to be cost effective, or to “pass” the TRC test, when the ratio of benefits counted by the TRC test exceed the costs counted by the test. (Ameren Ex. 5.0. at 5)

Not all costs and benefits associated with an EE program are counted in the TRC test. For example, non-energy benefits such as increased comfort or worker productivity are not included in the TRC test. The PUA “requires both cost effectiveness and that the portfolio ‘represent diverse cross-section of opportunities for customers of all rate classes to participate in the programs.’” (Ameren IB at 21, citing 220 ILCS 5/8-104(f)(5)) This means that individual measures or programs may be included in the portfolio if they reach a segment of customers that would otherwise be unable to participate even if the TRC associated with these measures or programs does not appear cost effective. (Ameren Ex. 5.0 at 7)

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

It involves a trial, particularly for emerging technologies or for a hard to reach market segment. The SB HVAC program falls into this category. The small business market has numerous constraints that limit participation including shortage of capital, frequently leased physical space, and focus on day-to-day operations.

It is expected to break down market barriers. A good example of such a program is one that leads to the installation of cost effective equipment such as tune-ups. Another example is a residential new construction program. Key to this kind of program is informing the potential participants of the benefits so that first cost becomes less of an issue.

The measure creates some additional value not easily measured by TRC. This is frequently noted in lighting programs, as workplace productivity is often improved by appropriate light levels.

A program might not be cost-effective in its early years, but is expected to become cost effective as it matures. This is typical of programs that rely heavily on trade ally coordination. Development of the trade ally network increases expenses in the early years, but costs decline as the network matures

(Id. at 7-8)

Dr. Chamberlin testified that it is typical to apply a TRC analysis to individual measures at an early stage of screening for portfolio planning purposes. One useful technique is to apply a limited form of TRC analysis to each measure to determine which have the potential to be cost-effective under certain circumstances. In this context, a “measure” is a technology, appliance, or activity (e.g., a high efficiency gas furnace); a “program” consists of a marketing strategy, rebate or incentive level, the equipment to be utilized, and generally an administrative and evaluation approach. “Programs” may have multiple “measures,” and some component measures can have multiple purposes. For example, the program may offer low cost tune-ups as both a stand-alone measure (i.e., one that produces some energy savings), but also as a marketing or outreach effort intended to leverage contractor visits to increase installations of new, more efficient HVAC units. These preliminary analyses generally include only a portion of costs and exclude common costs such as program administration. (Ameren IB at 22-23, citing AIC Ex. 5.0 at 8)

Dr. Chamberlin explained that while a measure-level screening is appropriate when first considering the development of an EE portfolio, utilities should ultimately be responsible for the overall performance of their portfolio. Energy efficiency portfolios

are best designed to balance multiple considerations. The first step in determining which of the many potential measures to include in programs could be the TRC screening at the measure level. This provides guidance, but is not an absolute determinant. Other factors, such as the distributional impact may suggest that a measure does not appear cost-effective from the TRC screen, but nonetheless adds value to the overall portfolio. Similarly, Dr. Chamberlin testified that when aggregated into programs, it may become apparent that certain sectors of customers will not have an opportunity to participate in an energy efficiency program. Utilities may then determine that it is in the best interest of their customers to add measures or programs that have not passed a TRC screen on a stand-alone basis to maximize the benefits of the overall portfolio and provide opportunities for broader participation. A strict application of the TRC would result in reduced benefits from the portfolio. (Ameren IB at 23, AIC Ex. 5.0 at 9)

Section II.B.2.b of AIC's initial brief is titled, "TRC Should be Analyzed at the Portfolio Level." (Ameren IB at 24-26)

According to AIC, Illinois law and the Commission have repeatedly recognized the benefit of applying the TRC to the portfolio, rather than at the program or measure level. 220 ILCS 5/8-104(f)(5); Docket No. 07-0539, Order at 20; Docket No. 10-0568, Order at 30 ("The Commission finds that evaluating cost-effectiveness on a portfolio level is necessary to ensure that Ameren not be penalized for planning assumptions that turn out to be inaccurate."). (Ameren IB at 24)

In the Final Order issued in the North Shore/Peoples Gas case in Docket No. 10-0564, the Commission rejected Staff's recommendation "that only measures that are cost-effective be included in any programs or the portfolio." Docket 10-0564, Order at 79 (May 24, 2011). Specifically, Staff witness Dr. Brightwell had advocated that using a measure-level TRC test would allow for an analysis of whether any particular measure has greater expected value to society than it costs. (*Id.*) He argued that if a particular measure is not cost-effective under the TRC test, then it does not have sufficient value to society to make it worthwhile because every unit sold of a measure that is not cost-effective serves to reduce the net benefit of the program. In denying Staff's recommendation, the Commission held, "The Commission agrees with the Utilities that Section 8-104 does not require each measure to meet the TRC test, but it does require the portfolio (except for the low income portion) to meet the TRC test. The Commission declines to make the finding requested by Staff witness Brightwell." (*Id.* at 92; Ameren IB at 24)

It is often the case that energy efficiency programs benefit from synergies that are created both between measures within programs and frequently between programs themselves. (Ameren Ex. 5.0 at 11) For example, the SB HVAC Program's goals were to increase use of more efficient HVAC units. While the tune-up portion was expected to produce some savings on its own, it was essentially an outreach effort intended to accomplish the broader goal of increasing the adoption of energy efficient technology in the small business sector. This segment is hard to reach and has significant market

barriers. Getting contractors on site to tune up HVAC units will place the contractors in the position to advise customers of the benefits of replacing antiquated units with energy efficient models. (*Id.*; Ameren IB at 24-25)

It is often true that there are significant uncertainties associated with program implementation. It may not be clear whether trade allies will stock particular technologies, what level of incentive is required to induce customer participation, or whether a particular marketing or outreach strategy would be effective. In AIC's view, the prudent course is to modify programs over time in light of new or evolving information. A program might not be cost-effective in its first year, but modifications can lead to improved cost-effectiveness. A policy requiring that all measures and programs be cost-effective in every year would preclude such improving portfolio results and would exclude measures and programs that increase the value of the portfolio without being cost-effective on a standalone basis, such as outreach and education programs. (Ameren IB at 25)

A new program may not be cost-effective during its first year, or even the first several years due to start-up costs. A cost-benefit analysis is premature until a program has reached a level of maturity that is indicative of its long-term potential. Developing a robust portfolio of energy efficiency programs is analogous to starting a new business; the early efforts require investments before the first customer walks through the door. Energy efficiency programs exhibit similar initial costs that are either non-recurring, such as development of marketing collateral, or are diminishing over time, such as outreach efforts to establish a network of trade allies. These factors can skew preliminary TRC values calculated at the measure or program level. (*Id.* at 25-26; Ameren Ex. 5.0 at 12)

While it is important that the portfolio as a whole achieve a TRC greater than 1.0, individual programs may not achieve a TRC greater than 1.0, yet still contribute towards increasing the overall portfolio TRC and savings. Educational programs often fall into this category as do programs that lead towards greater savings in other programs or other elements of the same program. The tune-up portion of the SB HVAC program falls into this category. Participants receiving tune-ups are likely to participate in the program and purchase a higher-efficient furnace or boiler at the time of replacement. (Ameren IB at 26; Ameren Ex. 5.0 at 12)

In Section II.B.2.c of its initial brief, AIC addresses "Further Policy Implications of Staff's Recommended Disallowance." (Ameren IB at 26-28)

According to AIC, if Staff's recommendation is adopted, the policy implications would be severe. In essence, each measure and program in a utility's portfolio would require a positive TRC score at all times during the life of the plan – regardless of the multiple variables and inputs, regardless of the sensitivities of the TRC test, and regardless of other considerations (with respect to cost effectiveness or otherwise) – or risk disallowance. This result would create significant roadblocks to further energy efficiency development in Illinois and possibly its elimination. (*Id.* at 26)

First, Staff's proposal would prevent measures and programs from evolving and thus becoming cost-effective as the portfolio matures. In this docket the implementer's plan forecast did indicate that the preliminary, interim TRC values were lower, but it also indicated that the TRC value could exceed 1.0 by the end of the three-year plan. More importantly, the plan recommends modifying the Program to increase cost-effectiveness in PY2 by limiting the total number of tune-ups and directing the program funds towards incentives for furnace and boiler replacements. The implementer found that these modifications would likely make AIC's attempt to reach an underserved market cost-effective. But these modifications would not be allowed under Staff's approach. If the Commission approves Staff's recommendation, it would send a clear signal that the focus should only be on cost-effectiveness and not innovation or market transformation. (*Id.* at 26-27)

Second, Staff's recommendation ignores the fact that preliminary TRC test results vary depending on a number of factors. There are many different definitions of the TRC test, and the same program could have a positive TRC value under one definition of the test and a negative TRC under a second definition. TRC results may vary depending on when the calculations are performed. Also, the person performing the test, and what inputs are part of the calculation, drive a particular TRC calculation. Given these uncertain variables, it would be improvident to bind utilities solely to TRC values by forcing them to either discontinue a cost-ineffective measure or program or face disallowance. (Ameren IB at 27-28)

Disallowance of costs associated with approved programs would create regulatory uncertainty that the Commission-approved energy efficiency plans were intended to alleviate. Consistent cost recovery policy from the Commission is important to ensure future investment in energy efficiency. As explained by Dr. Chamberlin, disallowance of costs based on cost-effectiveness testing, particularly initial year preliminary cost effectiveness results calculated by a third-party at a program or measure level, would be contrary to the need to align utilities' incentives for energy efficiency with traditional resources. (*Id.* at 28; Ameren Ex. 5.0 at 16)

3. Ameren Illinois Reply Brief and RBOE

In its reply brief, AIC states that Staff argues the costs at issue should be disallowed because preliminary TRC test run by the program implementer in early PY2 somehow provided "clear evidence" that the Program would not be cost-effective, and, for this reason alone, AIC should have discontinued the Program. (Ameren RB at 2-3, citing Staff IB at 4-6)

According to AIC, Staff's "single-minded" focus on preliminary TRC results improperly ignores several factors relevant to AIC's decision to continue the SB HVAC Program, including the timing of the TRC results, the program implementer's recommendation to continue the Program, the Program's projected cost-effectiveness, and the impact discontinuing the Program would have on the overall portfolio. Based on these factors alone, AIC's decision to continue the Program consistent with the

implementer's recommendations was reasonable and prudent. Second, Staff's recommendation, if adopted, would needlessly hamper implementation and growth of energy efficiency programs in Illinois. Requiring all measures or programs to have a positive TRC at all times throughout the life of a plan would stunt measures or programs that may evolve into becoming cost-effective or assist the portfolio in other ways. (Ameren RB at 2-3)

As AIC, CUB, the AG, and NRDC explained in their Initial Briefs, this result would be contrary to Illinois law and Commission precedent.

Section II.B.1.a of AIC's reply brief is titled, "Staff Selectively Ignores Facts Demonstrating the Reasonableness and Prudence of Continuing the SB HVAC Program." (Ameren RB at 3-7)

In August 2009, just two months into PY2, the program implementer ran preliminary TRC tests as part of a broader portfolio management and implementation analysis, which suggested that, under unknown inputs chosen by the program administrator, the SB HVAC Program was not cost-effective at that time. (*Id.* at 4) The implementer did not believe the TRC results were cause to discontinue the Program, however. Rather, in its October 2009 Final Report, the implementer explained its belief as to why its TRC results were low and the basis for its recommendations going forward:

The SB HVAC program was developed in the latter half of PY1. As such there was limited time to develop significant relationships with many of the key channel stakeholders, and the time period for HVAC maintenance activities had already occurred (pre-and-early heating season in the September through November timeframe). PY2 activities will expand outreach/marketing to take advantage of the customer awareness and interest when the next heating season begins. As noted above, the "fix on failure" mentality of this market needs to be tapped when heating systems are first turned on after being idle for the first four or five months leading into the heating season. (Ameren RB at 4, citing Joint Cross Ex. 1 at 160, 393)

As the implementer made clear, the TRC results were largely driven by timing, and the implementer recommended expanding the Program through additional outreach and marketing in advance of the heating season. In the Final Draft, the implementer further recommended bundling the SB HVAC tune-ups with AC tune-ups and the highly cost-effective thermostat measure to cut costs and increase efficiency. The implementer projected that, with the modifications, the SB HVAC Program was expected to have a positive TRC over the life of the plan. (*Id.*; see also Ameren RBOE at 7-8)

Based on this, AIC continued the Program consistent with the implementer's recommendations. Consistent with the implementer's findings, AIC reasonably believed

the Program would become more cost-effective as customer awareness grew, and, in any event, it would continue to benefit the overall portfolio by introducing energy efficiency to trade allies and the small business market. As the implementer made clear, it made little sense to cut short its attempts to penetrate the small business market during the fall months, the time of year when customers traditionally seek services relating to gas furnaces. (*Id.* at 5, citing Joint Cross Ex. 1 at 160)

Section II.B.1.b of Ameren's reply brief is titled, "Staff's Arguments for Disallowance Have No Merit." (Ameren RB at 7-12)

Staff argues that AIC ignored "clear evidence" showing that the SB HVAC Program was not cost-effective. (Staff IB at 4) According to AIC, the only evidence cited by Staff to support this claim is the implementer's preliminary TRC results from August 2009. AIC analyzed the results in proper context along with the other facts at its disposal, including the implementer's recommendations to continue the Program and to bundle tune-ups with cost-effective measures to increase the Program's efficiency. (Ameren RB at 7)

Staff argues that AIC had "no compelling reason" to continue the SB HVAC Program (Staff IB at 10), since AIC had "no expectation that the SB HVAC Program would provide net benefits to ratepayers in PY2." (Ameren RB at 7) AIC responds that it did expect the Program would be cost-effective to ratepayers, and the implementer's Final Report projected as much. (Ameren RB at 7-8, citing Joint Cross Ex. 1 at 120, 353)

Staff suggests that AIC knew it would not achieve cost-effectiveness because it "had plans to complete 340 gas tune-ups within PY2, which directly contradicts the limitation of 300 gas tune-ups over the three-year period which AIC relied upon to justify continuing the program." (Staff IB at 17)

In AIC's view, Staff's argument is unsupported by the record. In its Final Report, the implementer stated that "[i]f gas tune-ups are limited to 300 and balance of the incentive dollars for this program over the three-year period go to new equipment installs an overall TRC [greater than] 1 should be achieved." (Joint Cross Ex. 1 at 158) But this recommendation does not take into account additional efficiencies saved by bundling the SB HVAC tune-ups with AC tune-up and thermostat measures. As the implementer found, "bundling these together can drive each measure quickest to its completion goal, along with minimizing the overall program cost." (*Id.* at 154) The implementer concluded that "after about 340 bundled offers the economics change and it will no longer make sense to include the furnace tune up in the bundle because the PY2 therm goal for the Small Business Tune-up Program will have been met." (*Id.* at 155) Based on this, AIC reasonably believed the 340 bundled tune-ups recommended by the implementer would help the total SB HVAC Program become cost-effective. (Ameren RB at 8-9; Ameren RBOE at 4-5)

Staff also argues that AIC should not have permitted “cost-ineffective HVAC tune-ups to occur” following the preliminary TRC results because the SB HVAC Program’s savings came from installations of efficient boilers and furnaces, not tune-ups. (Staff IB at 12-13) In AIC’s view, this argument misunderstands the relationship between tune-ups and new equipment installs. As the implementer stated in October 2009, “More than any other program, the Small Business HVAC program needs to be accepted and promoted by the HVAC market stakeholders. There needs to be enough economic incentive and marketing support provided to make it worthwhile for them to change their business practices.” (Joint Cross Ex. 1 at 159) Consistent with the implementer’s recommendations, AIC marketed energy efficiency through its trade allies, which used the tune-up measures to cross the small business customer’s threshold and educate small businesses about energy efficiency, including the installation of new energy efficient and cost-effective equipment. In this way, the tune-up measures complimented other aspects of the Program, and benefited the portfolio, to achieve cost-effectiveness at the portfolio level. (Ameren RB at 9-10)

Staff also makes much of the fact that the third-party implementer did not retain the “cost-effective analysis” that gave rise to its preliminary TRC results and subsequent recommendations. (Ameren RB at 10, citing Staff IB at 18-19) Yet, Staff itself stated a belief that the preliminary TRC results were performed by an intern, raising questions as to why Staff continues to push the importance of the TRC calculation or value. AIC believes the analysis itself is irrelevant to disallowance. In determining whether to continue the SB HVAC Program, AIC relied on the implementer’s findings and projections, including those facts contained in the implementer’s August 2009 PY2 Implementation Plan Overview and the multiple drafts of the PY2 Implementation Plan. The record supports that, based on many factors, AIC reasonably and prudently relied on the implementer’s projection that the Program would be cost-effective over the life of the plan and its recommendation to continue the Program consistent with its modifications. AIC represents that the recommendations the implementer provided to AIC are in the record. (Ameren RB at 10-11; Ameren RBOE at 5-7)

Staff also argues that “all planned measures should be cost effective ... unless the circumstances warrant an expectation that the cost-effectiveness would change in the future or benefits elsewhere in the program were tied to cost-ineffective measures.” (Staff IB at 19) According to AIC, the Commission “has rejected similar arguments from Staff in the past. Docket 10-0564, Final Order at 79, 92 (May 24, 2011) (rejecting Staff’s recommendation “that only measures that are cost-effective be included in any programs or the portfolio.”). (Ameren RB at 11) Even if the Commission were to subject the SB HVAC Program to Staff’s test, the Program would pass. The Program was cost-effective at the planning stage. Notwithstanding the preliminary TRC results in early PY2, AIC reasonably believed the SB HVAC Program would be cost-effective over the life of the three-year plan based on the implementer’s forecast. (Ameren RB at 11)

Section II.B.2.a of AIC’s reply brief is titled, “Staff’s Recommendation is Contrary to Illinois Law and Commission Precedent.” (Ameren 12-13)

According to AIC, the AG, CUB and NRDC filed initial briefs demonstrating that Staff's proposal would violate Illinois law and is inconsistent with Commission precedent. As set forth in these initial briefs, Illinois law requires that a utility's overall portfolio of energy efficiency and demand response measures are cost-effective using the total resource cost test and represent a diverse cross-section of opportunities for customers of all rate classes to participate in the programs. 220 ILCS 5/8-104(f)(5); see *a/so* Docket No. 07-0539, Order at 20; Docket No. 10-0568, Order at 30 ("The Commission finds that evaluating cost-effectiveness on a portfolio level is necessary to ensure that Ameren not be penalized for planning assumptions that turn out to be inaccurate."); Docket 10-0564, Order at 79 (May 24, 2011) ("The Commission agrees with the Utilities that Section 8-104 does not require each measure to meet the TRC test, but it does require the portfolio (except for the low income portion) to meet the TRC test."). (Ameren RB at 12)

According to AIC, "This means, contrary to Staff's proposal, TRC results should not be analyzed at the measure or program level in the manner advocated by Staff." (*Id.* at 13)

In Section II.B.2.b of its reply brief, AIC states that it agrees with arguments in the briefs filed by CUB, AG and NRDC that "Staff's recommendation would stunt the growth of energy efficiency programs in Illinois." (Ameren RB at 13-15) The Commission also notes that in Section II.B.3 of its initial brief, AIC cites and describes passages of testimony from CUB witness Ms. Devens which AIC finds to be consistent with AIC's position in this case.

In its RBOE, AIC Staff disputes Staff's "wrong and unsupported" suggestion that AIC failed to provide evidence in Docket No. 08-0104 that the gas tune-ups were projected to be cost-ineffective such that "the Commission never had the opportunity carefully review" cost-effectiveness prior to issuing its Final Order in Docket 08-0104. (Staff BOE at 3) According to AIC, in its Order in Docket No. 08-0104 entered October 15, 2008, the Commission assessed all of AIC's proposed programs and measures and approved the portfolio as cost-effective, along with the flexibility to implement the portfolio. The only cite Staff provides for its "unfounded claim" that AIC somehow hid TRC results during the Docket No. 08-0104 plan filing is Staff Exhibit 2.0R at 16, which cites the August 17, 2009 implementer's report that was presented to AIC 10 months after the Order in Docket No. 08-0104 was entered. (AIC RBOE at 4)

C. Recommendations of CUB and the AG

In their testimony, briefs and RBOE, CUB and the AG recommend that the Commission reject Staff's proposed disallowance of the costs of the SB HVAC program.

1. Testimony and Initial Brief

In the introduction to their initial brief, "CUB and the People urge the Commission to reject Staff's recommendations because Ameren's decision to continue the program

was not imprudent since Ameren believed it could make changes to the program to maximize benefits and because the program implementer did not recommend discontinuing the program.” The Ameren SB HVAC program at issue was one of only two small business programs in the Company’s natural gas energy efficiency portfolio. In addition, the program was designed to create market transformation, a recognized goal of efficiency programs. (CUB/AG IB at 3-4)

Section I of the CUB/AG initial brief is titled, “The Cost Effectiveness of Utility Energy Efficiency Programs is Assessed at the Portfolio Level.” (see also CUB/AG RBOE at 3-5) According to CUB and AG, the PUA requires utilities to demonstrate that the “overall portfolio” of EEPS programs be cost-effective and “represent a diverse cross-section of opportunities for customers of all rate classes to participate in the programs.” 220 ILCS 5/8-103(f). (CUB/AG IB at 4) The cost-effectiveness of energy efficiency programs is measured by a total resource cost (“TRC”) test which compares the costs and benefits of a program: a result of one or greater shows a program is cost-effective. 220 ILCS 5/8-103(a); 220 ILCS 5/8-104(a); 20 ILCS 3855/1-10. The question of at what level (i.e. a particular measure, a particular program made up of multiple measures, or a particular portfolio made up of multiple programs) a TRC should be applied has been discussed several times before the Commission. Docket 10-0564, Order of May 24, 2012 at 92. (CUB/AG IB at 4)

The Commission has affirmed this statutory cost-effectiveness requirement -- that Ameren’s programs must only be found cost-effective at the portfolio level, and not at the program or measure level -- in both dockets addressing Ameren’s energy efficiency plans. Docket No. 07-0539, Order of February 6, 2008 at 21; Docket No. 10-0568, Order of December 21, 2012 at 30. (CUB/AG IB at 4-5) The Commission has not made any exception in this policy for natural gas energy efficiency programs that are not mandated by statute.

In fact, the Commission explicitly rejected Staff’s request to evaluate cost-effectiveness at the measure level in the approval of the North Shore/Peoples Gas first gas EEPS Plan. The Commission stated, “The Commission agrees with the Utilities that Section 8-104 does not require each measure to meet the TRC test, but it does require the portfolio (except for the low income portion) to meet the TRC test. The Commission declines to make the finding requested by Staff witness Brightwell.” Docket 10-0564, Order of May 24, 2012 at 92. (CUB/AG IB at 4-5)

In its Order of February 6, 2008 in Docket No. 07-0539, the Commission stated at page 21, “Calculation of the total resource cost test at the portfolio level provides utilities with greater flexibility to ensure that measures with less short-term energy savings value, but greater value over several years, will be included in any overall portfolio of measures and programs. This contention is reasonable and it is hereby approved.” (CUB/AG IB at 5)

The Commission was explicit that giving utilities flexibility via the application of the TRC at the portfolio level insures that utilities do not have a bias towards measures

that only generate savings in the current program year, but instead are able to offer a mix of programs, including measures with long lifetimes. (CUB Ex. 1.0 at 7) The Commission did note that once the energy efficiency programs are being implemented, Ameren would retain flexibility to modify those programs as circumstances warranted. Docket No. 08-0104, Order of October 15, 2008 at 18 (approving Ameren's natural gas energy efficiency programs, including SB HVAC). In that case, Ameren noted that this flexibility was necessary to address market risk -- the risk that, either because of a poor economic climate or the availability of better investments, customers choose not to participate in energy efficiency programs. The Commission agreed that this approach was appropriate. (CUB/AG IB at 5)

There is no reason to believe "the Commission did not envision the Rider GER programs would share the same cost-effectiveness criteria as the Rider EDR programs." (CUB/AG IB at 5-6, citing CUB Revised Exhibit 1.0 at 9) It is reasonable and sensible to assume that the Commission would want the same cost-effectiveness criteria applied to the statutory EEPS programs to apply to the Rider GER programs. Consistency across programs and regulatory requirements is an important goal for the state, a goal reflected in the practice by the Commission of allowing the joint prudence review of both statutory and voluntary energy efficiency programs. (CUB/AG IB at 5-6)

The SB HVAC program was cost-effective when it was proposed in the Plan approved by the Commission in Docket No. 08-0104. Ameren's entire portfolio of energy efficiency programs was cost-effective when it was approved by the Commission in Docket No. 08-0104. (CUB/AG IB at 6) As such, the only reason for which Staff can recommend a disallowance is that Ameren's decision to continue the program was imprudent as soon as the total resource cost test ("TRC test") result showed the program was likely to be cost-ineffective during PY2. (*Id.*, citing Tr. 116-117) Utilities should regularly monitor their programs, and more than annually revisit whether to continue, modify, or discontinue them. Action or inaction related to whether or not a utility is maximizing customer benefits may be grounds for imprudence. However, whether an individual program is found to be cost-effective cannot be the sole criteria for this determination, as it is in this case. The Commission must consider other factors, as discussed in CUB/AG's initial brief. (*Id.*; see also CUB/AG RBOE at 5-7)

Section II of the CUB/AG initial brief is titled, "Ameren's Decision to Continue the SB HVAC Program was Prudent."

The basis for Staff's recommended disallowance is that it was imprudent for Ameren to continue the program once Ameren received information from the independent evaluators that the SB HVAC program was projected to be non-cost-effective. (CUB/AG IB at 6, citing Staff Ex. 2.0R at 4 and Tr. 116-117) This recommendation counters Commission practice and Illinois law.

Under Illinois law, costs are recoverable from utility customers if the utility has acted prudently and reasonably. Illinois courts have defined prudence as "a standard of care which a reasonable person would be expected to exercise under the same

circumstances encountered by a utility management at the time decisions had to be made.” In determining whether a judgment was prudently made, “only those facts available at the time judgment was exercised can be considered.” *Illinois Power Company v. Illinois Commerce Comm’n*, 328 Ill. App. 3d 195, 34; 887 N.E. 2d 678, 684 (3rd Dist. 2008) citing *Illinois Power Co. v. Illinois Commerce Comm’n*, 339 Ill. App. 3d 425, 428 (2003). (CUB/AG IB at 7)

The prudence standard recognizes that reasonable persons can have honest differences of opinion without one or the other necessarily being ‘imprudent’. Docket No. 84-0395, Order at 17. In CUB and the AG’s view, this means Ameren’s decision to continue the program can only be assessed based on what Ameren knew about the program, its energy efficiency programs and the overall energy marketplace at the time. (CUB/AG IB at 7)

Commission practice affords utilities, including Ameren, a great deal of flexibility to manage their statutory energy efficiency programs. Most explicitly, in the Final Order for Ameren’s natural gas and electric energy efficiency programs in 2010, the Commission found it “necessary to ensure that Ameren not be penalized for planning assumptions that turn out to be inaccurate,” and also declined to “micromanage Ameren Illinois by ordering it to allocate more or less money to individual programs that Intervenor’s claim are more cost-effective.” Docket No. 10-0568, Order of December 21, 2010 at 30. (CUB/AG IB at 7-8)

This directive speaks directly to the issue in this docket: whether expenditures on a program that was cost-ineffective for a point in time are imprudent. While there are many reasons this expenditure was not imprudent, CUB and the People believe it is important to emphasize the legitimacy of planning values, and the fact that measure or program level cost-effectiveness cannot be the sole cause of imprudence. (CUB/AG IB at 8)

Section II.A of the CUB/AG initial brief is titled, “Ameren Had Reason to Believe the Program Could be Made Cost-Effective.”

Ameren acted prudently in continuing to fund the SB HVAC program. In the planning stages, the program was approved by the Commission in Docket 08-0104 with a TRC of 1.48, above the cost-effectiveness threshold of 1 for approval and inclusion in the EEPs. (CUB/AG IB at 8, citing Docket No. 08-0104 and Ameren Ex. 1.1 at 2) The record shows that utilities “already routinely monitor and publicly report the costs and benefits of their energy efficiency programs” in efforts to maximize the benefits of their portfolio under the greater umbrella of portfolio level cost-effectiveness. (CUB Exhibit 1.0 at 13)

No party disputes “that Ameren was aware that the SB HVAC program was not cost-effective in PY 2. The point of dispute is how Ameren responded to that information.” (CUB/AG IB at 8-9) Staff asserts that Ameren “[failed] to act on information that it had readily available and [failed] to exercise its ability to modify or

drop programs, a flexibility that the Commission had granted at Ameren's request." (Staff Revised Ex. 2.0 at 10) CUB and AG disagree with Staff. They argue that Ameren did modify the program in response to this information. In fact, Ameren states that the implementer "did not recommend pulling the plug on the Program, but rather recommended modifying it to include further outreach to program allies and the small business community. As part of these outreach activities, the implementer suggested increasing the incentives for HVAC tune-ups and bundling them with other outreach activities." (CUB/AG IB at 8-9, citing Ameren Exhibit 6.0 at 7)

Ameren "took steps to limit the number of tune-ups and cultivate ally participation and installation of equipment." (Ameren Exhibit 4.0 at 10) Ameren and the program implementer discussed ways to improve the program when it was becoming clear the program was no longer cost-effective, in keeping with the discretion the Commission granted utilities. In CUB/AG's view, "Ameren's expectation that the SB HVAC program would produce net benefits over time was reasonable, particularly because of the modifications Ameren made to the program in PY 2." (CUB/AG IB at 9)

Ameren witness Woolcutt testified, "the implementer noted that with the modifications to the SB HVAC Program as set forth in the updated recommendation, the Program was expected 'to yield a TRC' that was greater than 1...Cutting short the SB HVAC in light of such information would have meant disregarding the implementer's recommendations to continue the Program with modifications and would have meant cutting short Ameren Illinois' attempt to penetrate the small business market at a time in the year when customers traditionally seek services relating to gas furnaces." (CUB/AG IB at 9, citing Ameren Ex. 6.0 at 8)

The evidence suggests to CUB and AG that Ameren had reason to believe the program would become cost-effective in the future. Staff's "sole basis for the recommended disallowance" was that Ameren continued the program once it received a projection showing the program may not cost-effective. (CUB/AG IB at 9, citing Tr. 116-117) Staff provides data showing the projected TRC results (Staff Ex. 2.0 at 13-15) and notes that the Commission had instructed Ameren to monitor the cost-effectiveness of a gas griddle energy efficiency measure. (CUB/AG IB at 9, citing Staff Ex. 2.0 at 7-8) The only evidence Staff can cite that Ameren failed to take into account is a reference to an "Economic Downturn" for which Staff provides no citation. (CUB/AG IB at 9, citing Staff Ex. 2.0 at 17) However, the same page shows that Ameren was in fact considering how to improve the program by targeting both gas and electric customers and by looking for ways to bundle the program with other measures that might make it more attractive to Ameren customers. (CUB/AG IB at 9-10)

In the views of CUB and AG, Ameren's managerial decisions demonstrate that the decision to offer the SB HVAC program was prudent given the information the utility had at the time. Ameren's program implementer was recommending steps to improve the program, and Ameren was reasonable to think the program could be improved. (*Id.* at 10)

In Section II.B of their initial brief, CUB/AG argue, “The Program provides other benefits to Ameren customers and the overall energy efficiency market.”

According to CUB and the AG, Staff’s recommended disallowance would create a precedent that, if applied to all utility energy efficiency prudency reviews, would thwart utility efforts to design programs that reach hard-to-serve customer sectors and lay the groundwork for market transformation. Ameren’s SB HVAC Program was designed to target small businesses, “a particularly difficult market to penetrate due to the fact that they traditionally have limited funds to spend on energy efficiency investments and the relatively lower savings that can be calculated on the small business scale.” (CUB/AG IB at 10, citing Ameren Ex. 4.0 at 4)

Ameren considered it a priority to “build capacity among trade allies” catering to the small business sector to “try to penetrate this market...and increase future participation in the SB HVAC Program and other energy efficiency programs in future plan years.” (CUB/AG IB at 10, citing Ameren Ex. 4.0 at 5) This is in fact recognized practice in energy efficiency programs. CUB and the AG cite testimony by AIC, “As traditional in most other HVAC programs throughout the country, the tune-up measure is a standard tactic to cultivate ally participation and educate consumers whereby an equipment’s inefficiency is identified and the opportunities for improved efficiency are explained.” (CUB/AG IB at 10, citing Ameren Ex. 4.0 at 10)

CUB and the AG argue that market transformation is an important goal in utility decisions related to the implementation of energy efficiency programs, especially when customer funds may be limited and the embrace of efficiency measures through a particular program is in its nascent stages. As all customer sectors fund utility energy efficiency programs, including the small business customers who funded the Rider GER programs, those customers must be offered programs even if they are difficult markets to achieve cost-effective savings in. While CUB and the AG support the close examination of utility expenditures of ratepayer money on energy efficiency programs, and do not reject the possibility of disallowance when the evidence reveals truly imprudent behavior, that threshold was not reached in the instant docket. If Ameren had discontinued the program, it would not have provided benefits to the small business customers who were paying for Ameren's energy efficiency programs and would not have created a foundation to engage those customers in programs in future years. In the view of CUB and AG, Ameren’s managerial decisions demonstrate that the decision to offer the SB HVAC program was prudent given the information the utility had at the time. (CUB/AG IB at 10-11)

Section III of the CUB/AG initial brief is titled, “Staff’s Policy Recommendation Would Hinder the Viability of Ameren’s Energy Efficiency Programs and Discourage Investment in Innovative, Longer Lasting Efficiency Measures that Ultimately Benefit Ratepayers.”

Staff recommends “the Commission make a policy decision in this case and direct that the Company ... only continue to spend ratepayer funds on a program if and

when projected benefits exceed projected costs.” (Staff Exhibit 2.0 at 19) CUB and the AG argue that this recommendation contradicts previous Commission orders related to cost-effectiveness assessments at a portfolio level basis. If adopted by the Commission, Staff's recommendation would curtail energy efficiency programs by requiring Ameren to immediately cease spending, even if mid-year, on any program if the TRC drops below one. This will have an injurious impact on the viability of energy efficiency programs in general because “sudden cessation” of programs could damage relationships with contractors and program allies who market and implement these programs. In addition, it will prevent Ameren from meeting the Act's requirement to reach all customer sectors funding the EEPS programs, including those who may be hard to reach, such as small businesses. Finally, it will direct utilities to invest in only in those energy efficiency programs with a guaranteed high TRC result over the life of the program with the unfortunate result of utilities offering only “cheap, short-term” measures and effectively eliminate the incentive to invest in programs with more lasting results and programs targeted at harder-to-serve populations. (CUB/AG IB at 11-12)

Programs intended for hard-to-reach customer segments may, in particular, not pass the TRC, particularly in a program's early stages. (CUB Ex. 1.0 at 13) Some programs require time to become cost-effective, perhaps through customer education or market changes. In the interim, even less cost-effective programs serve an important function by generating awareness of or interest in other programs. If utilities are penalized for offering programs that reach hard-to-reach customer segments or help transform the market, utilities will likely emphasize programs that achieve short-term but guaranteed savings over programs that offer deeper and longer term savings, but which may require more time to develop. That outcome would reduce the economic and societal benefits of investment in innovative, long-lasting energy efficiency measures for ratepayers, who are funding the programs. As such, CUB and the AG argue, Staff's recommendation should be rejected. (CUB/AG IB at 12)

In their Conclusion, CUB and the AG argue that the Commission should reject Staff's proposed disallowance of the costs of the SB HVAC program. The SB HVAC program was anticipated to be cost-effective when approved in Docket 08-0104, modified when it was found to be cost-ineffective, reached a hard to reach customer segment, and was designed to help transform the market. Illinois law and Commission practice affirm that energy efficiency programs are only assessed for cost-effectiveness at the portfolio level. Staff has failed to demonstrate that there were factors other than a lower than expected TRC as justification for allegations of imprudence. (CUB/AG IB at 12)

2. CUB/AG Reply Brief and RBOE

Section II of the CUB/AG reply brief is titled, “The Costs Associated with Ameren's Small Business HVAC Program Should Not be Disallowed.” In Section II.A, they argue, “The Record Evidence Supports a Conclusion that Ameren Did Not Act Imprudently.”

In its initial brief, Staff argues that it was unreasonable of Ameren to continue the SB HVAC Program because the program was projected to “provide negative net benefits to Illinois ratepayers in PY2.” (CUB/AG IB at 3, citing Staff IB at 4) Staff also alleges that “it is unreasonable to allow AIC to cite portfolio level cost-effectiveness as its defense and entire basis for alleging prudent management of the SB HVAC Program.” (Staff IB at 5)

While CUB and the People agree that it would be unreasonable for a utility to cite portfolio level cost-effectiveness as the sole justification for retaining a particular program that does not pass the Total Resource Cost (“TRC”) test, Staff is wrong to discount and dismiss the fact that portfolio level cost-effectiveness is the standard established by the PUA and reinforced by the Commission in multiple prior dockets. 220 ILCS 5/8-103(f); Docket 10-0564, Order of May 24, 2012 at 92; Docket 07-0539, Order of February 6, 2008 at 21; Docket 10-0568, Order of December 21, 2012 at 30. (CUB/AG RB at 3)

More importantly, Ameren is not using the cost-effectiveness of its energy efficiency programs at the portfolio level as a “defense or entire basis for alleging prudent management” of the SB HVAC program, as Staff avers. Rather, CUB and the People, Ameren, and NRDC have all found that the “totality of evidence” supports Ameren’s conclusion that it would not be imprudent to continue the SB HVAC program, which was specifically designed to target what the evidence showed was a particularly difficult market to penetrate because small businesses traditionally have limited funds to spend on energy efficiency resources. This customer class funds the energy efficiency programs, like other customer classes, and the program was forecasted to better and more cost-effectively reach that customer sector in the future. The preponderance of the evidence showed that Ameren prudently managed expenditures related to the SB HVAC program by properly responding to TRC test results, offering a program to a hard-to-reach customer sector, and attempting to transform the small business market for energy efficiency programs. (CUB/AG RB at 3-4)

Section II.B of CUB/AG’s reply brief is titled, “The Evidence Shows That Ameren and Program Implementers Believed the SB HVAC Program Would Become Cost-Effective over Time.”

Staff alleges that Ameren failed to prudently respond to an initial TRC assessment conducted by an evaluator. (Staff IB at 12-13) CUB and AG respond that in PY 2, Ameren took steps to improve the cost-effectiveness of the SB HVAC program in response to recommendations from the program implementer. The implementer recommended modifying the SB HVAC program to “include further outreach to program allies and the small business community,” as well as “increasing the incentives for HVAC tune-ups and bundling them with other outreach activities.” (CUB/AG RB at 4-5, citing Ameren Ex. 6.0 at 7) With these modifications, “the Program was expected ‘to yield a TRC’ that was greater than 1.” (Ameren Ex. 6.0 at 10) Given these recommendations, Ameren “cultivate[d] ally participation and installation of equipment.” Ameren also began bundling the “gas furnace tune-ups with other SB HVAC activities,

like those related to AC tune-ups and the installation of “smart” thermostats.” (CUB/AG RB at 5)

In Section II.C of its reply brief, CUB/AG argue, “The SB HVAC Program was Designed and Implemented to Help Transform the Market for Small Business Customers.” (CUB/AG RB at 5-6, citing NRDC IB at 3, Ameren Ex. 5 at 7-8) CUB and the AG believe the evidence supports a conclusion that it was not unreasonable or imprudent to maintain the SB HVAC program because it was designed to reach a difficult market segment and break down market barriers, such as the initial lack of a trade ally network. Moreover, it was not unreasonable to assume that the program might require multiple years to mature. (CUB/AG RB at 6)

In Section II.D of their reply brief, CUB and the AG argue, “Granting Staff’s requested disallowance would hinder the future development of robust energy efficiency programs for all market segments.”

Staff’s argument that Ameren acted imprudently in continuing to fund the SB HVAC program rests almost entirely on the Program Year (“PY”) 1 TRC test results. (Staff IB at 15) CUB and the People agree with NRDC that utilities should re-evaluate all programs for cost-effectiveness annually, and make the appropriate adjustments each year, but that the “value of programs...must not be limited to the TRC test as proposed by the Staff.” (NRDC IB at 3) Although the gas efficiency program expenses being evaluated in this docket involve pre-date the passage of Section 8-104, which detailed energy efficiency program parameters and cost recovery criteria, the evaluation criteria included in that section of the Act should “inform” the Commission’s decision here. (CUB/AG RB at 6)

Section 8-104(f)(5) specifically requires gas utilities to demonstrate that their programs should “represent a diverse cross-section of opportunities for customers of all rate classes to participate in the programs,” as well as be cost-effective at the “overall portfolio” level. 220 ILCS 5/8-104(f)(5).

Staff has repeatedly cited language in the Rider Gas Energy Efficiency (“GEE”) Plan Order where the Commission agreed with Staff’s proposal that Ameren “monitor the projected benefits and costs of the proposed gas griddles and spray valve measures and only market these efficiency measures if and when projected benefits exceed projected costs.” (Staff IB at 5-6, citing Docket 08-0104 Order at 10-11) This language falls under a section of the Final Order titled, “Gas Griddles and Spray Valve Measures.” Staff fails to explain how a Commission directive specifically related to Ameren’s Small Business Food Service program is relevant, much less applicable, to the SB HVAC program, which is not mentioned in the referenced section of the Final Order. (CUB/AG RB at 7; CUB/AG RBOE at 4)

CUB and the AG agree with Ameren Illinois that Staff’s policy recommendation that the Commission should direct AIC to only spend funds on a program “if and when projected benefits exceed projected costs” fails to take into account a host of factors

and consequences related to evaluating cost-effectiveness, and would have “severe” impacts and “create significant roadblocks” to the continued development of robust efficiency programs. (Ameren IB at 26) Staff’s recommended disallowance would create a precedent that if applied to all utility energy efficiency prudency reviews would thwart utility efforts to design programs that reach hard-to-reach customer sectors and lay the groundwork for market transformation. Ameren’s SB HVAC Program was designed to target small businesses, which is a particularly difficult market to penetrate. (CUB/AG RB at 7-8, citing Ameren Ex. 4.0 at 4)

CUB and the AG also agree with Ameren that Staff’s proposal “ignores the fact that preliminary TRC test results vary depending on a number of factors,” and that “TRC results may vary depending on when the calculations are performed,” that “reasonable people could disagree about what should go into a particular TRC calculation,” and would “prevent measures and programs from evolving and thus becoming cost effective as the portfolio matures.” (Ameren IB at 27-28) CUB and the AG believe the evidence supports giving Ameren the benefit of the doubt regarding the Company’s decision to retain a program that ultimately failed to achieve expectation of cost-effective delivery of energy savings within the allotted timeframe. (CUB/AG RB at 8)

In their RBOE, CUB and the AG contend that “contrary to Staff’s arguments, it was reasonable for Ameren to believe the SB HVAC could become cost-effective over time as the Company took steps to cultivate ally participation, limit the number of tune-ups, and increase outreach to the small business community.” (CUB/AG RBOE at 5)

D. NRDC Position

Section A of the Argument in the Natural Resources Defense Council’s initial brief is entitled “Policy Analysis.”

In NRDC’s view, the Staff proposal should be rejected. The adoption of a rule that utilities should terminate programs that may not pass the TRC test in the next year, irrespective of broad-based benefits of those programs, would have a serious negative impact on the development of effective energy efficiency in Illinois. As noted by Ameren witness Mr. Woolcutt, such a rule would encourage utilities to overemphasize measures that obtain short-term benefits and would discourage them from proposing programs leading to long-term benefits, such as penetrating underserved markets and developing a robust energy efficiency portfolio. (NRDC IB at 2, citing Ameren Ex. 6.0 at 10; NRDC RBOE at 4) NRDC believes utilities must have the flexibility to balance several factors in their portfolios, only one of which is the TRC test.

Ameren witness Dr. Chamberlin articulated several ways in which programs that fail the TRC test may still provide a valuable addition to a portfolio: the program is a trial of an emerging technology; the program reaches a market segment not otherwise able to participate in energy efficiency programs, the program is expected to break down market barriers; the program creates some additional value not easily measured by TRC, such as lighting programs that improve workplace productivity; the program takes

several years to mature. As noted by Dr. Chamberlin, this is particularly true of programs such as the SB HVAC program that require the engagement of allies. (Ameren Ex. 5.0 at 7-8)

NRDC agrees with Dr. Chamberlin that each of these factors are valid reasons for including in a portfolio a program that is not cost-effective when solely measured by the TRC test. This “is not to say that a utility should not reevaluate each program in its portfolio and make appropriate adjustments each year.” Utilities should regularly evaluate their programs and make adjustments to enhance their value. That value, however, must not be limited to the TRC test as proposed by the Staff; rather, it should also include the elements listed above. (NRDC IB at 3; NRDC RBOE at 4-5)

Ameren has provided evidence that the SB HVAC program provides significant value to Ameren’s portfolio that is not recognized in the TRC test. Mr. Chamberlin testified that the SB HVAC program is designed to increase the overall portfolio effectiveness through its outreach to a customer segment that would otherwise have limited ability to participate in the energy efficiency programs and through the development of a trade ally network. (NRDC IB at 3, citing Ameren Ex. 5.0 at 16)

Mr. Woolcutt addressed the issue of whether Ameren conducted a sufficient reevaluation of the SB HVAC after the first year of the program. He testified that the implementer provided recommendations for improvement of the program and Ameren adopted those recommendations. Moreover, the implementer determined that adoption of those recommendations would yield a TRC greater than 1.0. (NRDC IB at 3-4, citing Ameren Ex. 6.0 at 7-8) It appears to NRDC that Ameren acted in good faith when it followed the recommendation of the implementer to adjust the program and allow it to continue.

In Section B of its Argument, NRDC provides a “Statutory Analysis.” In NRDC’s view, the General Assembly’s goal of providing cost effective energy efficiency to all customer classes would be hindered by the adoption of the Staff’s proposal. The portion of the Act that defines the TRC test, 220 ILCS 5/8-104(b), states, in part:

For purposes of this Section, “energy efficiency” means measures that reduce the amount of energy required to achieve a given end use and “cost-effective” means that the measures satisfy the total resource cost test which, for purposes of this Section, means a standard that is met if, for an investment in energy efficiency, the benefit-cost ratio is greater than one. The benefit-cost ratio is the ratio of the net present value of the total benefits of the measures to the net present value of the total costs as calculated over the lifetime of the measures. The total resource cost test compares the sum of avoided natural gas utility costs, representing the benefits that accrue to the system and the participant in the delivery of those efficiency measures, as well as other quantifiable societal benefits, including avoided electric utility costs, to the sum of all incremental costs of end use measures (including both utility and participant contributions),

plus costs to administer, deliver, and evaluate each demand-side measure, to quantify the net savings obtained by substituting demand-side measures for supply resources.

As can be seen, Section 8-104(b) of the Act applies the TRC test to “total” costs and benefits and the “sum” of avoided and incremental costs; it does not apply the test to individual programs. The application of the TRC test to the portfolio rather than individual programs is made explicit in Section 8-104(f)(5) of the Act. It provides in part that each gas utility shall “Demonstrate that its overall portfolio of energy efficiency and demand-response measures, not including programs covered by item (4) of this subsection (f), are cost-effective using the total resource cost test and represent a diverse cross-section of opportunities for customers of all rate classes to participate in the programs.” 220 ILCS 5/8-104 (f)(5). (NRDC IB at 4)

Thus, in NRDC’s view, the Act requires that the “overall portfolio” meet the TRC test and that the overall portfolio provides a diverse cross-section of opportunities and that all rate classes can participate in the programs. According to NRDC, adoption of the Staff’s proposal would violate all three elements of Section 8-104(f)(5): (1) it would improperly apply the TRC test to an individual program, (2) it would reduce the range of programs, and (3) it would deny a class of customers the ability to participate in Ameren’s programs. (NRDC IB at 5)

Section C of NRDC’s Argument is titled “ICC Precedent Analysis.” In NRDC’s view, Staff’s proposal is also inconsistent with this Commission’s recent Orders. In the North Shore/Peoples Gas case in Docket No. 10-0564, Staff made a recommendation similar to the one it is making here. The Staff proposed that the gas utilities only include individual measures that meet the TRC test. Staff argued that adoption of its proposal would lower the risk of the overall portfolio not being cost effective. The Commission explicitly rejected such a recommendation, stating, “The Commission agrees with the Utilities that Section 8-104 does not require each measure to meet the TRC test, but it does require the portfolio (except for the low income portion) to meet the TRC test. The Commission declines to make the finding requested by Staff witness Brightwell.” Docket 10-0564, Order at 92. (NRDC IB at 5)

The Commission has thus determined that it should use a broader standard and apply the TRC test to portfolios and not individual programs in the initial planning docket. There is no reason to unilaterally depart from established precedent and inexplicably reverse that position in a single reconciliation proceeding. In fact, given the retroactive nature of this reconciliation proceeding, there is even less justification for applying the TRC test to individual programs than in a planning docket. (NRDC IB at 6)

The Commission’s finding in the North Shore/Peoples Gas case was consistent with its previous finding in the 2008 Ameren planning docket. In that case, the Commission accepted the recommendation of the Illinois Department of Commerce and Economic Opportunity that cost-effectiveness be calculated at the portfolio level. The Commission provided its reasons for adopting the DCEO position, “Calculation of the

total resource cost test at the portfolio level provides utilities with greater flexibility to ensure that measures with less short-term energy savings value, but greater value over several years, will be included in any overall portfolio of measures and programs. This contention is reasonable and it is hereby approved. However, the utilities and DCEO are not precluded from applying the TRC test at the 'measure' or program level, if they so choose." Docket 07-0539 (Order Feb. 6, 2008) at 21. (NRDC IB at 6)

NRDC agrees with the policy underlying the Commission's Order in Docket 07-0539. Utilities need flexibility to adopt programs with long-term energy savings but uncertain savings in the initial years as well as programs that provide a broad range of opportunities to all customers. The Commission's rationale should be reaffirmed in this proceeding.

NRDC also notes that CUB witness Rebecca Devens provided a policy analysis of the issue of applying the TRC test to individual programs rather than the portfolio of programs. She concluded, "I believe Staff's recommendations would prevent Illinois consumers from accessing the benefits of cost-effective energy efficiency as envisioned by the legislature." (CUB Ex. 1.0 at 15) NRDC concurs with that conclusion. (NRDC IB at 6)

In its reply brief, NRDC argues that the determination of whether utility costs were reasonably and prudently invested in cost-effective efficiency measure should not be based on a simple formula that provides a cost-benefit analysis for each energy efficiency measure for each year of a plan. Yet that is the "single minded approach" taken by the Staff in its brief. (NRDC RB at 2; NRDC RBOE at 4-5)

According to the Staff, the TRC is the sole analysis that needs to be performed. The Staff argues that if the TRC test shows that the benefit-cost ratio of an individual program is below 1.0, then that program is not efficient and expenditures on that program are imprudent. Thus, according to Staff, because there was a projected TRC of the PY2 SB HVAC Program that was below one, "ratepayers were harmed in PY2 due to AIC's decision to continue marketing measures which produced negative net benefits." (NRDC RB at 2-3, citing Staff IB at 6)

According to NRDC, there are three defects with the Staff's analysis. First, the Staff is improperly applying the TRC test to an individual program. While such an analysis is entirely proper when first evaluating whether to implement a program, and a TRC test should be conducted for the entire portfolio of programs in a reconciliation proceeding, there are several reasons why its use by the Staff here is improper. As noted by NRDC in its initial brief, applying the TRC test to individual programs in a reconciliation proceeding is contrary to public policy, contrary to the Public Utilities Act and contrary to the Commission's previous orders. (NRDC RB at 3)

Second, the facts do not support Staff's allegation that Ameren acted improperly by ignoring information that the projected TRC of the PY2 SB HVAC Program was below 1.0. As noted by Ameren, the implementer did not recommend termination of the

program, but rather recommended modifying the program as part of its suggested modifications to other areas of the portfolio. Most importantly, Ameren states, “The implementer projected that, with the modifications set forth in its plan, the SB HVAC Program was expected ‘to yield a TRC’ greater than 1.0.” (Ameren IB at 15)

NRDC believes that utilities should regularly review their programs and make appropriate adjustments during the plan period, and that Ameren appears to have done just that. (NRDC RB at 3)

Third, the Staff’s sole reliance on the TRC test fails to acknowledge the other elements that should be evaluated when designing a portfolio of energy efficiency programs. NRDC listed these elements in its initial brief. Ameren provided a similar list:

There are many factors that could be considered when determining if a program should be modified or continued, including: whether there are resources available or market potential to achieve cost effective savings; whether a program could increase participation by allies and customers in energy efficiency programs; and whether emerging technologies, pilot programs appealing to hard to reach sectors, or programs that represent a diverse cross-section of opportunities for customers of all rate classes that in and of themselves may not be cost effective are at issue. (Ameren Ex. 4.0 at 9; Ameren IB at 16, 22-23)

Finally, NRDC argues, there is an important policy consideration at stake in this proceeding. On page 4 of its reply brief, NRDC concurs in the following analysis contained on page 12 of the CUB/AG initial brief:

Programs intended for hard-to-reach customer segments may, in particular, not pass the TRC, particularly in a program’s early stages. ... Some programs require time to become cost-effective, perhaps through customer education or market changes. In the interim, even less cost-effective programs serve an important function by generating awareness of or interest in other programs. ... If utilities are penalized for offering programs that reach hard-to-reach customer segments or help transform the market, utilities will likely emphasize programs that achieve short-term but guaranteed savings over programs that offer deeper and longer term savings, but which may require more time to develop. That outcome would reduce the economic and societal benefits of investment in innovative, long-lasting energy efficiency measures for ratepayers, who are funding the programs.

E. Commission Analysis and Conclusions

As explained in the Initiating Order, AIC received Commission approval on October 15, 2008, in Docket No. 08-0104, to implement gas energy efficiency (“GEE”) measures for its residential and small business customers. Under Rider GER, “Gas

Energy Efficiency Cost Recovery,” AIC recovers the cost of energy efficiency programs from its residential and small business gas customers through a single usage-based charge. The gas customers to which the rider applies are assessed the same Rider GER rate.

Ameren Illinois began recovering costs related to its Rider GER activities with the January 2009 billing cycle. The initial program “year” was defined as the period from January 2009 through May 2009, with subsequent program years running from June through May, to coincide with the electric energy efficiency program year.

The Initiating Order in the current docket directed AIC to present evidence to show the reconciliation of revenues collected under Rider GER with costs prudently incurred in connection with proper energy efficiency, as defined in the tariffs of the utility, for the reconciliation for the second program year – also known as Plan Year 2 or “PY2” -- which runs from June 2009 through May 2010. At issue is the prudence of AIC’s expenditure of \$119,550 in costs incurred in implementing its Small Business (“SB”) HVAC tune-up program.

Among other things, Staff contends that AIC’s incurrence of these costs was imprudent and that all such costs should be disallowed. Staff states that as early as August of 2009, the GEE plan implementer provided AIC with an analysis showing the PY2 projected costs for the SB HVAC Program were significantly higher than the PY2 projected benefits.

In Staff’s view, given the “dismal” projections for the SB HVAC Program, and the flexibility the Commission granted AIC in Docket No. 08-0104 to modify its programs, there was no “compelling reason” for AIC to continue operating the SB HVAC Program in PY2. (Staff IB at 8-9; RB at 10)

AIC, CUB, the AG and NRDC disagree with Staff. These Parties all contend that the costs were prudently incurred and should not be disallowed.

According to AIC, it would not have been prudent to terminate the program based on a preliminary analysis from the third-party implementer “mere months’ into PY 2, and the implementer did not recommend such action. In AIC’s view, it prudently managed the SB HVAC Program by modifying the Program consistent with the implementer’s recommendations, which included a forecast that the Program would achieve cost-effectiveness over the life of the three-year plan. AIC also claims accepting Staff’s recommendation would create bad policy that would stunt the growth of energy efficiency in Illinois. (AIC IB at 10-11)

CUB and the AG also urge the Commission to reject Staff’s proposed disallowance of the costs of the SB HVAC program. According to CUB and the AG, the SB HVAC program was anticipated to be cost-effective when approved in Docket No. 08-0104, was modified when it was found to be cost-ineffective, targeted a hard-to-reach customer segment, and was designed to help transform the market. They further

argue that Illinois law and Commission decisions affirm that energy efficiency programs are to be assessed for cost-effectiveness at the portfolio level, rather than at the measure or program level. (CUB/AG IB at 12-13)

NRDC also argues that the Staff adjustment should be rejected. NRDC cites testimony that the SB HVAC program was designed to increase the overall portfolio effectiveness through its outreach to a customer segment that would otherwise have limited ability to participate in the energy efficiency programs. NRDC believes adoption of Staff's proposal would violate Section 8-104(f)(5) of the Act in that it would improperly apply the TRC test to an individual program and would deny a class of customers the ability to participate in AIC's programs. (NRDC IB at 3, 5)

The Commission has reviewed the evidence and arguments presented by the Parties. Staff contends that all the costs incurred in implementing the SB HVAC program for PY 2, totaling \$119,550, were imprudent and should be disallowed. On the other hand, the rest of the Parties, AIC, CUB, the AG and NRDC, recommend that all such costs be allowed.

Although Staff's recommendations are well explained and warrant close consideration, the Commission believes that of the two competing proposals in the record, the one advanced by CUB, AG, NRDC and AIC is the more reasonable and should be adopted.

As observed by CUB, AG, NRDC and AIC, the SB HVAC program was part of the three-year gas energy efficiency plan approved in Docket No. 08-0104. While AIC was given the flexibility to modify or terminate programs that were not cost-effective, the Commission agrees with AIC and Intervenors that under the circumstances, it was not unreasonable for AIC -- upon receiving preliminary TRC values projected by the implementer in August of 2009, some two months into PY 2 which began in June, as well as an update from the implementer in October of 2009 -- to continue the SB HVAC program with modifications, rather than terminating it.

As indicated by AIC and Intervenors, the implementer did not recommend elimination of the SB HVAC program. Instead, the implementer recommended modifying the program, including further outreach to program allies, and projected that the program as modified would become cost-effective over the life of the plan. AIC and Intervenors agree that AIC did in fact modify the program in a manner consistent with the programmer's recommendations. Although Staff challenges these assertions and the underlying support for them, the Commission is not inclined to find that all the other Parties have "mischaracterize[d] the evidence" as argued by Staff.

Staff also argues that in the Order in Docket No. 08-0104, "the Commission agreed with Staff's proposal to require AIC to monitor projected benefits and costs of certain specific gas efficiency measures and to only market those specific measures if and when projected benefits exceed projected costs." (Staff IB at 5-6, citing Docket 08-0104 Order at 11) As explained by the other Parties, however, the measures to which

the Commission referred were “gas griddles and spray valve measures.” Unlike the gas griddles and spray valve measures, the SB HVAC tune-up program was not identified in that conclusion as being subject to such measure-specific scrutiny. Although Staff now suggests that in Docket No. 08-0104 AIC never presented the Commission with the cost-effectiveness results of the gas SB HVAC tune-up measures, the Commission does not believe it would be useful at this time to second-guess the Commission’s findings in Docket No. 08-0104 or to speculate on what the Commission might have done differently in Docket No. 08-0104 had the record been different.

Staff also takes issue with the other Parties’ reliance on Commission findings in other dockets that cost-effectiveness should be evaluated at the portfolio level rather than at the measure or program level. One such case cited by AIC and the Intervenors is the North Shore/Peoples Gas Order in Docket No. 10-0564, where the Commission stated, in part, on page 92, “The Commission agrees with the Utilities that Section 8-104 does not require each measure to meet the TRC test, but it does require the portfolio ... to meet the TRC test. The Commission declines to make the finding requested by [the] Staff witness”

Section 8-104(f)(5), cited by CUB, the AG and NRDC, provides that the utility shall “[d]emonstrate that its overall portfolio of energy efficiency measures, not including programs covered by item (4) of this subsection (f), are cost-effective using the total resource cost test and represent a diverse cross section of opportunities for customers of all rate classes to participate in the programs.”

Staff responds, in part, that the detailed criteria and other provisions in Section 8-104 are not applicable here, as the Rider GER portfolio pre-dates Section 8-104 and was not developed under or governed by Section 8-104. (Staff RB at 13-15)

The Commission recognizes that Section 8-104(f)(5) is not dispositive here because Section 8-104 is not directly applicable to AIC’s GEE Plan approved in Docket No. 08-0104. However, the Commission believes the objectives and criteria in the section do provide some guidance, and should not be totally disregarded, in determining whether AIC’s expenditures on the SB HVAC program in PY 2 should be disallowed as imprudent. In this case, AIC and Intervenors contend, and the Commission agrees, that the program at issue was designed and implemented to encourage and develop participation by customers in a hard-to-reach rate class, which is consistent with the policy goals in Section 8-104(f)(5).

In conclusion, the Commission finds, based on the totality of the evidence, that the costs at issue were prudently incurred, and the proposed disallowance should not be adopted.

The Commission further finds that the reconciliation schedule presented in Appendix B to this Order properly reflects the reconciliation of revenues collected under Rider GER with costs prudently incurred in connection with proper energy efficiency

activities as defined in Rider GER for the 12 months ended May 31, 2010. This reconciliation is approved.

V. FINDINGS AND ORDERING PARAGRAPHS

The Commission, having considered the entire record, is of the opinion and finds that:

- (1) the Commission has jurisdiction over the parties and the subject matter of this proceeding;
- (2) the facts recited and conclusions reached in the prefatory portion of this Order are supported by the record and are hereby adopted as findings of this Order;
- (3) subject to those adjustments adopted above, the revenues collected under Riders EDR and GER were properly reconciled with costs prudently incurred for the 12-month reconciliation period ending May 31, 2010 as shown in the Appendices hereto; for Rider EDR, it reflects collections of \$28,351,028 and recoverable costs of \$27,548,057, resulting in an over-recovery of \$802,971, as shown in Appendix A; for Rider GER, revenues collected were \$3,318,507 and recoverable costs were \$3,710,637, resulting in an under-recovery of \$392,130, as shown in Appendix B.

IT IS THEREFORE ORDERED that for the reconciliation period of June 1, 2009 through May 31, 2010, the reconciliations of revenues collected under Riders EDR and GER with costs prudently incurred in connection with proper energy efficiency and demand response activities as defined in the tariffs of Ameren Illinois Company, as summarized in Appendices A and B of this Order, are hereby approved.

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

By order of the Commission this 2nd day of October, 2013.

(SIGNED) DOUGLAS P. SCOTT

Chairman