STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

Ameren Illinois Company d/b/a Ameren Illinois	:	
	:	Docket No. 13-0498
Approval of the Energy Efficiency and Demand-Response Plan pursuant to 220 ILCS 5/8-103 and 220 ILCS 5/8-104.	:	

REPLY BRIEF OF THE STAFF OF THE ILLINOIS COMMERCE COMMISSION

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December 9, 2013

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Staff of the Illinois Commerce Commission ("Staff"), by and through its undersigned counsel, pursuant to Section 200.800 of the Illinois Commerce Commission's ("Commission" or "ICC") Rules of Practice (83 Ill. Adm. Code 200.800), respectfully submits its Reply Brief in the instant proceeding.

I. INTRODUCTION

II. STATUTORY LANGUAGE

III. PROCEDURAL HISTORY

On August 30, 2013, the Ameren Illinois Company ("AIC" or "Ameren" or "Company") filed its Verified Petition for Approval of its Integrated Electric and Natural Gas Energy Efficiency ("EE") Plan ("Plan" or "Plan 3") (Ameren Ex. 6.1; Ameren Ex. 7.2; Ameren Ex. 1.1 (2nd Rev.) and Appendices A through D) as well as testimony pursuant to Sections 8-103, 8-103A, and 8-104 of the Illinois Public Utilities Act ("Act"). The following parties intervened: the Environmental Law and Policy Center ("ELPC"), the Citizens Utility Board ("CUB"), the Natural Resources Defense Council ("NRDC"), the People of the State of Illinois ("AG"), the Illinois Industrial Energy Consumers ("IIEC") and Comverge, Inc. On October 18, 2013, Staff and Intervenors filed Direct Testimony. On October 28, 2013, Staff and Intervenors filed Rebuttal Testimony in response to each others' Direct Testimony. On November 14, 2013, Ameren filed Rebuttal Testimony.

At an evidentiary hearing on November 20, 2013, witnesses testified and were cross examined, and evidence was entered into the record. Pursuant to the schedule entered by the Administrative Law Judge on September 16, 2013 (Tr. 7), Staff and the following parties filed Initial Briefs ("IBs") on December 3, 2013 in the above-captioned matter: AG, AIC, CUB, ELPC, IIEC, and NRDC. Many of the arguments made in the Initial Briefs of the parties have already been fully addressed in Staff's IB. Thus, Staff stands on its positions set forth in its IB and will not repeat them here. In this Reply Brief, Staff responds to certain critical issues raised in the IBs of the AG and AIC. Failure to respond to recommendations made by other parties should not be construed as support for such recommendations.

IV. ELECTRIC AND GAS SAVINGS GOALS AND SPENDING LIMITS

A. PROPOSED MODIFIED GOALS

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B. ELECTRIC AND GAS SPENDING LIMITS

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(i) Proposed Spending Requirements

AIC asserts that "[i]mposing a spending requirement may force the Company to spend resources in a way that does not represent a good use of ratepayer funds." (Ameren IB, 20.) The Commission should dispel any notion that AIC creates with these statements that if the Commission imposes a spending requirement on AIC that the Commission is approving imprudent expenditures or the recovery of imprudent or unreasonable costs. If the Commission imposes a spending requirement on AIC, the Commission should determine that this requirement should be implemented consistent with AIC's responsibility to prudently incur expenses for energy efficiency and demand-response measures and should make clear that Ameren shall only be entitled to recover costs prudently and reasonably incurred.

Section 8-103(a) of the Act states that "[i]t serves the public interest to allow electric utilities to recover costs for <u>reasonably and prudently incurred expenses</u> for energy efficiency and demand-response measures." 220 ILCS 5/8-103(a) (emphasis added). Similarly, one of the minimum requirements for Plan approval involves including a "cost-recovery tariff mechanism to fund the proposed energy efficiency and demand-response measures and to ensure the <u>recovery of the prudently and reasonably incurred costs</u> of Commission-approved programs." 220 ILCS 5/8-103(f)(6) (emphasis added). In AIC's Plan 2 Order in ICC Docket No. 10-0568, the Commission stated:

> In essence, Ameren argues that this proceeding will determine whether it makes prudent decisions and whether the costs it incurs to implement the plan are reasonable. The Commission believes that despite Ameren's assertions to the contrary, it could make imprudent decisions or incur unreasonable levels of costs in implementing the Plan approved in this proceeding. The suggestion that this is not true is misguided.

ICC Order Docket No. 10-0568 at 93 (Dec. 21, 2010) ("Plan 2 Order"). Thus, the Commission has been clear that its determinations in Plan dockets does not excuse AIC from the obligation to make prudent decisions in implementing those determinations.

The Commission should order AIC to: (1) prudently respond to changes (e.g., TRM, NTG, market) during the implementation of its programs; (2) spend all funding to the extent practicable on cost-effective energy efficiency measures in order to exceed the modified savings goals and increase net benefits for ratepayers; (3) avoid over-promoting cost-ineffective measures so as to help ensure participation of these cost-ineffective measures does not exceed participation expectations included in the Plan;

(4) provide cost-effectiveness screening results in its quarterly ICC activity reports[1] for new measures the Company adds to its programs during implementation; and (5) explain how AIC responds to TRM, NTG, and other changes in its quarterly ICC activity reports that AIC shall file via the Commission's e-Docket system in this docket. (Staff IB, 10-11, 82-92.) Consistent with AIC's Plan 1 proceeding, the Commission should also find that AIC "may 'bank' cost overruns." ICC Order Docket No. 07-0539 at 29 (Feb. 6, 2008) ("Plan 1 Order"). Most pointedly, in making these findings, the Commission should determine that in implementing these requirements AIC is responsible for prudently incurring expenses for energy efficiency and demand-response measures and Ameren will only be entitled to recover costs prudently and reasonably incurred.

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A. DESCRIPTION OF AMEREN ILLINOIS' PLAN

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AIC addresses certain key policy issues in Section V.C.1.(b), "Proposed Changes to Ameren Illinois' Proposed Programs: Cost-Ineffective Measures," of its IB. Staff fully addressed these key policy issues related to cost-ineffective measures in Section VI., "Policy Issues," of Staff's IB, and accordingly, responds to those same issues, under Section VI., "Policy Issues," of this RB so as to clearly delineate the key policy issues from the specific program-related cost-ineffective measure proposals concerning furnaces, boilers, and LEDs before the Commission.

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VI. POLICY ISSUES

A. NET TO GROSS RATIO VALUES

1. Spillover and Free Ridership Factors for NTG Values

AIC concludes this section of its Initial Brief by stating that it seems all parties agree that spillover can and should be used. AIC concludes that the Commission should approve AIC's proposal that both spillover (participant and non-participant) and free ridership should be included in NTG values, and that if one is excluded, both should be excluded. (Ameren IB, 80.) Overall, it appears that Ameren's goal is to receive credit from spillover. Ameren seems to agree with an AG proposal that the SAG in conjunction with EM&V evaluators can deem a spillover value even if no evaluation has been performed. (Ameren IB, 79-80.)

Staff is not opposed to the inclusion of spillover. However, Staff is opposed to deeming spillover that is based on subjective opinion rather than evaluation. Staff also opposes excluding free ridership in the event that spillover is not included. This ultimately leads to measuring gross savings which is contrary to Sections 8-103 and 8-104 of the PUA and leads to inflated cost-effectiveness estimates for programs.

Staff continues to recommend that the Commission adopt its proposal to "direct the independent evaluators to make reasonable efforts to calculate both free ridership rates and spillover rates while being mindful of: (1) the costs of such evaluations, (2) the likely magnitudes of spillover and free ridership rates within a program, and (3) the significance of the program to overall savings." (Staff Ex. 2.0, 5:93-97; Staff IB, 47.)

Much of Dr. Brightwell's direct testimony explains why it may be implausible to measure and use spillover. Dr. Brightwell's recommendation indicated that the costs of measuring spillover may be substantial and limit other evaluation activities. AIC's arguments in testimony and its IB are unpersuasive. The idea of having a panel of Stakeholder Advisory Group members selecting spillover values based on limited information is unlikely to provide any less biased estimate of net savings than the approach recommended by Staff.

AIC asserts that its proposal, to exclude both spillover and free ridership, provides a less biased measurement of net savings than the current approach or the approach recommended by Dr. Brightwell. (Ameren IB, 80.) Ameren provides no evidence that this assertion is correct. The approximate bias for a NTG measurement that includes an accurate measurement of free ridership but excludes an estimate of spillover will be equal to the amount of spillover excluded. The approximate bias for a NTG measurement that excludes both free ridership and spillover will be equal to difference between the excluded free ridership and excluded spillover. Whenever spillover is less than half of free ridership, the bias from excluding both free ridership and spillover (the Ameren proposal) exceeds the bias from excluding only spillover (the current approach or the Staff-recommended approach when spillover is either too costly to measure, statistically insignificant, or theoretically unlikely).[2] Ameren has provided no evidence that spillover is likely to equal or exceed one half of free ridership and, therefore, there is no support for its assertion that its proposal provides a less biased measurement of net savings.

[2] For example, if free ridership is 30% and spillover is 10%, the true NTG value is 80%. If spillover is excluded, under the current approach, the estimated NTG value is equal to 70%. The bias is 10 percentage points. Under AIC's proposal, if spillover cannot be measured, the estimated NTG value is 100%. The bias is 20 percentage points. Assuming the 30% rate of free ridership, the bias is only greater under the current approach if spillover is larger than 15%. AIC has provided no evidence that spillover is typically greater than half the rate of free riders.

Additionally, Staff supported AIC's position to adjust savings goals based on changes to NTG ratios. (Staff IB, 88.) If the Commission adopts this proposal, any bias created by excluding spillover has no effect on AIC's ability to meet its goals. Adding a spillover factor to NTG ratio values increases the savings goal by the amount of the spillover addition. Therefore, AIC is neither harmed nor benefitted by the inclusion of spillover. However, ratepayers can be harmed if NTGRs are calculated such that free ridership is excluded any time either participant and/or non-participant spillover is not included.

Under Staff's proposal, the evaluators have an obligation to consider measuring spillover. Reasons not to measure spillover may include that the program in question has a delivery approach that is unlikely to lead to much spillover, evaluations are unlikely to detect statistically significant levels and the costs of attempting to measure spillover would take funds away from evaluating other programs. Staff continues to recommend that the Commission adopt Dr. Brightwell's recommendation to "direct the independent evaluators to make reasonable efforts to calculate both free ridership rates and spillover rates while being mindful of: (1) the costs of such evaluations, (2) the likely magnitudes of spillover and free ridership rates within a program, and (3) the significance of the program to overall savings." (Staff Ex. 2.0, 5:93-97; Staff IB, 47.)

2. Modified NTG Framework Proposals

Under Plan 1, NTG was retrospective and the NTG applied would be that approved by the ICC in the compliance with energy savings goals proceeding. In that proceeding, interested parties intervene and can provide input. Indeed, in ComEd's Plan 1 Order the Commission made it clear that the Evaluator is not the only competent party that could testify in such proceedings. ICC Order Docket No. 07-0540 at 27 (Feb. 6, 2008). In Plan 2, the NTG framework allowed for previous evaluation results to be used, and that parties could submit differing positions to the Commission. Plan 2 Order at 72. Thus, under Plan 2, the Commission would consider interested parties' positions and make a decision concerning application of the NTG framework. Under AIC's Modified NTG Framework in this proceeding, the Evaluator is the decision-maker rather than the Commission, and the Evaluator, as AIC would have it, should not alter its independent NTG recommendation based on input from interested parties. AIC's proposal should be rejected because it effectively eliminates parties' rights to be heard. Under Staff's proposal, any interested party has a say, and only in the case of consensus does the NTG value get deemed. In the case of non-consensus, two evaluated NTGRs are averaged. If the Commission adopts Staff's recommendation to require consistent NTG methods, then the Commission will have an opportunity to explicitly approve the NTG methods, thus in the case of non-consensus, the methods upon which the deemed NTGRs (average of evaluated NTGRs) would be established would be based on such Commission-approved methodology that was previously vetted by all stakeholders instead of some "new" methodology that has no foundation and is subject to significant controversy. (Staff Group Cross Ex. 2, 26-27; Staff Group Cross Ex. 1, 55-56.)

AIC's opposition to Staff's Modified NTG Framework proposal in regard to SAG decision-making authority is peculiar given AIC is requesting the Technical Advisory Committee ("TAC") (a subcommittee of the SAG) have decision-making authority for deeming updates to the IL-TRM despite there being a Commission-approved process in place whereby the Commission formally approves such consensus Updated IL-TRM values. "The TAC is a subcommittee of the SAG whose primary responsibility is to provide a forum to allow all interested parties to recommend TRM Updates and facilitate consensus for TRM Updates among the Evaluators, ICC Staff, Program Administrators, environmental organizations, interested stakeholders (e.g., other SAG participants), and the TRM Administrator prior to the annual TRM Update proceeding." (IL-TRM Policy Document, 6, ICC Docket No. 13-0077.) It appears AIC wants to eliminate the Commission-resolution of non-consensus TRM Updates that is currently in place. (Ameren IB, 81.) Staff finds these proposals troubling. Both of these proposals should be rejected as it will result in static NTG and TRM values, something the Commission explicitly rejected as it results in perverse incentives to AIC in the management of its Plan. Plan 2 Order at 72. In the Plan 2 Order, the Commission found that deeming a specific NTG value for multiple years "can result in perverse incentives that might discourage a utility from making appropriate program changes to ensure against high freeridership, at least in the short term, by guaranteeing savings claims regardless of the program's true effectiveness." Id.

B. ENERGY EFFICIENCY POLICY MANUAL

As described in Staff's IB, Staff opposes the AG's proposal to create an EE Policy Manual "designed to streamline and encourage consistency on various program-related policies." (AG Ex. 1.0, 52 (emphasis added); Staff IB, 74-77.) The Commission should decline to adopt the AG's proposal in this regard for each or all of the following reasons: (1) the phrase "various program-related policies" is sufficiently vague as to have potential for significant contention, (2) Section 8-103(f) requires the EE programs to be tailored to each utility's service territory, (3) each utility's plan filing docket provides sufficient guidance concerning how the utility should implement the EE programs in its service territory, (4) the creation of new program-related policies mid-Plan may serve to complicate and frustrate the utilities' existing EE program offerings to consumers, and (5) limited SAG resources should focus on its existing duties the Commission specified for SAG such as those related to the IL-TRM and NTGRs and reviewing utility quarterly reports and utility program changes. (Staff IB, 74-77.)

In its IB, the AG clarified that the EE Policy Manual that was proposed by Mr. Mosenthal would address "evaluation-related" policies to ensure the EE programs are "evaluated" using a consistent set of "rules in terms of monitoring savings achieved and evaluating programs." (AG IB, 46.) The Commission has previously established that SAG's responsibilities include monitoring savings achieved and evaluations. *See, e.g.,* ICC Order Docket No. 10-0564 at 92 (May 24, 2011). Specifically the AG states:

> The goal of the establishment of a Policy Manual would be to ensure that evaluators and program administrators … for the various utility service territories and customer bases play by the same rules in terms of monitoring savings achieved and evaluating programs. Currently, the utility and DCEO Program Administrators and their individually selected evaluators at times play by different rules, as acknowledged by Ms. Hinman. For these reasons, the People urge the Commission to include within its Order in this docket specific direction for the SAG to complete an Illinois Energy Efficiency Policy Manual to ensure that programs across the state and as delivered by various program administrators can be meaningfully and consistently evaluated.

(AG IB, 46.) With that clarification, Staff supports the AG's proposal as described in its IB. The reasons Staff opposed the creation of a Policy Manual concerning "various program-related policies" are not applicable to the creation of a Policy Manual concerning "various evaluation-related policies." Staff interpreted "various program-related policies" as impacting the utilities' implementation of its EE programs and thus could impact customers. Evaluation-related policies for each program will simply impact the evaluators and will not significantly impact the utilities' administration and operation of the programs in the utilities' service territories. Thus, the establishment of evaluation-related policies will not impact, complicate, or frustrate the utilities' existing EE program offerings to consumers.

Staff noted that SAG should focus on its existing responsibilities the Commission previously directed SAG to undertake. (Staff IB, 76-77.) The AG's recommendation set forth in its IB concerning consistency in evaluation-related policies is consistent with the existing responsibilities the Commission previously directed SAG to undertake. (Staff IB, 79.) In the last Plan filings, the Commission stated that "[t]he SAG's responsibilities should include establishing agreed-upon performance metrics for measuring portfolio and program performance." ICC Order Docket No. 10-0564 at 76 (May 24, 2011). The Commission recommended that "the independent evaluator … work with the … SAG to … ensure transparent and consistent methods for determining electricity and natural gas savings." Id. The Commission emphasized that "[i]t is critical that both gas and electric utilities are required to play by the same rules and assumptions." Id. In AIC's Plan 1 Order, the Commission established the SAG and clearly stated its responsibilities:

> The Stakeholder group's responsibilities include but are not limited to: reviewing final program designs; establishing agreed-upon performance metrics for measuring portfolio and program performance; reviewing Plan progress against metrics and against statutory goals; reviewing program additions or discontinuations; reviewing new proposed programs for the next program cycle; and reviewing program budget shifts between programs where the change is more than 20%.

ICC Order Docket No. 07-0539 at 24 (Feb. 6, 2008) (emphasis added). Nonetheless, it is clear that different NTG approaches continue to be used for common programs offered by different utilities, and thus a Commission directive to AIC to require this task be completed is necessary. (Tr. 49, Nov. 20, 2013.) The Commission should direct AIC to require its Evaluators to collaborate with the other Illinois Evaluators to reach consensus on the best and most defensible approaches to assessing NTG in particular markets for both residential and non-residential EE programs in a manner consistent with the direction provided in Staff's Initial Brief. (Staff IB, 80.)

C. Aligning the Timing Of The Application Of The Net To Gross Framework And Illinois Technical Reference Manual

AIC claims the March 1 deadline agreed to in Docket No. 13-0077 has not been formally adhered to. (Ameren IB, 90.) For the sake of accuracy, the Commission Order in ICC Docket No. 13-0077 was entered until March 27, 2013, which is after March 1, 2013, thus March 1, 2014 will be the first chance for parties to formally adhere to the Commission-adopted deadline.

AIC requests the Commission choose the Evaluators as the decision-maker for the deemed NTG values and the SAG subcommittee, the TAC, as the decision-maker for the deemed TRM values. (Ameren IB, 2.) Staff finds both these proposals to be problematic. Designating the Evaluators as the decision-making authority on NTG values undermines the independence of the Evaluators as it places undue pressure on them. Designating the TAC as the decision-making authority undermines the Commission-adopted process wherein the SAG consensus Updated IL-TRM that gets submitted and approved by the Commission each year will be the official document containing the deemed IL-TRM values. ICC Order on Rehearing Docket No. 13-0077 at 8 (Oct. 2, 2013). Staff believes it is inappropriate for AIC to request the Commission override its recent Order in ICC Docket No. 13-0077, which states that "[i]n the unlikely event that a Consensus TRM is approved by the Commission after June 1, the values therein shall be applied retrospectively to June 1 of the relevant program year given the consensus nature of the document." Id. The Commission should reject AIC's proposals.

D. Portfolio Flexibility and Application of Total Resource Cost Test

The Commission has previously established certain limits on requests for flexibility and should do so in this docket consistent with Staff's recommendations. For example, the Commission ordered the following limitations in the last Plan filings:

> The Commission agrees that allowing the Utilities some flexibility to adjust their portfolios and implementation plans is important. This is especially true for the first program period. The Utilities should follow the criteria established in Docket 10-0570[.] The Utilities should fully discuss with the SAG prior to initiating the change, any shift in the budget that results in a 20% or greater change to any program's budget, or that eliminates or adds a program. Further, [t]he Utilities shall not shift more than 10% of spending between residential and C&I sectors without Commission approval. The Utilities shall not modify their plans such that it no longer meets the statutory requirements for allocations to the low income and state and local government markets.

ICC Order Docket No. 10-0564 at 91-92 (May 24, 2011). AIC addresses certain key policy issues in Section V.C.1.(b), "Proposed Changes to Ameren Illinois' Proposed Programs: Cost-Ineffective Measures," of its IB. Staff fully addressed these key policy issues related to cost-ineffective measures in Section VI., "Policy Issues," of Staff's IB, and accordingly, responds to those same issues in the subsections that follow.

1. TRC Results for New Measures in AIC's Quarterly Reports

The Commission should reject AIC's arguments against providing TRC screening results in AIC's quarterly reports as they mischaracterizes Staff's proposal. Staff does not recommend that AIC "repeatedly" calculate and report TRC values to the Commission throughout the implementation period as AIC alleges. (Ameren IB, 46.) Staff recommended AIC provide the TRC screening results for any new measures AIC decides to add to its Plan during implementation. This straightforward proposal is necessary in order to ensure the Commission is informed of the TRC results for measures that are not forecasted to be implemented during Plan 3. The Commission requires that a utility indicate the forecasted TRC of all measures and programs that are to be implemented under its proposed plan. Logically, it follows that in exercising the flexibility the Commission grants to it, a utility should also apprise the Commission of the TRC values of measures that it implements in the future which are not indicated in this plan filing. If AIC is allowed to implement new measures without providing the Commission this information, the Commission's authority in approving the plan may be undermined. Staff is surprised that AIC's request for flexibility is accompanied by an unwillingness to provide the Commission with transparency and insight into its decision-making process. Staff's recommendation that TRC values should be included for new measures is not any more burdensome upon the Company than the Commission's requirement that the TRC values be provided for review of the Plan filing. In light of the vast flexibility that the Company is requesting the Commission grant it, Staff's recommendation is certainly reasonable, and should be adopted.

2. Limiting Participation of Cost-Ineffective Measures

In its IB, Staff argued that the Commission should in granting AIC's request for flexibility, also direct AIC to avoid over-promoting cost-ineffective measures so as to help ensure participation of cost-ineffective measures does not exceed expectations in AIC's Plan. (Staff IB, 82-87.) AIC should be required to obtain Commission approval before exceeding the participation estimates for cost-ineffective measures. This is consistent with limitations on flexibility in past Commission Orders wherein the Commission required the utility (Integrys) to obtain Commission approval before shifting funds greater than specified percentages. *See, e.g.,* ICC Order Docket No. 10-0564 at 91-92 (May 24, 2011). While the Commission did not impose the exact same restrictions on AIC's flexibility in terms of obtaining Commission approval in previous Plan filings, this Plan 3 filing is different from the previous two Plan filings because AIC is not planning to meet either the gas or electric unmodified energy savings targets. Further, in the past two Plan filings, all measures and programs proposed for inclusion in the Plan were considered cost-effective and screened to satisfy the TRC test. Plan 2 Order at 6. This is the first Plan filing wherein AIC proposes modified savings targets for both the gas and electric portion of its portfolio and it proposes to promote cost-ineffective measures. Thus, the Commission has before it a critical policy decision to make in this docket.

AIC argues that the Commission should reject all proposed limitations on flexibility because no party provided a single instance where AIC improperly used its Commission-granted flexibility. (Ameren IB, 97.) It should be noted that despite excluding cost-ineffective measures from its Plan 1 and 2 filings, AIC did in fact promote measures known to be cost-ineffective after Commission approval of the Plans. ICC

Order Docket No. 11-0341 at 15 (Oct. 2, 2013). AIC did not stop promoting a specific cost-ineffective measure it knew was cost-ineffective during PY2, until the middle of PY5, and despite this promotion from PY2 through PY5, AIC did not provide the cost-effectiveness screening results for this measure in its Plan 2 filing. (Staff Group Cross Ex. 1 (Part 4), 1145.)

AIC argues against Staff's recommendation that the Commission should order AIC to limit participation of cost-ineffective measures to no more than the levels proposed in AIC's Plan because AIC states the recommendation: (1) is unnecessary because all proposed programs have a TRC value greater than 1; (2) discourages AIC from adding new measures to the portfolio that may be cost effective at the planning stage but due to uncertainty may ultimately and unknowingly be cost-ineffective after implementation; (3) is vague and unclear how AIC would accurately limit participation in cost-ineffective measures to a particular level (not practical or possible); (4) increases the costs necessary to implement and administer the portfolio; (5) arbitrarily limits the offering of programs and measures that could benefit customers, particularly dual fuel customers, and curtails otherwise successful cost-effective dual fuel programs that contain cost-ineffective measures so as not to inadvertently exceed the limitation; and (6) past Commission Orders specify the TRC test should not be applied as a litmus test for whether or not programs or measures should be offered to customers. (Ameren IB, 44-45.) Staff addresses each of these statements in turn below.

First, the Commission should reject AIC's position that Staff's recommendation is unnecessary and should be rejected because all proposed programs have a TRC value greater than 1. AIC's position is misleading because it implies the programs will remain cost-effective during implementation; however, there is no guarantee such programs will remain cost-effective during implementation. As noted in Staff's IB, AIC has included some measures that do not pass the TRC test and including such cost-ineffective measures within the programs increases the risk that the program and thus the entire portfolio may become cost-ineffective. (Staff IB, 86.) The adoption of each additional cost-ineffective measure serves to reduce net benefits to ratepayers which makes it more difficult to achieve the policy objectives set forth in the EE statutes to reduce direct and indirect costs to consumers by decreasing environmental impacts and by avoiding or delaying the need for new generation, transmission, and distribution infrastructure. To the extent participation of cost-ineffective measures exceed that in the Plan, the likelihood the programs remain cost-effective decreases and this shifts risk to ratepayers.

Staff is concerned that without a Commission directive to limit cost-ineffective measures, AIC will make no attempt to limit participation of these measures to the values set forth in the Plan. (Staff Ex. 1.3, 12.) Indeed, it is certainly possible for AIC to become heavily reliant on such cost-ineffective measures in order to meet its savings goals in Plan 3, especially if it is easy to get customers to adopt the cost-ineffective measures and the measures have high first year savings which would make it easier for AIC to meet its incremental energy savings goal. For example, the participation estimates assumed in AIC's initial Plan filed for 92%/95% AFUE furnaces was 179 units in PY7. (Ameren Ex. 1.1 Appendix A (Rev.), 24; Ameren Ex. 7.1, 18.) During PY4, AIC provided incentives for 5,786 units of 92%/95% AFUE furnaces. (Staff Group Cross Ex. 1 (Part 4), 2376.) In other words, the forecasted participation of this cost-ineffective measure in PY7 represents only 3% of the actual realized participation for this measure in PY4. In AIC's remodeled Plan, AIC increased the participation estimate to 315 units in PY7. (Ameren Ex. 7.2, 19.) This estimate is still only 5% of past participation. This particular cost-ineffective measure was responsible for approximately 23% of AIC's entire PY4 gas portfolio therm savings achieved as percent of the statutory savings goal. (Staff Group Cross Ex. 1 (Part 4), 2375, 2377.) AIC's reliance on this particular cost-ineffective measure in the past has been critical in AIC meeting its gas savings goals. If the Commission provides no directive to AIC to limit such cost-ineffective measures, then there is nothing preventing AIC from continuing to rely on this cost-ineffective measure going forward to the detriment of ratepayers. Given this measure can substantially reduce net benefits of the portfolio to ratepayers, Staff strongly urges the Commission to adopt its recommendation and direct AIC to limit cost-ineffective measures.

Second, the Commission should reject AIC's position that Staff's recommendation discourages AIC from adding new measures to the portfolio that may be cost effective at the planning stage but due to uncertainty may ultimately and unknowingly be cost-ineffective after implementation. AIC's contentions in this regard are without merit. The Commission has previously approved use of the TRC test at the measure level for planning purposes, without repercussions in the event that TRC measure-level planning assumptions turned out to be inaccurate on an ex post basis. Plan 2 Order at 30. Providing forecasted TRC values for new measures in its quarterly ICC activity reports as recommended by Staff provides transparency to all parties and the Commission and information on whether the measure is cost effective at the planning stage, without repercussions in the event that the Evaluator's ex post TRC analysis shows the measure is cost-ineffective. This should not be construed as saying that AIC is permitted to use unreasonable assumptions in its planning TRC analysis. Indeed, in past Orders, the Commission stated: "The Commission finds that the decision to include wall insulation in the portfolio was unreasonable when made and that it meaningfully reduced the anticipated value of the portfolio to customers. The erroneous wall insulation TRC ratio of 2.5 was derived from flawed and contradictory assumptions, and the Board's implementation actions suggest that those assumptions lacked credibility even to the Board." ICC Order Docket Nos. 09-0436/09-0437 (Cons.) at 18 (March 15, 2011). Thus, AIC's concerns in this regard are without merit.

Third, the Commission should reject AIC's assertion that Staff's recommendation is vague and unclear as to how AIC would accurately limit participation in cost-ineffective measures to a particular level. Staff's position is not vague, and indeed Staff provided significant detail to AIC in response to data requests. (Staff Group Cross Ex. 2, 2-4.) There are a variety of ways in which AIC can influence the level of adoption of certain measures. With respect to limiting to a particular level, AIC generally prefers to alter measure offerings on a program year basis. (Ameren IB, 89.) To the extent one of the cost-ineffective measures exceeds Plan 3 expectations in the first program year, AIC could discontinue offering the measure in the second program year. The Company could adjust incentive levels and marketing of cost-ineffective measures in order to affect their adoption. AIC could also include in their marketing that the measure is limited to the first 200 or X number of customers, so customers' expectations are appropriately set at the outset. These ways are simply part of AIC's ongoing planning, management, and marketing practices which exist as part of AIC's existing processes as described in AIC's Plan. (Ameren IB, 89; Ameren Ex. 6.1, 53.) Indeed, in requesting flexibility, AIC explicitly contemplates influencing the volume of participation of certain measures offered in its portfolio in response to changes: "When equipment standards change, this causes the amount of savings for that measure to change, resulting in necessary changes to the incentives being provided for that measure. This also results in the need to change the volume in which that measure is being offered by the portfolio." (Ameren Ex. 6.1, 53.) The Commission should reject the notion that AIC cannot influence participation levels and adopt Staff's recommendation.

Fourth, the Commission should reject AIC's contention that Staff's recommendation increases the costs necessary to implement and administer the portfolio. As noted above, there are simple ways in which AIC could limit excess adoption of cost-ineffective measures. None of these increases the costs to implement and administer the portfolio. Such alternatives are consistent with standard planning, management, and marketing practices described in AIC's Plan. (Ameren Ex. 6.1, 53.)

Fifth, the Commission should reject AIC's argument that Staff's recommendation arbitrarily limits the offering of programs and measures that could benefit customers, particularly dual fuel customers, and curtails otherwise successful cost-effective dual fuel programs that contain cost-ineffective measures so as not to inadvertently exceed the limitation. It is not Staff's intent for this limitation to curtail the implementation of cost-effective measures. While Staff is not convinced this limitation will limit implementation of cost-effective measures, in order to alleviate AIC's concerns, if the Commission adopts Staff's recommendation, which it should, then the Commission should clarify that cost-ineffective measures that are a necessary component for implementing cost-effective measures (e.g., comprehensive whole home dual fuel programs) are excluded from such limitation.

Finally, the Commission should reject AIC's assertion that Commission Orders oppose using the TRC test value as a litmus test. (Ameren IB, 44.) To be clear, Staff is not advocating for such litmus test treatment as alleged by AIC. Indeed, Staff agrees with the reasons AG witness Mosenthal describes for why including certain cost-ineffective measures may be appropriate. (AG Ex. 1.0, 48-49.) These reasons do not include an unlimited promotion of such measures. These reasons include, but are not limited to:

> • pursuing market transformation for measures that are expected to benefit from early promotion, which will drive down prices and set the stage for more long term cost-effective savings;
>
> • preserving continuity in programs and relationships with vendors for measures that have been promoted and now may be marginally non-cost-effective, but likely to become cost-effective again in the near future, or where these vendor relationships are important to capture other cost-effective opportunities;
>
> • to support comprehensive treatment of customer facilities at the time of an efficiency retrofit when a particular measure is part of an overall bundle of measures that is cost-effective and logical to install together. A few examples include lighting fixtures in a few rooms with low hours of use when doing a comprehensive lighting retrofit; rebating all sizes and types of an efficiency measure even when a minority of these sizes or types may fail screening; installing better ventilation systems when sealing a home even if there was no ventilation before and actual usage will increase because it is important for health and safety reasons; etc.

(AG IB, 29.) The AG notes that certain limitations on implementing cost-ineffective measures are appropriate, and states that "if evidence exists that inclusion of the measure in a portfolio is both non-cost-effective and unlikely to serve some higher goal of establishing longer term, robust efficiency goals[,]" such measure should be excluded. (AG IB, 30.)

While AIC states that past Commission Orders direct evaluating the TRC test at the portfolio level, it is important to note that the Commission has also seen the merit in evaluating the TRC test at other levels, and in fact the Commission never prohibited evaluating the TRC test at the measure or program level and explicitly found that "the utilities and DCEO are <u>not precluded</u> from applying the TRC test at the 'measure' or program level[.]" Plan 1 Order at 21 (emphasis added). Indeed, in relatively recent Commission Orders, the Commission directed that a utility in its plan filing "must demonstrate at least a reasonable probability that [a program] will be cost-effective in the future and any proposal will be scrutinized carefully by the Commission." ICC Order Docket No. 12-0132 at 12 (Oct. 17, 2012). The Commission did not approve ratepayer funding for the CUB Energy Saver Program through the IPA's procurement because the proposed EE program was projected to be cost-ineffective. ICC Order Docket No. 12-0544 at 270-271 (Dec. 19, 2012). The Commission previously directed that AIC not implement certain measures projected to be cost-ineffective in the Plan filing and 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, when they are cost-effective. ICC Docket No. 08-0104 Order at 11 (Oct. 15, 2008).

In ICC Docket No. 10-0564, the Commission recognized that Section 8-104 does not require each measure to be cost-effective, rather it requires the entire portfolio to be cost-effective, excluding low income programs, in order to be approved by the

Commission: “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.” ICC Order Docket No. 10-0564 at 92 (May 24, 2011). Staff is not questioning the Commission’s finding in this regard and agrees that Section 8-104(f)(5) of the Act clearly specifies the “portfolio” must be cost-effective in order for the Commission to approve the Plan. 220 ILCS 5/8-104(f)(5). That being said, this minimum requirement for Plan approval does not prohibit the Commission from imposing more stringent requirements if they serve the public interest. Indeed, in ICC Docket No. 12-0132, the Commission, despite Section 8-408 of the Act specifying a minimum requirement of approval is for each “program” to be cost-effective, nevertheless imposed a more stringent requirement that the utility in future Plan filings “should only include measures shown to be cost-effective for Illinois ratepayers … unless extenuating circumstances are shown that would argue for inclusion of such measures or programs.” ICC Order Docket No. 12-0132 at 17-18 (Oct. 17, 2012).

The Commission should reject the argument that evaluating cost-effectiveness at the measure level is too restrictive because the current modeling of the TRC test excludes important benefits in the analysis and if such benefits were included then certain measures currently forecasted as cost-ineffective would likely be cost-effective if remodeled with additional benefits. This argument is not applicable in this case because AIC explicitly added significant benefit adders to its avoided costs in the modeling of cost-effectiveness in this Plan, which makes it far easier for measures to pass the TRC test and screen as cost-effective. AIC states:

> A Non Energy Benefits (NEBs) adder of 10% for electric avoided costs and 7.5% for natural gas avoided costs was applied. NEBs represent societal

> benefits outside of avoided energy savings. The basis of the adder is the testimony (found in MEC Ex. 2.0) and Final Order in ICC Docket No. 12-0132.

(Staff Ex. 1.3, 15.) AIC states the basis of adding such excess benefits is that it is consistent with the Commission's Order in ICC Docket No. 12-0132. In that Order, the Commission concluded that future Plan filings "should only include measures shown to be cost-effective for Illinois ratepayers … unless extenuating circumstances are shown that would argue for inclusion of such measures or programs." ICC Order Docket No. 12-0132 at 17-18 (Oct. 17, 2012). AIC has not satisfied this requirement and explained the extenuating circumstances that would justify exceeding the participation estimates for the cost-ineffective measures included in its Plan. AIC should be required to obtain Commission approval before exceeding the participation estimates for cost-ineffective measures. This is consistent with limitations on flexibility in past Commission Orders wherein the Commission required the utility to obtain Commission approval before shifting funds greater than specified percentages. ICC Order Docket No. 10-0564 at 91-92 (May 24, 2011). If the measures are unable to pass cost-effectiveness screening even with such significant benefit adders as AIC included, then Staff believes the measures should not be offered, or should be offered subject to certain limitations. AIC has not met its burden of proof for why the cost-ineffective measures included in the Plan should be allowed to exceed the forecasted participation.

3. Increasing Net Benefits for Ratepayers

Staff recommended that AIC be granted flexibility to increase net benefits for ratepayers. AIC opposes Staff's proposal. (Ameren IB, 100-101.) Despite Staff's clarifications to AIC concerning its recommendation, AIC nevertheless ignores these responses and completely mischaracterizes Staff's recommendation. (Staff Group Cross Ex. 2, 19-22; Ameren IB, 100-101.) To be clear, Staff's recommendation in this regard does not restrict modifications to those measures that have the highest TRC ratio. Staff's recommendation provides AIC with the overarching policy goal to increase net benefits for ratepayers that AIC should keep in mind when it makes changes to its portfolio.

E. Aligning Savings Goals According to Changes in Values

F. Banking of Savings

G. CFL Carry-forward Savings

AIC claims the final NTG values for PY5-PY6 will not be known until after the Commission issues its Final Order in the compliance with energy savings goals dockets. (Ameren IB, 110.) Staff believes it would be appropriate for the Commission to direct AIC to use the PY5 evaluated NTGR estimated through the in-store customer intercepts of 0.44. (Ameren Ex. 7.2, 3.)

H. Contracting with Independent Evaluators and Evaluation Cycle

Since AIC's request to have the Commission grant AIC's Evaluators decision-making authority to deem specific NTGR values for AIC, establishing and maintaining provisions to ensure the Evaluators remain independent from AIC has never been more important than in this docket. (Ameren IB, 2, 81.)

AIC requests the option to renew its contract with its current evaluator instead of rebidding the contract. (Ameren IB, 112.) If the Commission adopts Staff's recommendation to require the Evaluators to use consistent NTG methods that will ultimately be adopted by the Commission as an attachment to the updated IL-TRM then Staff has no objection to AIC's request to renew the contract. (Staff IB, 98-99.)

The Commission should reject AIC's request to eliminate Staff from reviewing and agreeing to the final evaluation work plans as the pretenses upon which this request is made are false. (Ameren IB, 113.) AIC claims that by deleting agreement from Staff, the Evaluator would have "sole discretion" to develop the evaluation plans for AIC's portfolio. Id. This statement is misleading because it suggests, quite wrongly, that AIC also has no role in final evaluation work plan approval. AIC holds the contract with the Evaluator, therefore, AIC must "sign off" on such evaluation work plans, evaluation reports, and other deliverables per the contract. By excluding Staff from the final evaluation work plan review, the Evaluator is thus entirely beholden to AIC, which is contrary to the independence requirements of Sections 8-103(f)(7) and 8-104(f)(8) of the Act. The Commission should reject AIC's request to eliminate Staff and instead confirm the finding from the Plan 2 Order whereby the final evaluation plans shall be developed at the discretion of the independent evaluator with agreement from Staff. See Staff's Initial Brief for other reasons AIC's request in this regard should be denied. (Staff IB, 98.)

AIC makes a new request in its Initial Brief concerning the Evaluator, it requests the Commission let the Evaluator decide whether or not it will share the data used in the evaluations with the Commission. (Ameren IB, 113.) Staff finds AIC's recommendation to be a particularly questionable one. Confidential information will be kept confidential as required by law. Staff does not believe a customer's identifying information is necessary to produce to comply with this requirement. Thus, AIC's concerns are overstated.

AIC requests the Evaluator file in this docket an annual report to apprise the Commission of the Evaluator's ability to conduct itself independently. (Ameren IB, 114.) Staff has no objection to the filing of such report but is not confident such a report will convey much useful information to the Commission if the Evaluator's independence is called into question in the future as AIC anticipates it could. The Commission should make clear that such report should also discuss direction AIC has provided to the Evaluator, and not solely stakeholders and Staff, especially considering AIC, who holds the contract with the Evaluator, provides the most direction to the Evaluator in actuality. Staff believes the third party auditor/evaluator of AIC's Evaluator should file its report in this docket too.

I. Recommendation for Potential Study

VII. MISCELLANEOUS

A. Inclusion of TRM Codes

B. Other

VIII. CONCLUSION

For the reasons set forth above Staff respectfully requests that the Commission's Final Order in the instant proceeding reflect Staff's recommendations consistent with its Briefs.

Respectfully submitted,

_/s/_________________________

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December 9, 2013

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