STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

Illinois Department of Commerce and Economic Opportunity **Approval of its Energy Efficiency Portfolio and Plan Pursuant to Sections 8-103(e) and (f) and 8-104(e) and (f) of the Public Utilities Act.**	: : : : : : : :	**Docket No. 13-0499**

REPLY BRIEF OF THE STAFF

OF THE ILLINOIS COMMERCE COMMISSION

JESSICA L. CARDONI
MATTHEW L. HARVEY
KELLY A. TURNER
Office of General Counsel
Illinois Commerce Commission
160 North LaSalle Street, Suite C-800
Chicago, IL 60601
Phone: (312) 793-2877
Fax: (312) 793-1556
jcardoni@icc.illinois.gov
mharvey@icc.illinois.gov
kturner@icc.illinois.gov

Counsel for the Staff of the
Illinois Commerce Commission

December 10, 2013

Table of Contents

Page

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

Illinois Department of Commerce and Economic Opportunity	:	
Approval of its Energy Efficiency Portfolio and Plan Pursuant to Sections 8-103(e) and (f) and 8-104(e) and (f) of the Public Utilities Act.	:	**Docket No. 13-0499**

REPLY BRIEF OF THE STAFF
OF THE ILLINOIS COMMERCE COMMISSION

Staff of the Illinois Commerce Commission ("Staff"), by and through its counsel, pursuant to the direction of the Administrative Law Judges ("ALJs") and Section 200.800 of the Illinois Administrative Code (83 Ill. Adm. Code 200.800), respectfully submits its Reply Brief ("RB") in the above-captioned matter.

I. INTRODUCTION

On August 30, 2013, the Department of Commerce and Economic Opportunity ("DCEO" or "Department") filed its Petition for approval of its energy efficiency ("EE") portfolio and three year plan pursuant to Sections 8-103(e) and (f) and 8-104(e) and (f) of the Public Utilities Act ("Act") in addition to its supporting testimony. Thereafter, the People of the State of Illinois ("AG") and City of Chicago ("City") filed appearances. The Natural Resources Defense Council ("NRDC"), Citizens Utility Board ("CUB"), Environmental Law & Policy Center ("ELPC"), Coalition to Request Equitable Allocation of Costs Together ("REACT"), and Midwest Cogeneration Association ("MCA") filed petitions for leave to intervene, all of which were granted.

On October 2, 2013, an initial status hearing was held in this matter. The parties agreed to a schedule setting forth dates for prefiled testimony, hearings, and briefs. The parties agreed to waive Reply Briefs on Exceptions (Tr., October 2, 2013; Notice of Schedule, September 16, 2013.)

The following Staff witnesses submitted testimony in this case: Jennifer L. Hinman (Staff Exs. 1.0 and 3.0) and Dr. David Brightwell (Staff Exs. 2.0 and 4.0). In addition to DCEO and Staff, testimony was filed by: AG, NRDC, ELPC, REACT, CUB, and MCA.

Evidentiary hearings were held in this matter in Chicago, Illinois on November 22, 2013. On December 3, 2013, the record was marked "heard and taken." On December 5, 2013, initial briefs were filed by Staff, DCEO, NRDC, AG, ELPC, CUB, and REACT. Pursuant to the direction of the Administrative Law Judge, Staff's reply brief follows.

Some of the issues raised in the parties' IBs were addressed in Staff's IB and, in the interest of avoiding unnecessary duplication, Staff has not repeated every argument or response previously made in Staff's IB. Thus, the omission of a response to an argument that Staff previously addressed simply means that Staff stands on the position taken in Staff's IB.

II. THE AG'S PROPOSAL FOR CREATION OF AN ILLINOIS POLICY MANUAL SHOULD BE ADOPTED

As described in Staff's IB and testimony, Staff originally opposed 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, 38 (emphasis added); Staff IB, 21.) In its IB, however, 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 guidelines in terms of monitoring savings achieved and evaluating programs. (AG IB, 51.) As the AG noted in its brief, Staff witness Jennifer Hinman shares its concern that, at times, utility and DCEO program administrators and evaluators play by different rules. Id. The AG's IB clarified that the purpose of the Policy Manual would be "to ensure that evaluators and program administrators for the various utility service territories and customer bases play by the same set of rules in terms of monitoring savings achieved and evaluating programs." Id. With the clarification that the Policy Manual will address evaluation related policies, Staff now supports the AG's proposal.

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's previous objection to the creation of a Policy Manual was also based upon Staff's belief that SAG should focus on its existing responsibilities the Commission previously directed SAG to undertake. (Staff Ex. 3.0, 5.) 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). The AG's proposal for the creation of a Policy Manual designed to streamline evaluation-related policies is consistent with SAG's existing Commission-approved responsibilities. In the last Plan filings, the Commission stated that the SAG's responsibilities "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. Despite this clear direction from the Commission, different approaches continue to be used for common programs offered by different utilities and the DCEO. Accordingly, the AG proposal is in line with the directives already issued to the utilities and SAG. Due to circumstances beyond the control of SAG and through no fault of any particular party, these directives have not been achieved. In order for that to happen, the Commission should utilize its authority to direct the various program administrators and evaluators to complete this task. The Commission should adopt the AG's proposal for an Illinois Policy Manual and direct DCEO 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.

III. THE ADJUSTED GROSS SAVINGS APPROACH ADVOCATED BY CUB SHOULD NOT BE ADOPTED

In CUB's Initial Brief, it argues that using a Net-to-Gross ratio value for public sector programs is inappropriate because an entity's decision to invest in an energy efficiency upgrade is, in CUB's view, inextricably linked to the existence of a DCEO incentive. (CUB IB, 5.) CUB argues that the EEPS programs have generated great awareness in their six year existence and, as a result, a public entity may have become aware of the programs in a past year but for various reasons, decide not to invest until a future year. (CUB Initial Brief, 4-5.)

CUB is apparently under the impression that such an investment would be considered free ridership and DCEO would not receive credit for the energy savings under such a scenario. As a result, CUB does not believe NTG values should be applied to Public Sector programs. Id. at 5. Staff disagrees with CUB's conclusion regarding whether the entity in this situation is an example of a free rider.

As Staff witness David Brightwell testified, evaluators need to consider what the motivation is for a customer to participate in the program to determine whether the customer constitutes a free rider. (Staff Ex. 2.0, 5.) Program awareness alone does not constitute free ridership, as all participants in the program are necessarily aware of its existence. (Staff Ex. 4.0, 3-4.) A free rider is a customer who (1) was aware of the program, (2) received money from the program for projects completed, and 3) would have completed those projects without receiving the money. (Staff Ex. 2.0, 4-5.)

The evaluators attempt to determine free ridership by asking a series of questions to gauge whether or not a customer meets the three criteria provided above. Staff Ex 3.3 provides a copy of a questionnaire used by evaluators. There are questions about rate of return or payback periods an organization requires to make EE investments, about whether the organization made past EE investments without EE program funds and the reasons for using the EE program funds. The answers to these and the remaining questions are used to estimate the level of free ridership. The evaluation goes well beyond determining whether an organization was aware of the program. Accordingly, CUB's concern regarding calculations of public sector programs under a NTG approach is without merit. The Commission should reject CUB's recommendation to utilize an adjusted gross savings approach for the public sector.

IV. CONCLUSION

WHEREFORE, for all of the foregoing reasons and those enumerated in its initial brief, Staff respectfully requests that the Commission's order in this proceeding reflect all of Staff's recommendations regarding the Department's Energy Efficiency Plan and Portfolio submitted pursuant to Sections 8-103 and 8-104 of the Public Utilities Act.

Respectfully submitted,

__/s/______________________

JESSICA L. CARDONI
MATTHEW L. HARVEY
KELLY A. TURNER
Office of General Counsel
Illinois Commerce Commission
160 North LaSalle Street, Suite C-800
Chicago, IL 60601
Phone: (312) 793-2877
Fax: (312) 793-1556
jcardoni@icc.illinois.gov
mharvey@icc.illinois.gov
kturner@icc.illinois.gov

Counsel for the Staff of the
Illinois Commerce Commission

December 10, 2013