STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

COMMONWEALTH EDISON COMPANY,	)))	
Approval of the Energy Efficiency and Demand Response Plan Pursuant to Section 8-103(f) of the Public Utilities Act.	)))	**Docket No. 13-0495**

DRAFT PROPOSED ORDER
SUBMITTED BY COMMONWEALTH EDISON COMPANY

Dated: December 19, 2013

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ORDER

By the Commission:

I. THE PROCEDURAL HISTORY OF THIS DOCKET

On August 30, 2013, Commonwealth Edison Company ("ComEd") filed a petition with the Illinois Commerce Commission ("Commission") pursuant to Section 8-103 of the Public Utilities Act ("Act"), 220 ILCS 5/8-103, requesting that the Commission issue an order on or before February 1, 2014 approving its 2014 – 2016 Energy Efficiency and Demand Response Plan (the "Plan" or "Plan 3"). A copy of the Plan, its appendices and supporting direct testimony, were included with ComEd's Petition for Approval of its Energy Efficiency and Demand Response Plan.

In response to ComEd's and DCEO's filings, each of the following parties contended that they had an interest in the outcome of the proceeding and filed a petition to intervene or entered an appearance in this docket: the People of the State of Illinois ("AG"), the Citizens Utility Board ("CUB"), the City of Chicago ("City"), the Environmental Law & Policy Center ("ELPC"), the Midwest Cogeneration Association ("MCA"), the Illinois Industrial Energy Consumers ("IIEC"), the Natural Resources Defense Council ("NRDC"), and the Coalition to Request Equitable Allocation of Costs Together ("REACT").

Staff, AG, REACT, NRDC, IIEC, ELPC, MCA, the Chicago Infrastructure Trust ("CIT"), and CUB and City (jointly "CUB/City") filed Direct Testimony. The following parties filed Rebuttal Testimony on November 12, 2013: Staff, AG, CUB/City, REACT, NRDC, and IIEC. ComEd filed Rebuttal Testimony on November 26, 2013. Pursuant to notice duly given in accordance with the law and the rules and regulations of the Commission, an evidentiary hearing was held before a duly authorized Administrative Law Judge ("ALJ") of the Commission, at its offices in Chicago, Illinois, on December 4, 2013. The ALJ marked the record "Heard and Taken" on December 11, 2013.

The parties filed simultaneous initial briefs on December 13, 2013. The parties also filed simultaneous reply briefs on December 18, 2013, and the parties filed draft

Proposed Orders on December 19, 2013. The statutorily-imposed mandate for commencing this docket was September 1, 2013. The statutorily-imposed deadline for a final Commission order in this docket is February 1, 2014. We note that the issues in this docket involve the statutorily-mandated imposition of energy efficiency and demand response standards, which are intended to reduce energy consumption, thereby reducing energy costs, pollution from emissions and the need for new generation, transmission and distribution infrastructure. 220 ILCS 5/8-103(a).

II. THE STATUTORY FRAMEWORK

A. Policy Rationales Underlying Section 8-103

Section 8-103 of the Act requires that Illinois electric utilities subject to the Act implement energy efficiency and demand response programs to meet aggressive energy reduction goals. Section 8-103(a) sets forth the policy objectives underlying the statutory framework for energy efficiency and demand response initiatives in Illinois, while recognizing the many direct and indirect benefits that inure to customers and the State as a result of such initiatives. The statute states that:

> It is the policy of the State that electric utilities are required to use cost-effective energy efficiency and demand-response measures to reduce delivery load. Requiring investment in cost-effective energy efficiency and demand-response measures will 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.

220 ILCS 5/8-103(a). It also ensures that the utilities will receive total and complete cost recovery for such measures, because "[i]t serves the public interest to allow electric utilities to recover costs for reasonably and prudently incurred expenses for energy efficiency and demand-response measures." *Id*.

B. Energy Efficiency and Demand Response Savings Goals

Subsections (b) and (c) of Section 8-103 set forth two separate energy savings goals. The first pertains to energy efficiency, which "means measures that reduce the amount of electricity … required to achieve a given end use." 20 ILCS 3855/1-10. It requires that in this third three-year Plan, "[e]lectric utilities shall implement cost-effective energy efficiency measures to meet the following incremental annual energy savings goals: … (7) 1.8% of energy delivered in the year commencing June 1, 2014; and (8) 2% of energy delivered in the year commencing June 1, 2015 and each year thereafter." 220 ILCS 5/8-103(b).

While each Plan year is associated with a separate, incremental energy savings goal that ultimately must be achieved, the General Assembly recently amended Section 8-103 of the Act to expand the timeframe for determining compliance with each individual Plan year's goal. *See* Public Act ("PA") 98-0090. Specifically, subsection (b) of Section 8-103 now provides that “[e]lectric utilities may comply with this subsection (b) by meeting the annual incremental savings goal in the applicable year or by showing that the total cumulative annual savings within a 3-year planning period associated with measures implemented after May 31, 2014 was equal to the sum of each annual incremental savings requirement from May 31, 2014 through the end of the applicable year.” 220 ILCS 5/8-103(b).

The second energy savings goal concerns demand-response, which “means measures that decrease peak electricity demand or shift demand from peak to off-peak periods.” 20 ILCS 3855/1-10. It provides that “[e]lectric utilities shall implement cost-effective demand-response measures to reduce peak demand by 0.1% over the prior year for eligible retail customers … .” 220 ILCS 5/8-103(c).

“[C]ost-effective,” as used in Section 8-103(b) and (c), “means that the measures satisfy the total resource cost [(“TRC”)] test.” 220 ILCS 5/8-103(a). The Illinois version of the TRC test is defined as follows:

> "Total resource cost test" or "TRC test" means a standard that is met if, for an investment in energy efficiency or demand-response measures, 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 program to the net present value of the total costs as calculated over the lifetime of the measures. A total resource cost test compares the sum of avoided electric 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 natural gas utility costs, to the sum of all incremental costs of end-use measures that are implemented due to the program (including both utility and participant contributions), plus costs to administer, deliver, and evaluate each demand-side program, to quantify the net savings obtained by substituting the demand-side program for supply resources. In calculating avoided costs of power and energy that an electric utility would otherwise have had to acquire, reasonable estimates shall be included of financial costs likely to be imposed by future regulations and legislation on emissions of greenhouse gases.

20 ILCS 3855/1-10.

C. Statutory Spending Screens

A utility’s obligations under subsections (b) and (c) of Section 8-103 are modified by subsections (d) and (e), however. In particular, Section 8-103(d) puts in place “spending screens” to limit the Plan’s effects on rates:

> (5) ... thereafter, the amount of energy efficiency and demand-response measures implemented for any single year shall be reduced by an amount necessary to limit the estimated average net increase due to the cost of

> these measures included in the amounts paid by eligible retail customers in connection with electric service to no more than the greater of 2.015% of the amount paid per kilowatthour by those customers during the year ending May 31, 2007 or the incremental amount per kilowatthour paid for these measures in 2011.

220 ILCS 5/8-103(d)(5). With respect to the computation of the total amount paid for electric service per kilowatt-hour ("kWh"), Section 8-103(a) provides, in relevant part:

> For purposes of this Section, the total amount paid for electric service includes without limitation estimated amounts paid for supply, transmission, distribution, surcharges, and add-on taxes.

220 ILCS 5/8-103(a).

Anticipating the conflict between the increasing energy savings goals and flat budgets that would occur during ComEd's 2011 – 2013 Energy Efficiency and Demand Response Plan ("Plan 2"), the legislature directed that the Commission "review the limitation on the amount of energy efficiency and demand-response measures implemented pursuant to this Section and report to the General Assembly its findings as to whether that limitation unduly constrains the procurement of energy efficiency and demand-response measures." 220 ILCS 5/8-103(d). This June 30, 2011 report, which included a discussion of the Plan 2 modified goals approved by the Commission just six months earlier, has not resulted in any expansion of the statutory spending screens to date. *See* Illinois Commerce Comm'n, *Report to the General Assembly Concerning Spending Limits on Energy Efficiency and Demand-Response Measures* (June 30, 2011), http://www.icc.illinois.gov/reports/report.aspx?rt=32 ("June 30, 2011 Report to the General Assembly").

D. Coordination with State Agencies

Section 8-103(e) requires that the utility and the Department of Commerce and Economic Opportunity ("DCEO") share the duties of implementing the energy efficiency measures. Specifically, the statute provides that "[e]lectric utilities shall implement 75% of the energy efficiency measures approved by the Commission. … The remaining 25% of those energy efficiency measures approved by the Commission shall be implemented by [DCEO], and must be designed in conjunction with the utility and the filing process." 220 ILCS 5/8-103(e). Section 8-103(e) also requires that "[a] minimum of 10% of the entire portfolio of cost-effective energy efficiency measures shall be procured from units of local government, municipal corporations, school districts, and community college districts," and that DCEO "coordinate the implementation of these measures." *Id.* "The portfolio of measures, administered by both the utilities and [DCEO], shall, in combination, be designed to achieve the annual savings targets" in the statute. *Id.*

E. Cost Recovery

Consistent with the policy objectives set forth in Section 8-103(a), Section 8-103(e) provides for the recovery of the costs of the energy efficiency and demand response programs "through an automatic adjustment clause tariff filed with and approved by the Commission," and Section 8-103(f) requires the filing of such tariff. 220 ILCS 5/8-103(e) and (f). ComEd proposed Rider EDA in the first Plan docket, where it was approved and remains in effect. The statute further provides for an annual Commission "review to reconcile any amounts collected with the actual costs and to determine the required adjustment to the annual tariff factor to match annual expenditures." 220 ILCS 5/8-103(e).

F. The Filing Requirements for Commission Approval of the Plan

Section 8-103(f) sets forth the elements that an electric utility must include in its Plan filed with the Commission on or before September 1, which in turn must show how the utility will meet the energy efficiency and demand response goals for Plan Years 2017 through 2019. Each utility must set forth in its plan its "proposals to meet [its] portion of the energy efficiency standards identified in subsection (b) and the demand-response standards identified in subsection (c) of this Section as modified by subsections (d) and (e)," and, in particular, make the following showing:

> (1) Demonstrate that its proposed energy efficiency and demand-response measures will achieve the requirements that are identified in subsections (b) and (c) of this Section, as modified by subsections (d) and (e).
>
> (2) Present specific proposals to implement new building and appliance standards that have been placed into effect.
>
> (3) Present estimates of the total amount paid for electric service expressed on a per kilowatthour basis associated with the proposed portfolio of measures designed to meet the requirements that are identified in subsections (b) and (c) of this Section, as modified by subsections (d) and (e).
>
> (4) Coordinate with the Department to present a portfolio of energy efficiency measures proportionate to the share of total annual utility revenues in Illinois from households at or below 150% of the poverty level. The energy efficiency programs shall be targeted to households with incomes at or below 80% of area median income.
>
> (5) 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.
>
> (6) Include a proposed cost-recovery tariff mechanism to fund the proposed energy efficiency and demand-response measures and to

> ensure the recovery of the prudently and reasonably incurred costs of Commission-approved programs.
>
> (7) Provide for an annual independent evaluation of the performance of the cost-effectiveness of the utility's portfolio of measures and [DCEO's] portfolio of measures, as well as a full review of the 3-year results of the broader net program impacts and, to the extent practical, for adjustment of the measures on a going-forward basis as a result of the evaluations. The resources dedicated to evaluation shall not exceed 3% of the portfolio resources in any given year.

220 ILCS 5/8-103(f). Following the utility's submission of its Plan, "[t]he Commission shall seek public comment on the utility's plan and shall issue an order approving or disapproving each plan within 5 months after its submission." *Id.* Each of these requirements is addressed in Section V, *infra.*

G. Breakthrough Technologies

Under Section 8-103(g), "[n]o more than 3% of energy efficiency and demand-response program revenue may be allocated for demonstration of breakthrough equipment and devices." 220 ILCS 5/8-103(g).

H. Penalties

Section 8-103(i) sets forth the penalty if utilities fail to meet the prescribed energy efficiency savings goals. In the event that the utility fails to meet the efficiency standard specified in Section 8-103(b), as modified by subsections (d) and (e), "the responsibility for implementing the energy efficiency measures of the utility … shall be transferred to the Illinois Power Agency … ." 220 ILCS 5/103(i).

I. Potential Study

The General Assembly enacted new Section 8-103A of the Act (effective October 26, 2011), which requires that ComEd's Plan provide "an analysis of additional cost-effective energy efficiency measures that could be implemented, by customer class, absent the limitations set forth in subsection (d) of Section 8-103." 220 ILCS 5/8-103A.

III. COMED'S FILING

A. The Planning Process

According to ComEd witness Mr. Brandt, ComEd developed the Plan through a collaborative process that included the participation of the Stakeholder Advisory Group ("SAG"), which was established pursuant to the Commission's Final Order in Docket No. 07-0540. While many groups have participated in the SAG over the past five years, key participants in the development of Plan 3 include the following: Ameren Illinois Utilities ("AIU"), Center for Neighborhood Technology ("CNT"), CUB, the City of Chicago, DCEO, ELPC, Future Energy Enterprise, Staff, AG, Integrys (Peoples Gas and North Shore Gas), Midwest Energy Efficiency Alliance ("MEEA"), NRDC and Nicor Gas. In addition to the SAG process, ComEd has worked separately with the two local gas companies, Nicor Gas and Integrys, to develop the joint or coordinated electric-gas program elements that are presented in this Plan. ComEd Ex. 2.0 at 20.

Mr. Brandt explained that ComEd has had significant dialogue with the SAG, and has listened to their comments and addressed them accordingly. Many ideas and concepts of the SAG members have influenced the final portfolio. For example, the Illinois Statewide Technical Reference Manual ("TRM"), which is new this year, is the direct result of the work of many members of the SAG. ComEd has also increased its effort on education and outreach in light of discussions with a SAG member. Overall, ComEd believes that the SAG has been very important and influential in the final portfolio design. ComEd Ex. 2.0 at 20-21.

Mr. Brandt further testified that ComEd is proposing seven program elements to be offered jointly between the gas and the electric utilities. He explained that several of the joint programs are smaller in scope due to the gas companies having much smaller goals and budgets during the Plan time period than ComEd. Also, according to Mr. Brandt, because the gas measures are the drivers for the Single Family and Multi-family Home Performance program elements, ComEd will be dependent on how much of the gas companies' resources can be invested into these programs. ComEd Ex. 2.0 at 21.

B. The Portfolio Framework

ComEd's portfolio includes a mix or balance of energy efficiency measures that are designed as a whole to produce a desired result with acceptable risk. Here, ComEd's portfolio is designed to achieve the proposed energy savings goals within the statutory spending screens, as well as satisfy other important policy and strategic objectives. The wide selection of measures that makes up the portfolio also creates a broad array of energy efficiency opportunities for all customers. Mr. Brandt explained that a portfolio is the best option for both maximizing energy savings and developing the necessary foundation to build an energy efficiency culture in the ComEd service territory. ComEd Ex. 2.0 at 22.

Mr. Brandt explained that, consistent with the statutory framework, ComEd's energy efficiency portfolio is designed to achieve the proposed energy saving targets within the spending screens while continuing to support ComEd's key themes, which include: support for the statutory requirements, building upon the existing energy efficiency foundation, inclusion and innovation, and ownership of responsibility for performance. He stressed that the portfolio has been put together as a three-year integrated plan, and that it is not and should not be viewed as three separate one-year plans. Indeed, this approach is consistent with the amendments to Section 8-103, which permit the utility to demonstrate compliance at the end of the three-year Plan period. 220 ILCS 5/8-103(b). This grants the utilities flexibility to offer programs that may take a full year just to implement, meaning that resulting energy savings in future years can be captured and accounted for under the existing Plan. ComEd Ex. 2.0 at 22.

Section 8-103(e) requires that ComEd and DCEO each implement a portion of the energy efficiency measures. ComEd must implement 75% of the measures, and DCEO must implement 25% of the measures. Mr. Brandt explained that ComEd and DCEO calculated the split by considering the nature of the programs and allocating the amount under the statutory spending screen to correspond with the statutory percentages. ComEd is requesting that the Commission approve this allocation. DCEO also has responsibility for specific programs under the statute. Section 8-103(e) requires that "[a] minimum of 10% of the entire portfolio of cost-effective energy efficiency measures shall be procured from units of local government, municipal corporations, school districts, and community college districts," and that DCEO "coordinate the implementation of these measures." 220 ILCS 5/8-103(e). In addition, ComEd and DCEO have agreed that DCEO would be responsible for presenting and implementing the portfolio of energy efficiency measures targeted at low-income households as required by Section 8-103(f)(4). ComEd Ex. 2.0 at 23.

Mr. Brandt explained that the 25% / 75% allocation between DCEO and ComEd does not correspond to the kWh savings. Because DCEO has taken on the responsibility of the low-income programs, which are exempted from the TRC test, ComEd and DCEO assumed that DCEO's portion of the kWh savings would be less than 25% of the savings, and that therefore ComEd's portion of the kWh savings would have to achieve over 75% of the savings to achieve the goal. Based on its results from the first several years of implementation, ComEd understands that DCEO can only achieve a $0.41 per kWh target. DCEO filed its three-year plan in a separate docket (ICC Docket No. 13-0499). Mr. Brandt explained how ComEd and DCEO determined the energy efficiency goals over the life of the Plan. For Plans 1 and 2, ComEd and DCEO agreed to a percentage breakdown of kWh savings that each entity would achieve such that the overall statutory or modified goal, as applicable, would be attained. For Plan 3, ComEd and DCEO adopted a different approach because the statutory goal is not attainable under the spending screen for any of the three years. As a result, both ComEd and DCEO developed their goals by summing the total savings projected by their individual program elements (*i.e.*, a bottom-up approach). This resulted in the "Projected Megawatt hours ("MWh") Attained Each Year" values in the Plan. From these values, ComEd and DCEO reduced each goal by approximately 5% to account for additional risk, and rounded the goals for both entities to set the proposed goals for this Plan. ComEd Ex. 2.0 at 23-24.

ComEd's Plan is made up of measures, program elements, and programs. Mr. Brandt explained that an energy efficiency measure is an individual technology (*e.g.*, compact fluorescent lamps ("CFL")), behavior (*e.g.*, adjusting a thermostat up or down when leaving the house) or service (*e.g.*, air conditioning ("AC") tune-up) that reduces the amount of electricity used when installed or performed. He further explained that an energy efficiency program or program element consists of the bundling of one or more energy efficiency measures into an entire program concept, which includes program delivery mechanisms, incentive rebate levels, and marketing approaches. The measure is one component of the program element. A program represents a bundle of program elements. ComEd Ex. 2.0 at 25-26.

ComEd's portfolio development process consisted of three primary stages – energy efficiency measure analysis, program analysis, and portfolio design, which are described below. ComEd Ex. 2.0 at 25.

C. Development of the Portfolio

ComEd developed its portfolio by identifying energy efficiency measures and programs and relying on the results of the TRC test to determine the cost-effectiveness of each measure and program. Mr. Brandt testified that the portfolio is designed to achieve the annual proposed kWh savings goals while also achieving ComEd's other portfolio objectives.

1. Measure Selection

To determine which measures to include in the Plan, Mr. Brandt testified that ComEd considered energy efficiency measures from a broad list compiled from the existing measures that ComEd's current programs offer. The list was supplemented with additional measures from other sources, including the TRM, programs currently offered in other jurisdictions, the California Database for Energy Efficiency Resources ("DEER"), the Consortium for Energy Efficiency ("CEE"), the American Council for an Energy Efficient Economy ("ACEEE"), and Focus on Energy. ComEd Ex. 2.0 at 26.

Mr. Brandt explained that the final database prepared for this analysis included nearly 2,000 measures. Many of these measures are combinations or variations of basic measures, such as different wattages of CFLs or different configurations of what are known as T8 linear fluorescent lamps, and a number of specific measures were analyzed for multiple building types. Even though the initial list included over 2,000 measures, the list of all possible measures would be several times as large. A list of all possible measures would require that ComEd look at every device or system that uses electricity in every possible building type, with every possible heating and cooling system. It would also entail evaluating measures that are not pertinent or applicable to ComEd's service territory. For example, evaporative air conditioning measures are very efficient and useful in the Southwest United States, but in Illinois' humid summer environment, it is impractical as an energy-saving technology except in certain custom applications. It is standard practice when conducting a first-stage measure screening to restrict analysis to those measures within a set of common building types that could account for the majority of energy efficiency potential in a given area. The goal of the measure screening process is to create the building blocks for energy efficiency programs. These programs should be designed such that if additional measures are considered important to include, they can easily be screened and included within the program without major redesign. Mr. Brandt testified that he considered the list of measures examined to have been comprehensive. Some new measures that were not included in the first two Plans include Agricultural energy saving measures and Laboratory Fume Hood Controls. ComEd Ex. 2.0 at 27.

The Illinois Technical Reference Manual ("TRM"). Mr. Brandt testified that the Commission orders approving the electric utilities' second Plans and the gas utilities' first Plans (Docket Nos. 10-0562, 10-0564, 10-0568 and 10-0570) directed the utilities to work with one another, DCEO and the SAG to develop a statewide TRM. The collaboration was intended to ensure that a consistent format was developed for the TRM, and, on January 9, 2013 the Commission approved the TRM. *See Commonwealth Edison Co.,* ICC Docket No. 12-0528, Final Order (January 9, 2013). ComEd Ex. 2.0 at 28-29.

To ensure the consistent application of TRM policies, SAG participants also developed a TRM Policy Document that was approved by the Commission in ICC Docket No. 13-0077. The Policy Document establishes policies that pertain to (1) the applicability of the TRM in planning, implementing and evaluating energy efficiency measures; and (2) the process for annually updating the TRM, including: (i) identification of roles and responsibilities for stakeholders in the TRM Update Process; (ii) requirements surrounding the TRM Administrator; and (iii) a timeline for updating the TRM. Mr. Brandt explained that the TRM serves multiple purposes across the energy efficiency portfolios, but for the planning process, it is the primary data source for the majority of energy efficiency measures. For example, the TRM includes CFL data, which encompasses the definition of efficient equipment, the definition of baseline equipment, measure life, measure cost, coincidence factor, and calculation of savings. This data drives the analysis to determine the cost-effectiveness of the energy efficiency measures. ComEd Ex. 2.0 at 29-30.

Analysis of Cost-Effectiveness. Section 8-103(f)(5) of the Act requires that the portfolio of energy efficiency measures be "cost-effective," which is defined as having satisfied the Illinois TRC test. The standard TRC test was originally developed by the California Energy Commission in the 1980s as part of what is called the California Standard Practice Manual, and has been incorporated into the National Action Plan for Energy Efficiency. Virtually every jurisdiction uses some form of this test for energy efficiency analysis. Illinois defines the TRC test as follows:

> "Total resource cost test" or "TRC test" means a standard that is met if, for an investment in energy efficiency or demand-response measures, 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 program to the net present value of the total costs as calculated over the lifetime of the measures. A total resource cost test compares the sum of avoided electric 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 natural gas utility costs, to the sum of all incremental costs of end-use measures that are implemented due to the program (including both utility and participant contributions), plus costs to administer, deliver, and evaluate each demand-side program, to quantify the net savings obtained by substituting the demand-side program for supply resources. In calculating avoided costs of power and energy that an electric utility would otherwise have had to acquire, reasonable estimates shall be included of financial costs likely to be

imposed by future regulations and legislation on emissions of greenhouse gases.

20 ILCS 3855/1-10. ComEd Ex. 2.0 at 30.

Mr. Brandt testified that in the Commission's Order in the Plan 1 docket (ICC Docket No. 07-0540), the Commission concluded that "[c]alculation of the TRC test at the portfolio level provides utilities with greater flexibility to ensure that measures with less short-term savings value, but greater value over several years, will be included in any overall portfolio of measures and programs … ." *Commonwealth Edison Co*., ICC Docket No. 07-0540 (Feb. 6, 2008) ("*Plan 1 Order*") at 28. He observed that this finding was reaffirmed in the Plan 2 docket (ICC Docket No. 10-0570 (*Commonwealth Edison Co*., ICC Docket No. 10-0570 (Dec. 21, 2010) ("*Plan 2 Order*") at 42)), and ComEd again proposes that calculation of the TRC test be conducted at the portfolio level. ComEd Ex. 2.0 at 31.

Mr. Brandt explained that the TRC test compares the benefits realized by installing a measure with the costs to install that measure. Benefits are calculated as the product of the measure's estimated energy and peak demand savings and the utility's avoided cost. Costs are equal to the incremental capital, installation and operating and maintenance ("O&M") costs. The incremental cost is defined as the difference between the cost of the efficiency measure and the cost of the measure that otherwise would have been installed. ComEd Ex. 2.0 at 31.

Mr. Brandt testified that before applying the TRC test to the potential energy efficiency measures, ComEd gathered additional data and performed further analysis related to the measures. Beginning with Plan 3, utilities have the benefit of the Illinois TRM. ComEd's initial efforts focused on measures that are contained within the TRM, which covers a wide range of residential and commercial and industrial ("C&I") measures that have been exhaustively reviewed and vetted by members of the SAG. Version 1 of the TRM, which was approved by the Commission in ICC Docket No. 12-0528, contains 98 core energy efficiency measures covering both electric and natural gas savings. Of these measures, 60 are C&I-focused, and when expanded to cover the various permutations of technology sub-types and building types, can exceed 2,000 permutations. As an example, one measure (T-5 Fixtures and Lamps) contains 12 different combinations of baseline and new fixtures, each of which would need to be evaluated against 15 different building load profiles. As such, this one measure would require 180 different analyses. While the TRM provides an extensive starting point for measures, it is by no means comprehensive, particularly where more sophisticated programs such as Retrocommissioning are concerned. For these measures, ComEd relied on savings algorithms, assumptions and values from the program implementers and evaluators. ComEd Ex. 2.0 at 32.

ComEd was next required to estimate the useful life of each measure. Mr. Brandt explained that measure lifetime was needed because the TRC test analysis needs to account for all of the energy savings realized by implementation of a measure over time. Last, the cost-effectiveness analysis requires a discount rate that is used to estimate the present value of the efficiency measure's costs and benefits. ComEd Ex. 2.0 at 32-33.

Mr. Brandt testified that ComEd used DSMore, an industry-standard demand-side management planning model, as its tool for determining the cost-effectiveness of all measures. He explained that the method that DSMore uses to determine cost-effectiveness varies by measure category. For lighting measures, ComEd developed a lighting profile that allowed it to disaggregate annual energy savings into hourly values. These hourly values were then entered into DSMore, which applied the appropriate hourly energy price to assign a value to the annual savings for each measure. For other measures, ComEd developed an annual energy savings target which DSMore then apportioned based on the load profile of the customer class being evaluated. ComEd Ex. 2.0 at 33.

Mr. Brandt stated that the avoided energy values used for the analysis were developed in 2013 by Integral Analytics ("IA") using 2 years of historical prices, 3 years of forecasted wholesale energy prices and 30 years of historical weather data. ComEd provided the price data while IA provided the weather data for the Chicago-O'Hare weather station. The forward prices were based on NYMEX Around-The-Clock ("ATC") prices that are traded up to three years prior to delivery. These ATC prices were "shaped" using ComEd's actual monthly costs to arrive at peak and off-peak monthly costs. Mr. Brandt explained that with this data, IA developed a series of weather-price correlations using the historic data and applied those correlations to the forecasted prices to develop appropriate load/price shapes for ten customer load shapes. Beyond the three-year price horizon, ComEd relied on the latest Energy Information Administration ("EIA") Annual Energy Outlook for price escalators to estimate long-term energy prices. Avoided capacity costs were taken from PJM's Reliability Pricing Model ("RPM") auction clearing price for the 2014, 2015 and 2016 delivery years; future years were assumed to escalate at the same rate as energy prices, using the EIA values mentioned above. ComEd Ex. 2.0 at 33-34.

Mr. Brandt testified that using the above data, ComEd calculated the value of the TRC test for each of the measures in the database. Measures that score a ratio of benefits to costs of 1.0 or greater are considered to pass the TRC test. ComEd Ex. 2.0 at 34.

Mr. Brandt explained that the formula for the Illinois TRC test is as follows:

$$\mathrm{TRC} = \frac{\sum_{t=1}^{N}\left(\frac{\mathrm{UAC}_t + \mathrm{OQB}_t}{(1+d)^{t-1}}\right)}{\sum_{t=1}^{N}\left(\frac{\mathrm{PRC}_t + \mathrm{PCN}_t + \mathrm{UIC}_t}{(1+d)^{t-1}}\right)}$$

Where :

UAC_t = Utility Avoided Cost in year t

OQB_t = Other Quantifiable Societal Benefits in year t

PRC_t = Program Costs in year t

PCN_t = Participant Costs in year t

UIC_t = Utility Increased Supply Costs in year t

d = Discount Rate

ComEd Ex. 2.0 at 34-35.

Mr. Brandt explained that the TRC test often is applied to assess the cost-effectiveness of individual energy efficiency measures as well as energy efficiency programs. When the analysis of measures is prepared, we look at a single measure's costs and benefits and do not include variables such as Program Administrator program costs because, at this stage in the analysis, there are no program costs. Importantly, the calculation of cost-effectiveness incorporates both electricity savings and demand reductions. Most energy efficiency measures not only reduce the total amount of electricity consumed over the course of a year, but also reduce peak demand. When ComEd calculates the cost-effectiveness of a measure, it: (i) multiplies energy savings by the avoided energy cost, and (ii) multiplies peak demand savings by avoided capacity costs. ComEd Ex. 2.0 at 35.

Mr. Brandt further noted that the Illinois TRC test differs from standard formulations of the test used in other states in two ways. First, the Illinois TRC test now allows the inclusion of "other quantifiable societal benefits" within the benefits calculation. Second, the Illinois TRC test does not include tax credits as a benefit within the calculation. Also, the Illinois TRC test includes avoided natural gas utility costs as a societal benefit to measure. Mr. Brandt testified that this is important because some energy efficiency measures produce both electricity and natural gas savings, which allows ComEd to develop joint programs with the natural gas utilities. ComEd Ex. 2.0 at 36.

In his direct testimony, Mr. Brandt reported that of the nearly 2,000 measures that were screened, approximately 1,600 passed with a benefit-cost ratio of 1.0 or greater. ComEd Ex. 2.0 at 36.

2. Development of the Energy Efficiency Programs

Bundling of Measures. After the energy efficiency measure analysis is complete, the next stage is program analysis. As explained by Mr. Brandt, a program element is a general classification that references the types of measures that might be offered within a program targeted at a specific market. The bundling process is used because very few, if any, program elements and programs are designed and implemented that include only one single measure. Program designers build programs around combinations of measures that might appeal to a given market and that can be delivered using similar channels. Mr. Brandt noted that the bundling process also is necessary because in subsequent steps, ComEd estimates how many of each measure would or could be adopted by program participants and then sums the energy and demand reduction impacts of these measures. ComEd Ex. 2.0 at 38.

Mr. Brandt explained that ComEd began the process of designing programs by reviewing the existing portfolio of programs ComEd offers. ComEd then conducted industry research by interviewing energy efficiency program personnel from other utilities, organizations and regional forums in an effort to identify program practices and emergent issues that are being encountered throughout the country. ComEd also reviewed the baseline and potential study that were commissioned during the Plan 2 cycle, to determine if there were markets or sectors that existing programs had difficulty penetrating. Finally, ComEd solicited additional program concepts from internal staff and stakeholders with the overall objective of ensuring that the portfolio reaches the widest audience of customers in the most cost-effective manner. ComEd Ex. 2.0 at 38-39.

Mr. Brandt testified that ComEd found that there are no significant gaps either in target markets or end-uses that the existing portfolio of programs is not able to address. ComEd's research findings show that significant potential exists for behavioral-based energy efficiency in the C&I sector, but due to the lack of evaluation evidence that would support a fully-developed program, the best approach toward this type of program is via a research pilot. Likewise, there is a small group of very large manufacturing customers for which a tailored program would potentially be viable, and ComEd proposed a pilot to address this small but significant group of customers. ComEd Ex. 2.0 at 39.

Cost-Effectiveness Analysis. Mr. Brandt testified that to determine cost-effectiveness at a program level, ComEd reran the TRC test on the programs, rather than on the measures. He noted three differences between the screening process for measures and programs. <u>First</u>, when screening measures, the PRC variable ("program administrator costs") in the Illinois TRC test is set to zero. However, program-level screening requires that the PRC variable equal the cost to implement and administer the program. <u>Second</u>, while the measure screening focused on the cost-effectiveness of a single measure, program screening by definition is the cost-effectiveness of a bundle of measures as these measures are adopted by program participants. This means that at the program level, ComEd must also project the number of measures that we expect to be adopted as a result of the program. <u>Third</u>, every customer that receives an incentive for undertaking a specific program-sponsored activity is a participant, but not every participant is motivated to undertake that activity by the program. Some fraction of program participants will be "free riders" – participants that would have undertaken the desired action in the absence of the program. The estimated savings for a program is reduced by the amount of savings attributed to these free riders. At the same time, however, there will be some customers who undertake the action the program is attempting to motivate, but who do not actually take any incentive from the program. These customers are known as "free drivers" and the savings that their actions produce are termed "spillover." Just as the effects of free riders must be accounted for, so must the effects of free drivers. ComEd Ex. 2.0 at 39-40.

Mr. Brandt explained that the net effect of free-ridership and spillover is known as the net-to-gross ("NTG") ratio – the ratio of: (1) net program savings calculated as the net of free-ridership and spillover and (2) gross program savings, which are equal to the total number of measures installed and their associated savings. The NTG ratio is a number calculated based on post-implementation evaluation of program impacts. Using various evaluation methods dependent on the program type, evaluators attempt to determine which participants are free riders (*i.e.*, would have undertaken a program-sponsored action even without the program) and which non-participants and participants are free drivers (*i.e.*, took action even though they did not avail themselves of the program incentives). Program designers use the results of prior NTG ratio analyses as inputs to program cost-effectiveness calculations. ComEd Ex. 2.0 at 40-41.

Mr. Brandt described the sources that ComEd relied upon to compile the program cost, participation, and NTG ratio data. For continuing programs, cost data was based on the current costs to deliver the programs. These costs were adjusted in consultation with the program managers to reflect potential increases or decreases in cost elements over time. The program cost data that was used for new programs is based on the costs reported by utilities running similar programs in other parts of the country. After beginning with this data, ComEd modified it to reflect adjustments that would be expected in its service territory. Similarly, the participation data also are based on the actual or projected achievements of similar programs as prepared by the utilities managing the programs. These data were also compared against the market potential study that ComEd conducted. The NTG ratio estimates for continuing programs are generally based on the results of the most recent evaluation reports completed by the independent evaluator. In certain cases, these values were adjusted to reflect likely future market behavior. For new programs, ComEd developed estimates of NTG ratios using proxy values from current programs. ComEd Ex. 2.0 at 41.

3. Portfolio Design

ComEd began the development of its final energy efficiency and demand response portfolio with the program elements that successfully passed the two-stage design process described above. Mr. Brandt testified that ComEd also developed budget estimates for portfolio-level activities, which include education and outreach, program evaluation, research and development, market research, legal, the tracking system, and non-program specific labor costs. ComEd also quantified the statutory target (prior to application of the spending screen) as well as the spending screen for each year. Mr. Brandt stated that ComEd then balanced the portfolio, scaling certain programs up or down in size to arrive at a portfolio that would allow ComEd to achieve the proposed energy savings goals while also achieving the other objectives of a robust portfolio. ComEd Ex. 2.0 at 42-43.

Mr. Brandt noted that ComEd did not analyze the cost-effectiveness of the programs proposed by DCEO. DCEO has a statutory responsibility to deliver statewide integrated gas and electric energy efficiency programs. Therefore, DCEO elected to use a single cost-effectiveness analysis for all of its programs, which transcends four utility territories. ComEd provided DCEO with its list of measures as well as the avoided cost tables from DSMore. ComEd Ex. 2.0 at 43.

4. The Energy Efficiency Portfolio's Ability to Achieve the Energy Savings Goals

Mr. Brandt opined that the ComEd energy efficiency portfolio is designed to achieve the proposed energy savings goals within the spending screens. He explained that the explicit objective of the analysis process was to design a portfolio that achieves aggressive energy savings goals within the spending screens, while also achieving other objectives (*e.g.*, a robust and diverse portfolio). While Mr. Brandt testified that he believes this proposed portfolio does just that, he recognized that there are a number of uncertainties that characterize the analysis. For example, if the values that ComEd has used to represent energy efficiency measure savings are incorrect, if program participation is not what ComEd estimated, or if the NTG ratios vary from those that ComEd has used in its analysis, the verified net savings estimated by the evaluator could be very different than the ComEd estimate. ComEd Ex. 2.0 at 43.

Mr. Brandt testified that this uncertainty materially affects ComEd's ability to achieve the proposed savings goals under the Plan. Because the spending screens do not provide sufficient funding to achieve statutory targets in each year of the Plan, ComEd has proposed modified targets that reflect the fact that the statutory spending screens essentially stopped increasing after Plan Year ("Plan Year" or "PY") 4. Even under the modified goals, however, an adverse NTG value can put ComEd at risk of not achieving the target. To address and manage this risk, ComEd has worked with the other State utilities, DCEO and stakeholders in the development of a modified NTG framework. At this time, not all parties have agreed to all aspects of this NTG framework. Nevertheless, in Section 6 of the Plan ComEd submitted its proposed framework to the Commission for approval going forward. Mr. Brandt explained that consistent with the flexibility granted to ComEd in the Orders approving ComEd's first and second Plans, ComEd must retain the ability to adjust its portfolio and program design based on the real-time information it receives regarding program performance. Specifically, ComEd must be able to reallocate funds across program elements and modify, discontinue and add program elements within approved programs based on actual implementation experience and the results of the evaluation of its programs. ComEd Ex. 2.0 at 43-44.

D. The Portfolio of Energy Efficiency Programs

Mr. Brandt testified that ComEd analyzed over 2,000 energy efficiency measure combinations, of which 73% passed the TRC test. The majority of measures that did not pass the TRC test are in the C&I Incentives program element and reflect new technologies with very low uptake (*e.g.*, light-emitting diode ("LED") lighting fixtures). ComEd believes that these measures will become cost-effective over the next three or four years as they achieve critical mass in the market. At the program design stage, ComEd focused in particular on the cost-effective measures from a marketplace perspective. ComEd also believed it was important to have programs available for all customers, including programs that went across various end-uses (*e.g.*, lighting, heating, ventilation, air conditioning ("HVAC"), motors, refrigeration) and that addressed special customer groups (*e.g.*, multi-family, small business). By focusing on these objectives, ComEd made the portfolio more accessible to all customers and spread its investment in energy efficiency across many customers and end-uses. The portfolio consists of two broad programs, *Smart Ideas for Your Home* and *Smart Ideas for Your Business*, that target the residential and C&I customer segments, respectively. There are 12 energy efficiency program elements – 7 residential programs and 5 commercial and industrial programs proposed to be offered under the *Smart Ideas* banners. ComEd Ex. 2.0 at 44-45.

1. The *Smart Ideas for Your Home* Program

Smart Ideas for Your Home provides a variety of options for residential customers including the following: (1) Residential Lighting; (2) Appliance Recycling; (3) Complete System Replacement; (4) Multi-Family Comprehensive Energy Efficiency Program; (5) Energy Efficiency Kits Program; (6) Single Family Home Performance; and (7) Residential New Construction. ComEd Ex. 2.0 at 45-47.

Mr. Brandt explained that the Residential Lighting program element will continue to provide the most kWh savings among residential program elements, but, similar to Plan 2, its kWh contribution will be decreasing over time as the incandescent bulb disappears from the market pursuant to federal legislation mandates. This program will continue to be available to all customers. The Appliance Recycling program element is the second largest residential program in terms of projected kWh savings, and will be open to all customers who own old working appliances (*e.g.*, refrigerators, freezers, and window ACs). In Plan 2, the second largest residential program was the Home Energy Report ("HER") program element. This program will continue, but is now part of ComEd's Illinois Power Agency ("IPA") filing. The scope of this program has been dramatically increased such that this program will be ComEd's largest program in the residential sector, providing approximately 300,000 MWh annually during the three-year period covered in this Plan. Although the other programs are more narrowly focused on particular segments and smaller in scale, they are targeted at either an important end use (*e.g.*, AC), a critical customer segment (*e.g.*, multifamily customers), or a critical market sector (*e.g.*, new construction). These programs, along with the two larger programs, create a diverse residential portfolio that provides opportunities for all residential customers to participate while also minimizing portfolio risk and laying the foundation for future offerings. ComEd Ex. 2.0 at 48.

2. The *Smart Ideas for Your Business* Program

Mr. Brandt explained that *Smart Ideas for Your Business* is targeted at ComEd's C&I customers, offering a complementary set of energy management options. Although customers can participate in the program through any individual program element, ComEd will also encourage participants to use the available building benchmark services as a means of increasing awareness of the "whole building" solutions. For this Plan, ComEd has repositioned the business portfolio around four core programs, with an overarching customer acquisition platform that ensures interested customers are directed to the programs that most suit their needs. In Plan 2, a number of "boutique" programs were developed to target certain niche markets. While these programs were successful in addressing these markets, ComEd has come to realize that they were really just strategic delivery mechanisms for its core set of programs. The following Plan 3 programs are designed for C&I customers – the first four represent core programs, and the fifth is a proposed pilot program for large C&I customers: (1) C&I Incentives; (2) C&I Optimization Program; (3) Midstream Incentives; (4) C&I New Construction; and (5) Large C&I Pilot. ComEd Ex. 2.0 at 48-50.

Mr. Brandt testified that the C&I program mix is driven by three programs. The C&I Incentives program element is by far the largest program in terms of both costs and kWhs saved in the overall portfolio, and will continue to be the foundation on which the C&I program elements are built. Two other program elements – C&I Optimization and Midstream Incentives – are each projected to account for over 15% of the total MWhs saved in the C&I sector. These three program elements taken together account for approximately 95% of the MWhs projected to be saved in the C&I sector. The remaining program elements are designed to target hard-to-reach customer segments, including the C&I new construction market and our largest manufacturing customers, which ensures that all customers have the opportunity to participate in energy efficiency. ComEd Ex. 2.0 at 51.

Mr. Brandt noted that the Small Business Direct Install Program, while not represented in Plan 3, is being offered under the IPA portfolio on a much larger scale when compared to Plan 2. However, in the event the Small Business Direct Install program achieves its IPA MWh goal and additional funding remains under Plan 3, ComEd intends to continue offering the program under this Plan with the energy savings inuring to this Plan. ComEd Ex. 2.0 at 51.

3. DCEO Programs

Mr. Brandt testified that DCEO's portion of the portfolio consists of seventeen programs (described in more detail in the DCEO docket). Seven programs are targeted at the public sector segment, five are aimed at the low-income segment, and five are designed as market transformation programs. ComEd Ex. 2.0 at 51-52.

4. Achievement of Energy Savings Goals and Opportunities for Customers

Mr. Brandt stated that ComEd's proposed portfolio of energy efficiency measures, when considered in conjunction with the measures that DCEO is implementing, is designed to achieve the proposed energy savings goals within the spending screens. ComEd Ex. 2.0 at 53.

Mr. Brandt testified that ComEd's proposed portfolio provides a diverse cross-section of opportunities for customers of all rate classes. He pointed out that the *Smart Ideas for Your Home* and *Smart Ideas for Your Business* programs are designed to provide all residential and C&I customers with the opportunity to participate in energy efficiency programs. In the residential sector, a lighting program element is available to all customers. In addition, appliance program elements are aimed at ACs and refrigerators/freezers, which are some of the largest loads in the home. ComEd also has residential program elements aimed specifically at whole-house, comprehensive measures, which are jointly offered with the gas companies. Concerning the C&I sector, the C&I Incentive program element provides every C&I customer with multiple opportunities to take advantage of energy efficiency offerings. In addition, the Optimization and New Construction program elements allow customers to participate at the whole-building level. Also, ComEd will be testing a new Large C&I Pilot concept targeted at our largest customers to encourage their increased participation in the portfolio. Overall, ComEd believes the portfolio as a whole provides a diverse cross-section of opportunities for all of its customers. ComEd Ex. 2.0 at 53-54.

E. Program Implementation, Management and Administration

1. Implementation and Marketing

Mr. Brandt testified that factors such as whether the program element is new or existing, tied to another program element, or jointly offered with a gas company all come into play in determining an appropriate implementation strategy. Regardless of the approach, however, a key driver is to deliver the most cost-effective program elements possible. With respect to the existing programs currently offered under Plan 2, the existing implementation contractor contracts expire at the end of Plan Year 6. As a result, ComEd will review each contract to ensure costs continue to be prudently incurred and reasonable in amount. In some cases, ComEd may rebid the contract. In other cases, ComEd may seek to renegotiate a contract in order to leverage the experience and lessons learned during Plan Years 4 through 6. In the event renegotiation is not successful, ComEd would then initiate a request for proposal ("RFP") process. ComEd Ex. 2.0 at 54.

Mr. Brandt explained that in addition to the implementation information provided in each program element template presented in Section 6 of Plan 3 (ComEd Ex. 1.0), ComEd realizes that the actual implementation process for each program will require much more detail. Because most programs will be implemented by third parties, ComEd expects to work with each implementation contractor in the development of the final, more detailed program designs and implementation plans. This will allow ComEd to bring the third party administrator's expertise into the process before the program design is complete. Working with the implementation contractors, ComEd will finalize the program structure, incentive levels, and marketing and recruitment strategies to maximize the success of achieving the program goals. ComEd and the implementation contractors will develop a detailed roadmap for program roll-out and management, including customer qualification, rebate fulfillment, customer care, data capture and tracking, reporting and quality control processes. ComEd Ex. 2.0 at 55.

Mr. Brandt testified that ComEd views the marketing of the portfolio as one of the key elements that can lead to the overall success of the portfolio. It is important to stress that ComEd does not view the portfolio as individual program elements offered separately to customers. Rather, ComEd views the portfolio at a customer segment level with programs presented together as *Smart Ideas for Your Home* and *Smart Ideas for Your Business*, which ComEd believes will allow customers to learn about and make energy management purchasing decisions in a one-stop shopping environment that matches programs to their needs for energy savings and environmental benefits. These groupings present all the programs for the particular customer segment as a package, and are designed to avoid the potential confusion that might be caused by presenting each program and its details individually. ComEd Ex. 2.0 at 55-56.

Mr. Brandt added that ComEd is proposing market transformation and educational programs, in conjunction with those offered by DCEO, that are designed to actively promote an energy efficiency culture and the value of ComEd's energy efficiency programs. Two of ComEd's market transformation programs are the Energy Usage Data System, a web-based tool that allows customers to obtain certain energy usage on a monthly basis, and the Energy Insights Online Program, a web-based energy consumption-tracking tool. ComEd Ex. 2.0 at 56.

2. Company Management and Administration

Mr. Brandt testified that ComEd's portfolio will continue to be administered by ComEd's Energy Efficiency Services Area. Two sub-departments will play major roles in implementing the portfolio. The Energy Efficiency Planning & Measurement Department, led by Mr. Brandt, will have responsibility for the planning, measurement and verification, cost tracking, goal tracking and reporting, and portfolio risk assessment functions. The Energy Efficiency Services Department will be in charge of the implementation of all energy efficiency programs, serving as program managers and overseeing management of third party program administrators. Many other internal ComEd departments will play supporting roles throughout the implementation process, including Marketing, Demand Response, Large Account Services, Customer Care, Communications, and Information Technology. ComEd Ex. 2.0 at 57.

3. Ongoing Evaluation and Risk Management

Mr. Brandt described three activities that ComEd proposes to undertake to address portfolio risk over the Plan's three-year period. First, at the portfolio level, ComEd will continue to reassess its mix of programs and timing to ensure it remains on track to achieve the proposed energy savings goals within the applicable spending screens. Second, to address risk going forward, ComEd also must retain flexibility to adjust portfolio and program design based on the real-time information it receives. ComEd requires the ability to modify programs during the three-year Plan cycle as results are realized. On-going program modifications are a key to a well-designed portfolio – as information is received and analyzed, program designs will be modified accordingly. This will be critical if the proposed energy savings goals are to be achieved. Although ComEd has conducted a risk analysis, it is impossible to foresee every contingency that might arise in the future. To ensure that ComEd has the ability to respond to such challenges following approval of Plan 3, it must retain sufficient flexibility to reallocate funds across program elements, including the ability to modify, discontinue and add program elements within approved programs based on subsequent market research and actual implementation experience. Third, ComEd will continue to meet and work with other Illinois stakeholders through the SAG. ComEd is committed to continued engagement with the stakeholders to provide opportunities to review ComEd's progress towards maximizing energy savings in Illinois through the Plan. ComEd Ex. 2.0 at 57-58.

ComEd proposes a process for making changes to its programs following the Commission's approval of the Plan. Mr. Brandt explained that it is essential to ComEd's risk management strategy to retain sufficient flexibility to reallocate funds across program elements, including the ability to modify, discontinue and add program elements within approved programs as dictated by additional market research and actual implementation experience. At the same time, ComEd recognizes the importance of having stakeholder participation in this process of review and, as necessary, modification. Consistent with the Commission's Orders in Docket Nos. 07-0540 and 10-0570, ComEd proposes that the following matters would be discussed within the SAG: (1) the reallocation of funds among program elements within the *Smart Ideas for Your Home* and *Smart Ideas for Your Business* programs (excluding those elements managed by DCEO) to ensure ComEd's ability to achieve its goals, where the change in budget for any specific program element is greater than 20%; (2) discontinuing approved program elements within the *Smart Ideas for Your Home* and *Smart Ideas for Your Business* programs; and (3) adding new program elements within the *Smart Ideas for Your Home* and *Smart Ideas for Your Business* programs, as long as those program elements pass the TRC test. ComEd Ex. 2.0 at 58-59.

Mr. Brandt testified that the proposed portfolio represents ComEd's best effort to design a cost-effective mix of program elements with a high probability of success. Following Commission approval of Plan 3, ComEd will proceed with final and detailed program designs and implementation plans. This process will include further discussions with stakeholders, customer groups and trade allies. Continuing market research will also influence ongoing program direction. Based on the information compiled through this process, these initial program designs most likely will be refined to strengthen the program offerings. In the event ComEd revises the proposed budget for any specific program element within the *Smart Ideas for Your Home* and *Smart*

Ideas for Your Business programs by more than 20%, it will notify the SAG of these changes. ComEd Ex. 2.0 at 59.

Mr. Brandt testified that the programs in ComEd's portfolio are not limited to a certain participation level or kWh limit each year. He explained that although ComEd has done its best to model projections of program participation, costs, and other impacts, they are still projections. ComEd cannot predict with certainty what will happen in the marketplace when the programs are launched. Although ComEd has projected participation rates for each program element, each program element could potentially realize much different participation rates. ComEd will require the flexibility necessary to manage the costs and the program and customer mix to determine when funds are reallocated and to properly manage the portfolio. ComEd Ex. 2.0 at 60.

Mr. Brandt reiterated that the recent legislative changes to Section 8-103 permit ComEd to demonstrate compliance with each of the three annual goals at the end of the three-year Plan period. 220 ILCS 5/8-103(b). In doing so, the statute necessarily permits ComEd to measure the total amount of energy savings cumulatively achieved over the three-year Plan period. Put more simply, during each three-year period, the General Assembly has approved unlimited "banking" of energy savings to be applied through and including the third Plan year. Accordingly, ComEd's Plan 3 proposes that the Commission confirm this new framework and revise its annual goal compliance schedule to reflect the new triennial evaluations as contemplated by the statute. Consistent with the Commission's Order in ICC Docket No. 10-0570, ComEd further proposes that the Commission again approve two related banking proposals – (1) that kWh savings banked during Plan Year 1 through Plan Year 6 can be applied to the proposed goals set in this Plan, and (2) that kWh savings achieved in this Plan can be banked and applied during ComEd's next Plan. *Plan 2 Order* at 53-54. Mr. Brandt explained that these proposals recognize the need to maximize every kWh achieved under the constrained budgets, provide ComEd the proper incentive to aggressively promote its energy efficiency portfolio over the entire life of portfolio, and ensure that the verified energy savings funded by customers are given full effect. He stressed that this banking concept is very important to the overall management of ComEd's portfolio. ComEd Ex. 2.0 at 60-61.

F. Evaluation, Measurement and Verification (EM&V) Process

ComEd's proposed EM&V process is intended to serve several purposes. Mr. Brandt explained that first, the process determines the actual savings achieved by a program element, known generally as an impact evaluation. Second, by combining actual savings data with actual program cost data, the EM&V process calculates the cost-effectiveness of a program element. Third, the EM&V process develops estimates of program planning variables such as per unit measure energy savings and demand reductions and NTG ratios. Fourth, the EM&V process can provide a vital early-warning system to ComEd regarding savings shortfalls, if the evaluation can be conducted in a timely manner. Fifth, a process evaluation that evaluates the process of program implementation can occur. ComEd Ex. 2.0 at 61.

Mr. Brandt explained that like the first two Plans, ComEd intends to have an independent contractor perform the EM&V work. This contractor will complete an assessment independent of ComEd, implementation contractors and stakeholders. Consistent with the Commission's Orders in Docket Nos. 07-0540 and 10-0570, ComEd proposes to enter into a contract with the EM&V contractor, and the contract will provide that the Commission has the right to: (i) approve or reject the contract, (ii) direct ComEd to terminate the evaluator if the Commission determines that the evaluator is unable or unwilling to provide an independent evaluation, and (iii) approve any action by the utility that would result in termination of the evaluator during the term of the contract. Mr. Brandt testified that ComEd believes that the EM&V process has worked very well, and ComEd has coordinated with ICC Staff to retain an independent evaluation contractor for ComEd's entire portfolio. Although ComEd managed the evaluation contractor, the ICC still maintains oversight authority of the evaluation. ComEd proposes the continuance of this process in its current form. ComEd Ex. 2.0 at 62.

Mr. Brandt further testified that the 3% of the total portfolio budget that the statute allocates to EM&V translates to approximately $3.6 million per year. ComEd plans to work with the independent evaluator to determine how best to allocate the dollars across the program elements. Also, because ComEd proposes to claim the kWh savings from its Research & Development ("R&D") projects, it will also have to work with the evaluators to ensure budget dollars are set aside for these pilot programs. Each program element has its own unique evaluation needs and, because ComEd will now be starting the seventh year of implementation for some programs, it may not need to allocate as many dollars for established programs. ComEd Ex. 2.0 at 62-63.

The EM&V activities that ComEd proposes for the Plan include: (1) continuation of current process for selection and management of the independent evaluation contract, (2) approval of a modified NTG framework, and (3) establishment of a realization rate ("RR") framework. The details of these frameworks are discussed in Section V.G. of this Order. Mr. Brandt explained that the NTG framework that was approved in Plan 2 was developed through the SAG, and has worked reasonably well over the past several years. This framework has proved to be a highly valuable tool in managing ComEd's risk because, in many cases, it institutes a prospective application of revised NTG ratio values. This is important because it allows ComEd to manage its programs while having certainty regarding the application of one of the key inputs to the net savings calculation. Even so, Mr. Brandt described certain limitations during implementation of this framework. For example, "market change" was a criterion that was supposed to determine whether a new NTG ratio would apply retrospectively or prospectively. In other words, NTG ratios that were revised due to a market change were to be applied retrospectively. While this approach sounds relatively straightforward, its implementation revealed that this concept meant different things to different stakeholders, which led to confusion and a lack of direction in the implementation of the NTG framework. As a result, ComEd is proposing in this docket to further refine and improve upon the current NTG framework. Indeed, it is ComEd's understanding that many stakeholders now concur that prospective application of NTG ratios makes the most sense and that the modified NTG framework set forth below addresses this point while building on the success of the initial framework and addressing its limitations. ComEd Ex. 2.0 at 63-64.

NTG Framework. Accordingly, Mr. Brandt explained ComEd's proposed NTG framework for new and existing programs. For existing programs, when a ComEd evaluation of a program has identified an estimated NTG ratio, that ratio will be used prospectively until a new ComEd evaluation estimates a new NTG ratio. The prevailing NTG ratio provided by the EM&V contractor by March 1 of any Plan year is the NTG ratio value to be applied to the next Plan year beginning June 1. For new programs, planning NTG ratio values that have been provided by the EM&V contractors by March 1 of any Plan year, will be applied prospectively to the next Plan year beginning June 1. These values will be used until a ComEd evaluation estimates a revised NTG ratio. If the revised NTG ratio is provided by the EM&V contractor by March 1, then the ratio will be applied to the next Plan year beginning June 1. Thereafter, NTG ratios shall be revised according to the framework for existing programs as described above. ComEd Ex. 2.0 at 64-65.

Mr. Brandt proposes one additional EM&V change concerning the calculation of the NTG ratio. A NTG ratio is calculated based on the combination of both free rider impacts and spillover impacts. To date the evaluations have placed much more emphasis on the free rider component, which has been at the expense of considering the spillover effect. Starting with Plan 3, ComEd proposes that all program evaluations must address, in addition to free ridership, spillover from both the participant and non-participant perspectives. Without these perspectives, the evaluation is unduly reducing the net program impacts that should be realized by a program. ComEd proposes that if an evaluation does not account for spillover, then the free rider effect should also be ignored. ComEd Ex. 2.0 at 66.

RR Framework. Mr. Brandt explained that a realization rate is the ratio of measured savings to projected savings. ComEd proposes a framework similar to the NTG framework under which the realization rate would only apply prospectively. In other words, the newly calculated realization rates would not apply until the start of the next Plan year. ComEd proposes a framework similar to the one for NTG ratios. Specifically, for existing programs, when a ComEd evaluation of a program has identified an estimated realization rate, that rate will be used prospectively until a new ComEd evaluation estimates a new realization rate. The prevailing realization rate provided by the EM&V contractor by March 1 of any Plan year is the realization rate to be applied to the next Plan year beginning June 1. For new programs, planning realization rates that have been provided by the EM&V contractors by March 1 of any Plan year, will be applied prospectively to the next Plan year beginning June 1. These rates will be used until a ComEd evaluation estimates a revised realization rate. If the revised realization rate is provided by the EM&V contractor by March 1, then the rate will be applied to the next Plan year beginning June 1. Thereafter, realization rates shall be revised according to the framework for existing programs as described above. ComEd Ex. 2.0 at 65.

G. Requirement to Provide Analysis of Energy Efficiency Potential

Section 8-103A of the Act imposes a new requirement that ComEd provide an analysis of additional cost-effective energy efficiency measures that could be implemented by customer class, absent the spending screens. 220 ILCS 5/8-103A. Mr. Brandt testified that ComEd addressed this new requirement by conducting a potential study of energy efficiency in the ComEd service territory. This analysis is included in Appendix D to Plan 3. This study was conducted by an outside contractor, ICF Consulting, and covered the energy efficiency potential for the period 2013-2018. It also breaks down this potential by residential, commercial and industrial customer classes. ComEd Ex. 2.0 at 66.

IV. THE ROLE OF THE STAKEHOLDER ADVISORY GROUP (SAG)

ComEd's Position

ComEd observes that in the *Plan 1 Order*, the Commission established the SAG as a group of stakeholders that would review and report on utilities' energy efficiency portfolios in an advisory (non-binding) capacity. *Plan 1 Order* at 32-33. Consistent with the SAG's Commission-stated purpose, ComEd engaged the SAG during the development of Plan 3, and the SAG has played an important advisory role in the development of the Plan and its portfolio of programs. Through the SAG process, ComEd solicited and addressed stakeholder comments and concerns regarding the portfolio's design. ComEd Ex. 3.0 at 32. For example, throughout the cost-effective analysis, ComEd shared the findings, data and assumptions with the SAG. *Id*. at 9. And, in direct response to the April 30, 2013 SAG presentation by FutureMark's Mr. Flowers, ComEd developed and has proposed a Large C&I Pilot program for large C&I customers such as FutureMark, which would provide participants with unprecedented access to their Rider EDA contributions to the maximum extent permitted under the law. *Id*. at 53. Indeed, since the filing of Plan 3, ComEd and REACT (of which FutureMark is a member) have further refined the Pilot to accommodate REACT's concerns and comments. *See* App. A to ComEd's Init. Br. ComEd Init. Br. at 9-10.

ComEd contends that the success of this collaborative process is perhaps best summarized by SAG participants who filed testimony in this docket. Staff witness Ms. Hinman commented that the portfolio reflected in Plan 3 "includes a diverse cross-section of opportunities for customers of all rate classes to participate in the programs," and CUB/City witness Ms. Devens observed that the portfolio reflects "a wide range of energy efficiency programs that reach all customer classes that fund the EEPS." Staff Ex. 1.0 at 19; CUB/City Ex. 1.0 at 5.

Yet, ComEd notes that certain proposals in this docket seek to fundamentally transform the SAG from an advisory and collaborative process to a decision-making body, most notably in connection with the modified NTG Framework proposals. These proposals to delegate decision-making authority to the SAG are directly contrary to the Commission decisions that established the SAG and expressly declined to grant it decision-making authority. *See Plan 1 Order* at 32-33; *Central Illinois Light Co. d/b/a*

Ameren CILCO, ICC Docket No. 10-0568, Order (Dec. 21, 2010) at 86. In *Central Illinois Light*, the Commission stated:

> Among other things, the Commission is concerned about the suggestion to grant stakeholders decision-making authority, as it raises the possibility of a deadlock, and gives rise to the possibility of conflicts of interest arising in the context of delivering the optimal programs and measures to the ratepayers. Finally, it appears that granting stakeholders decision-making authority would be inconsistent with the rationale articulated in the Final Order in Docket No. 07-0539, and the original intent of the group, which was for it to be advisory only, and which has been effective. The Commission finds that extending decision-making authority to the SAG is not appropriate at this time.

Id. Fundamental principles, moreover, bar the Commission from delegating its decision-making authority. *See generally, Union Electric Co. v. Ill. Commerce Comm'n,* 77 Ill. 2d 364, 383 (1979) (barring the Commission from delegating its decision-making authority). ComEd Init. Br. at 10-11.

ComEd states that Staff, indeed, acknowledges in rebuttal testimony that "[t]he Commission has repeatedly declined to give the SAG decision-making authority," and expresses concern "that the development of voting parties [through the AG's proposed NTG framework] in this proceeding would be the first step toward such a structure." Staff Ex. 3.0 at 8. Staff, however, then ignores that its own proposal similarly would delegate decision-making authority to the SAG. Staff Ex. 1.0 at 34-36; Staff Ex. 1.1.

ComEd notes that the efforts to inappropriately expand the authority of the SAG are not limited to delegating decision-making authority to it. For example, the AG lists nine additional topics on which it requests "that the Commission direct ComEd to work with the SAG." AG Ex. 1.0C at 44-45. This list includes a litany of directives and reporting requirements that would foster SAG micromanagement over ComEd's portfolio. *Id*. ComEd already complies with voluminous reporting requirements throughout each Plan Year, however, and therefore objects to the imposition of additional mandatory reports or SAG micromanagement procedures. Staff's, the AG's, and other parties' requests to expand the SAG's role, particularly by delegating decision-making authority to it, should be rejected. The Commission – pursuant to the Act – not the SAG, oversees and regulates ComEd. ComEd Init. Br. at 11.

Notwithstanding the legal impediments to transforming the SAG into a decision-making body, the fact that so many proposals in this docket were not first vetted through the SAG strongly suggests that the Commission should direct the SAG to return to its original purpose of reviewing and commenting on the portfolio. Indeed, the assumption by some intervenors that their speculative proposals be further considered by the SAG *after this docket concludes* – and then approved by the Commission based on the SAG's decision – only further underscores the extent to which Staff and intervenors have strayed from Section 8-103, Commission orders and the SAG's purpose. To be sure, the failure of these parties to first develop and vet their proposals through the SAG before their submission in this docket has resulted in proposals that lack the support and specificity required for evaluation, much less adoption, here. Having ignored the very forum created to consider new program ideas and proposals, their premature introduction here results in wasteful and unnecessary litigation. Many of these proposals, indeed, impermissibly seek a six month extension for consideration by the SAG followed by a "Revised Plan" filing. However, this extension to the current statutory framework is not lawful. Pursuant to Section 8-103(f), 220 ILCS 5/8-103(f), the Commission is required to issue an order approving or disapproving Plan 3 *within five months* of its submission, which ensures utilities have sufficient time to finalize their programs before launch on June 1, 2014. 220 ILCS 5/8-103(f). ComEd Init. Br. at 11-12.

Further, as ComEd points out in its Initial Brief, arguments to litigate one-off issues following the approval of Plan 3 misunderstand the nature and complexity of this docket and Plan 3, which require a careful balancing of energy savings goals, budgets and program offerings. In this regard, proposals to "extend" this docket beyond the statutory five-month period are tantamount to requests that the Commission engage in single-issue ratemaking, and should be rejected for the same reasons. *See, e.g., Bus. and Prof'l People for Pub. Interest v. Ill. Commerce Comm'n,* 146 Ill. 2d 175, 244-245, 585 N.E.2d 1032, 1061-1062 (1991). ComEd Init. Br. at 12.

Staff and Intervenors' Positions

Commission Analysis and Conclusions

The Commission recognizes the importance of the SAG in connection with reviewing and reporting upon ComEd's energy efficiency portfolio, and appreciates the substantial efforts and contributions made by the SAG over the past six years. Yet, consistent with prior Commission orders, the SAG's role is an advisory one, and the Commission is without authority to delegate decision-making authority to it or otherwise transfer, in whole or in part, duties assigned to the evaluator under Section 8-103. *See Plan 1 Order* at 32-33; *Central Illinois Light Co. d/b/a Ameren CILCO*, ICC Docket No. 10-0568, Order (Dec. 21, 2010) at 86; *See generally, Union Electric Co. v. Illinois Commerce Comm'n*, 77 Ill. 2d 364, 383 (1979); 220 ILCS 5/8-103(f). Consistent with this conclusion, the Commission also declines to order ComEd to work with the SAG on the nine topics selected by the AG. As ComEd points out, it has consistently worked with the SAG since its inception and commits to doing so through Plan Years 7 through 9. Moreover, ComEd is already subject to numerous reporting requirements and docketed proceedings related to its plans in each Plan Year. True to the SAG's collaborative spirit, SAG participants should determine the agenda items during Plan Years 7 through 9.

The Commission is also cognizant of the fact that many of the recommendations of parties in this docket were not first introduced and discussed in the SAG. As discussed further in this Order, undeveloped recommendations preclude their consideration or adoption in connection with approving ComEd's Plan. Rather than proposing new roles for the SAG, parties should utilize the SAG for its original intended purpose, which is to serve as a forum for the consideration of new program ideas and proposals. Furthermore, even if the SAG were to consider these proposals following the close of this docket, the Commission cannot later incorporate them into a "Revised Plan" filing because the Plan must be approved within five months of its submission, which ensures that ComEd has time to finalize programs by June 1, 2014. 220 ILCS 5/8-103(f).

V. STATUTORY COMPLIANCE WITH SECTION 8-103(F) OF THE ACT.

A. Whether ComEd's Plan Is Designed to Achieve the Energy Savings Goals of Subsections (b) and (c) of Section 8-103, as Modified by Subsections (d) and (e).

1. Achievement of the Section 8-103(b) Energy Efficiency Savings Goals.

ComEd's Position

The Section 8-103(b) energy savings goals set forth in ComEd's Plan.

ComEd's Initial Brief lays out the statutory framework regarding the energy savings goals. Section 8-103(f) requires that ComEd's Plan "[d]emonstrate that its proposed energy efficiency and demand-response measures will achieve the requirements that are identified in subsections (b) and (c) of this Section, *as modified by subsections (d) and (e)*." 220 ILCS 5/8-103(f)(1) (emphasis added). In particular, subsection (d) requires that a utility "*reduce* the amount of energy efficiency and demand-response measures implemented over a 3-year planning period by an amount necessary to limit the estimated average annual increase in the amounts paid by retail customers in connection with electric service due to the cost of those measures to" an amount within the spending screens. 220 ILCS 5/8-103(d) (emphasis added). Indeed, when compliance with Section 8-103(d) requires such a reduction in measures, Section 8-103(i) permits the "efficiency standard specified in subsection (b) [to be] modified." 220 ILCS 5/8-103(i). ComEd Init. Br. at 13.

As set forth in Plan 3 and described in ComEd witness Mr. Brandt's testimony, under Section 8-103(b) the energy savings goals increase by 0.4% for Plan Year 7, and by an additional 0.2% for Plan Years 8 and 9. ComEd Ex. 1.0 at 1; ComEd Ex. 2.0 at 8. However, beginning with Plan Year 5, the spending screen under Section 8-103(d) has been essentially frozen at the Plan Year 4 budget, and has not increased along with the escalating energy savings goals. ComEd Ex. 2.0 at 8; 220 ILCS 5/8-103(d). ComEd Init. Br. at 13-14.

ComEd observes that because this incongruity first arose in Plan 2, the Commission initially addressed the issue there and approved a complex stipulation to address these challenges, which included a modified energy savings goal for Plan Year 6 ("PY6"). Notably, following the approval of Plan 2, the legislature directed the

Commission to study the budget constraints and issue a report in 2011. 220 ILCS 5/8-103(e). The Commission did so, noting that the budget limitation had indeed required modification of the statutory energy savings goals. *See* June 30, 2011 Report to the General Assembly. In response, the General Assembly left Section 8-103's goals and budgets unchanged, but separately enacted Section 16-111.5B of the Act just a few months later, which provides for additional procurement of energy efficiency measures pursuant to an IPA process that is subject to different statutory criteria and no express budget limitation. 220 ILCS 5/16-111.5B. ComEd Init. Br. at 14.

Because the General Assembly made no changes to the Section 8-103 structure, ComEd realized early in the Plan 3 planning process that the goals for Plan Years 7 through 9 would again require modification, and shared these concerns with the SAG. ComEd Ex. 3.0 at 7-8. Although the challenges of this incongruity between increasing goals and flat budgets are obvious, ComEd contends that they are further exacerbated by three factors:

First, newer energy efficiency portfolios have the benefit of initially rolling out the simpler, less costly measures that generate substantial kWh savings (*e.g.*, CFLs). ComEd Ex. 2.0 at 8-9. However, as Plan 3 moves into Plan Years 7 through 9, much of this "low-hanging fruit" has been captured, which creates significant challenges to developing additional energy efficiency programs within the spending screens. *Id*. at 9. *Second*, because the federal Energy Independence and Security Act ("EISA"), Pub. L. 110-140, 121 Stat. 1492, prohibited the manufacture of certain incandescent bulbs beginning January 1, 2012, the impact of the lighting program elements will be further reduced – if incandescent bulbs are no longer available in the market, then the baseline will be a more efficient light bulb, possibly even the CFL. ComEd Ex. 2.0 at 8; ComEd Ex. 3.0 at 9. This federal legislation essentially eliminates over time some of the least expensive kWh savings opportunities. ComEd Ex. 3.0 at 8. NRDC similarly acknowledged the challenges posed by EISA. NRDC Ex. 1.0 at 9. *Third*, the HER program offered under Plan 2, which procured the cheapest energy efficiency in Plan Year 5, was transferred to the new IPA portfolio under Section 16-111.5B. ComEd Ex. 3.0 at 8. NRDC also acknowledged the adverse impact of the HER program transfer. NRDC Ex. 1.0 at 9. ComEd Init. Br. at 14-15; ComEd Rep. Br. at 4-5.

Mindful of these challenges and Section 8-103's provision for modified goals where the spending screens are not sufficient to fund achievement of the statutory energy savings goals (*see* 220 ILCS 5/8-103(d)), ComEd undertook a "bottom up" portfolio-building process to construct the diverse mix of programs that would provide opportunities for all customers to participate in the portfolio while delivering energy savings. ComEd Ex. 3.0 at 8. In brief, ComEd conducted hundreds of hours of analysis of available energy efficiency measures, including the bundling of these measures into program concepts and conducting cost-effectiveness analyses at the measure, program and portfolio levels. *Id*. It is this process that generated the modified savings goals proposed by ComEd in this docket, which are supported by a vast collection of data and analyses. *Id*. In fact, during the discovery phase of this docket, ComEd produced over seven gigabytes of DSMore analysis, which is an industry-standard model for building energy efficiency portfolios. This analysis shows the individual measure analysis for every program included in the portfolio and the measure make-up within each program. *Id*. at 9. ComEd Init. Br. at 15-16.

ComEd states that from these analyses, it summed up what each program was capable of delivering in terms of kWh savings, and these calculations formed the basis of the modified goals. ComEd Ex. 3.0 at 9. Based on these projections, ComEd has proposed three modified annual goals for Plan Years 7, 8 and 9 of 630,000 megawatt-hours ("MWhs"), 615,000 MWhs, and 600,000 MWhs, respectively. Each goal also includes an approximately 5% reduction to account for the risks that ComEd has identified and described in this proceeding. ComEd believes these modified goals are very aggressive in light of the budgets, and will require strong management skills and diligent oversight to achieve. ComEd Ex. 2.0 at 10-11. In sum, ComEd's proposed goals are supported by thorough and rigorous analysis, and ComEd remains convinced that these are the correct goals for the next three years. ComEd Ex. 3.0 at 9. ComEd Init. Br. at 16.

Having shared this analysis with the SAG during the planning of Plan 3, no intervenor has challenged the inputs to or results of the DSMore analysis, and ComEd credits the SAG process for the apparent agreement among participants in this docket regarding this analysis. ComEd Ex. 3.0 at 9. Rather, in an effort to increase the modified goals, intervenors propose programs or budget reallocations that they speculate may generate some undefined amount of additional kWh savings. It is important to underscore that additional funds do not automatically translate to additional kWh savings. To the contrary, ComEd witness Mr. Brandt testified that the residential *Smart Ideas for Your Home* program and commercial *Smart Ideas for Your Business* program already reflect maximum kWh savings under the current program designs. ComEd Init. Br. at 16-17; ComEd Rep. Br. at 5.

In its Initial Brief, ComEd supports this contention for each of the programs. Regarding the *Smart Ideas for Your Home* programs, the different dynamics occurring within the various residential programs preclude additional funds from being added to the residential sector to produce additional kWh savings. ComEd Ex. 3.0 at 8, 9, 10; ComEd Ex. 1.0 at 33. The Residential Lighting program is maximized, and actually will decline due to EISA; Appliance Recycling cannot be further expanded without dramatically increasing incentives, which will alter the entire cost structure of the program; and the remaining programs are jointly offered with and primarily driven by gas companies, which means the gas companies would need to commit more funds. In addition, as NRDC acknowledges, the HER program was transferred to the IPA portfolio, which caused a loss of the cheapest kWh savings available to Plan 3. NRDC Ex. 1.0 at 9; ComEd Ex. 3.0 at 11. Regarding the *Smart Ideas for Your Business* programs, similar to the *Smart Ideas for Your Home* programs, additional funding of the *Smart Ideas for Your Business* programs does not automatically translate to a proportionate level of additional kWh savings, which is illustrated by the C&I Incentives and Optimization programs. ComEd Ex. 3.0 at 11. Based on ComEd's experience of offering these programs in some format over the last several years, it has learned that it is funding these programs at the correct level for the current program designs – during each of the last several years, the budgets for these programs have allowed ComEd to incent all of the qualifying projects that were submitted while leaving some budgeted funds unspent. *Id*. at 11-12. And, these unspent funds may be further increased by customers who delay the completion of projects to the following year, which leaves ComEd with unspent incentive funds for the year in which the project was to have been completed. *Id*. at 12. ComEd Init. Br. at 17-18.

ComEd states that it has not identified any other significant sectors or markets that are not already addressed or targeted in its program design. ComEd Ex. 3.0 at 12. As a result, channeling additional funds to the C&I programs would require program design changes that could achieve additional kWh savings at the same cents per kWh. *Id*. However, ComEd is unaware of any program design changes that meet this requirement, and no such changes have been proposed by intervenors. *Id*. And, even if such changes had been proposed with specificity, they would presumably require further investment in costly program design, meaning that the achievement of additional savings would likely come at a higher cents per kWh cost (*e.g.*, higher incentives, a more elaborate marketing campaign, or additional engineering assistance). *Id*. at 12-13. According to ComEd, there is no guarantee or evidence in this docket to show what the cents per kWh increase would be. *Id.* at 13. In the worst-case scenario, the cents per kWh cost could actually increase to the point where less (and not more) kWhs are saved. *Id*. ComEd Init. Br. at 18.

ComEd further observes that Intervenors instead complain that the portfolio's energy savings goals will not sufficiently challenge ComEd, and base these complaints on ComEd's past success in exceeding the energy savings goals. These complaints, however, fail to consider that *the legislature* – not ComEd – set these prior statutory goals and budgets. While it chose to adequately fund achievement of these prior goals, ComEd notes that is not at all the case for Plan Years 7 through 9. Thus, according to ComEd, the past cannot be used as "evidence" that ComEd has a history of proposing cautious or unchallenging goals – to the contrary, the past goals and budgets were set by the General Assembly, and ComEd performed as best it could under that framework. Here again, ComEd proposes the best portfolio it could build under the budget constraints. No party challenges this analysis. ComEd Rep. Br. at 5.

Intervenors' proposals regarding ComEd's Section 8-103 energy savings goals.

ComEd points out that Staff and virtually all intervenors agree with the core assumption that the energy savings goals for Plan Years 7 through 9 must be adjusted downward because of the severe budget constraints and other programmatic limitations applicable to the portfolio. Although several parties have presented proposals to increase ComEd's proposed goals, no party took issue with the analysis and data supporting the portfolio of programs and projected kWh savings. These parties' proposals, moreover, generally have not been submitted to and vetted by the SAG, lack specificity regarding their budgets and the savings that they might produce, are unsupported by evidence, and cannot statutorily or practically be considered in this docket. ComEd Init. Br. at 19-20. ComEd further observes that some of these proposals indeed were offered and rejected in connection with Plan 2 for the same reasons and have not been significantly developed since then. For these reasons, all of these proposals should be rejected. ComEd Rep. Br. at 4, 5-6.

The AG's recommendation concerning the Residential Lighting program.

ComEd explains that the Residential Lighting program has been a part of the ComEd portfolio since its inception. ComEd Ex. 2.0 at 45-46. Under Plan 3, this program will continue to offer customers instant rebates when purchasing qualifying products such as CFLs and light-emitting diode lighting fixtures ("LEDs") by targeting retailers and manufacturer/retailer partnerships. *Id*. The AG recommends that the Commission order ComEd to move the Residential Lighting program element from the Section 8-103 portfolio to the Section 16-111.5B IPA portfolio for PY8 and PY9. AG Ex. 1.0C at 9. The AG does not include PY7 because it is already too late in the process to make that change. *Id*. As the IPA programs are not subject to a statutory budget cap like those under Section 8-103, it appears that the AG's proposal is designed to move and retain the program under the IPA portfolio and thus free up funds for Plan 3. *Id*. ComEd Init. Br. at 20.

ComEd argues that the Act precludes consideration of the AG's proposal in this docket. Section 8-103 governs the scope of this docket. 220 ILCS 5/8-103. Section 8-103 limits this docket to review and approval of ComEd's energy efficiency plan. 220 ILCS 5/8-103. Section 16-111.5B, on the other hand, governs review and approval of additional energy efficiency in the context of ComEd's annual procurement process. 220 ILCS 5/16-111.5B. This process occurs pursuant to an entirely separate statutory framework and approval criteria. Neither Section 8-103 nor 16-111.5B includes a provision authorizing transfer of a particular program to the IPA as part of the consideration of an electric utility's energy efficiency plan pursuant to Section 8-103. Accordingly, if the Commission were to remove the Residential Lighting program from the Section 8-103 portfolio, it could not at the same time include it in the IPA portfolio, and instead would leave this important program stranded outside of either portfolio. Indeed, the analysis required to approve a program under Section 16-111.5B was not, and cannot be, presented or considered in this docket. *See* 220 ILCS 5/16-111.5B(a)(1)-(3). Sections 8-103 and 16-111.5B accordingly mandate rejection of the AG's proposal. ComEd Init. Br. at 20-21.

In its Initial Brief, although the AG claims that ComEd "fail[ed] to leverage existing cost-effective programs through the IPA's efficiency portfolio, pursuant to Section 16-111.5B," the AG cites to no legal standard that ComEd purportedly "failed" to satisfy. AG Init. Br. at 9. Indeed, there is no such standard, and the AG's entire proposal rests on the blurring of two very distinct statutory frameworks. ComEd further observes that even the AG appears to recognize that its proposal is beyond the scope of this docket when it admits that the proposed transfer could not be accomplished in this docket. Rather, under the AG proposal, the Commission would sever the successful and popular Residential Lighting program from Plan 3 and then direct ComEd to "bid th[e] program into the IPA" at some later date, which is a reference to an IPA docket process rather than a Section 8-103 docket process. AG Init. Br. at 11. And, as even the AG admits, its incorporation into the IPA portfolio is uncertain because "the Company would have to demonstrate at that time that the program is still cost-effective." AG Init. Br. at 18. None of these hurdles remains in this docket. ComEd Rep. Br. at 6-7.

Notwithstanding that the AG's proposal is contrary to the law, ComEd contends that moving the program to the IPA would truly diminish the amount of energy efficiency being offered to the residential sector under Plan 3, especially when one considers that the HER program already has been moved to the IPA. ComEd Ex. 3.0 at 14. Section 8-103 requires that ComEd offer a *diverse* portfolio of programs across *all* customer classes. 220 ILCS 5/8-103(f)(5). If the Residential Lighting program were also moved to the IPA portfolio, residential customers' ability to participate in the portfolio would be severely constrained, with the main program offering being limited to the Appliance Recycling program. ComEd Ex. 3.0 at 14. ComEd Init. Br. at 21. In response to the the AG's assertions that moving the program to the IPA would not diminish the amount of energy efficiency being offered to the residential sector (AG Init. Br. at 11-12), ComEd clarifies that the legal standard in this docket is not whether residential customers generally have access to energy efficiency measures. Rather, Section 8-103(f)(5) requires that *Plan 3's measures* "represent a diverse cross-section of opportunities for customers of all rate classes to participate in the programs." 220 ILCS 5/8-103(f)(5). While residential customers might be able to resume participation in the Residential Lighting program at some later date, that participation would not be under Plan 3. ComEd Rep. Br. at 7-8.

Finally, ComEd notes that IIEC opposes the AG's proposal because it would further increase the portfolio costs paid by C&I customers. IIEC Ex. 2.0 at 3-4; IIEC Init. Br. at 7-10. IIEC's concerns are indeed valid – the AG's proposal, if adopted, would increase C&I customers' costs. ComEd Ex. 3.0 at 15. In addition, as discussed above, there is no evidence that the additional funding available to the C&I portfolio would actually generate additional kWh savings. *Id*. Accordingly, the proposal to transfer the Residential Lighting program element should be rejected as legally impermissible or, in the alternative, rejected on its merits. ComEd Init. Br. at 21; ComEd Rep. Br. at 8.

<u>The AG's and NRDC's proposals to attribute savings to the Large C&I Pilot program.</u>

ComEd notes that both the AG and NRDC recommend that ComEd allocate kWh savings to the Large C&I Pilot program. AG Ex. 1.0C at 11-12; NRDC Ex. 1.0 at 11. In fact, of the several adjustments that NRDC recommends, this proposal accounts for an additional 75,000 MWh being added to the goals, or approximately 40% of its entire three-year adjustment. NRDC Ex. 1.0 at 12. However, while Plan 3 could have been clearer on this issue, an estimate of kWh savings for the Large C&I Pilot program is already included within the projected kWh savings for the C&I Incentives program. ComEd Ex. 3.0 at 15-16. ComEd Init. Br. at 22.

ComEd clarifies that it did include the budget *and* kWh savings for the Large C&I Pilot in the C&I Incentives program for Plan 3. ComEd Ex. 3.0 at 15-16. Plan 3 states that "[t]he Total Budget for C&I Incentives includes the costs associated with the Large C&I Pilot." ComEd Ex. 1.0 at 68. While the Plan should have explicitly provided the same clarification regarding the kWh savings, they are in fact included. ComEd Ex. 3.0 at 15. Moreover, the program cost per lifetime kWh, as well as the TRC test results, include the costs associated with the Pilot. *Id*. While ComEd has not yet developed a *specific* savings estimate for the Large C&I Pilot program, it has assumed for planning purposes that energy efficiency projects that occur within the Pilot program are projects that could have occurred within the C&I Incentive program. *Id*. at 15-16. As a result, ComEd is assuming that the Pilot projects would likely achieve savings at the same cost as those achieved in the larger C&I Incentive program. *Id*. at 16. To add additional savings to the modified goals based on the Large C&I Pilot would be double-counting these savings. *Id*. Based on this clarification, the recommendations to add kWh savings based on the Large C&I Pilot program are incorrect and should be rejected. ComEd Init. Br. at 22.

Although ComEd clarifies in Mr. Brandt's rebuttal testimony (ComEd Ex. 3.0 at 15-16) that the Large C&I Pilot program's projected energy savings are already reflected in Plan 3, both the AG and NRDC ignore the testimony and briefing on this point and continue to recommend that ComEd allocate kWh savings to the Large C&I Pilot program, which would *double count* the savings projected for this experimental pilot program. AG Init. Br. at 16; NRDC Init. Br. at 7-8. This is particularly troubling given ComEd's and stakeholders' lack of experience implementing the Pilot program, which further increases uncertainty and risks regarding how the Pilot will perform. ComEd notes its disappointment that intervenors would take advantage of the Pilot's preliminary framework in an effort to artificially inflate the modified savings goals. To ComEd, it is unclear why intervenors refuse to acknowledge, much less credit, Mr. Brandt's explanation of how the Pilot's energy saving were incorporated within Plan 3. ComEd Ex. 3.0 at 15-16; ComEd Init. Br. at 22. They simply ignore it. ComEd Rep. Br. at 8-9.

In its Reply Brief, ComEd reiterates that an estimate of kWh savings for the Large C&I Pilot program is already included within the projected kWh savings for the C&I Incentives program. ComEd Ex. 3.0 at 15-16. The annual $5 million budget for the Large C&I Pilot program is included within, and represents roughly 13% of, the entire annual C&I Incentive program. *See* ComEd Ex. 1.0 at 68, fn. 26; ComEd Reply Br. at 10. Consistent with Mr. Brandt's testimony that the kWh savings associated with the Large C&I Pilot program are already reflected in the overall projected kWh savings for the C&I Incentives program and were estimated using the same savings calculation applicable to the overall Incentive program (ComEd Ex. 3.0 at 15), Plan 3 already attributes savings of 64,428 MWh over the three-year Plan period to the Large C&I Pilot program (22,619 MWh + 21,377 MWh + 20,432 MWh). While these projected savings are similar to the 76,388 MWh that the AG would attribute (AG Init. Br. at 16) and the 75,000 MWh that NRDC would attribute (NRDC Init. Br. at 7), Tables 1 and 2 of ComEd's Reply Brief demonstrate that these savings *are already included*. To add these additional savings, then, would double count the projected savings and artificially inflate the modified goals. ComEd Ex. 3.0 at 16. ComEd Rep. Br. at 9-11.

Finally, ComEd notes that these efforts to artificially inflate a *pilot* program's estimates of energy savings are especially troublesome given the unpredictable and experimental nature of pilot programs. Indeed, ComEd readily admits that it has not developed specific kWh savings goals associated with the Pilot program because the program is brand new and its performance untested. ComEd Init. Br. at 22. As a result, the only planning assumptions ComEd could use were those associated with the larger Incentives program. In ComEd's view, it is particularly unfair, then, that intervenors seek to take advantage of the uncertainty surrounding a new pilot program and *double count* the savings associated with the Pilot. The recommendations to add kWh savings based on the Large C&I Pilot program thus are incorrect and should be rejected. ComEd Rep. Br. at 11.

<u>Proposals to adjust the CFL carryover calculation and exclude CFL carryover.</u>

ComEd addresses parties' proposed adjustments to the CFL carryover as well as the AG's proposal that the Commission exclude the CFL carryover altogether. First, the AG, CUB/City, and NRDC have proposed adjustments to the CFL carryover calculation and claim that these adjustments will increase the savings that can be achieved in PY7 through PY9. AG Ex. 1.0C at 5, 19; CUB/City Ex. 1.0 at 17. 18; NRDC Ex. 1.0 at 12-14. In brief, these proposals attempt to estimate carryover impacts for PY7 through PY9 even though the amounts are set by the TRM and are not yet known. As explained below, these speculative adjustments should be rejected. ComEd Init. Br. at 23; ComEd Rep. Br. at 11-12.

ComEd states that, as an initial matter, the CFL carryover calculation determines the amount of savings that can be recognized in a given Plan Year for CFLs sold in a prior Plan Year, and is designed to recognize and account for the fact that not all customers who purchase CFLs install them at the time of purchase. ComEd Ex. 3.0 at 16. To illustrate, in PY7 ComEd will receive credit for CFLs purchased in PY5 and PY6 but not installed until PY7. *Id*. A subsequent version of the TRM will establish the applicable carryover installation rate values, and correctly ensures that savings associated with measures purchased through the portfolio are counted even if their installation is delayed. *Id*. In Plan 3, ComEd accounted for CFL carryover – *for planning purposes* – by simply assuming all CFLs are installed in the year they are purchased. *Id*. Because the TRM values for PY7 through PY9 are not yet known, the most straightforward approach for planning purposes is to include all CFLs in the year of purchase rather than speculating regarding what the TRM carryover values might be. *Id.* at 16-17. This approach makes the most practical sense and reflects an accurate representation of the potential kWh achievement. *Id*. at 17. ComEd Init. Br. at 23-24; ComEd Rep. Br. at 12.

ComEd further observes that while NRDC claims that ComEd has not demonstrated that its approach is "the most accurate" (NRDC Init. Br. at 12), ComEd finds this criticism to equally apply to NRDC's own proposal, which engages in speculation regarding what the subsequent TRM values might be. According to ComEd, it is true that the Commission has a choice between competing methodologies here, and ComEd urges the Commission to adopt its simple and transparent planning methodology rather than engage in the speculation invited by NRDC. The Commission will ultimately determine these values in the respective TRMs, but that time is not now. The modified goals thus should not be further adjusted based on this issue. ComEd Rep. Br. at 12.

ComEd argues that the AG's proposal that the Commission dispose of the carryover process altogether *for evaluation purposes* and simply assume that CFLs are installed in the year they are purchased (AG Ex. 1.0C at 20) also should be rejected. While its simplicity is attractive, this proposal is inconsistent with the requirement of Section 8-103 that utilities "implement" measures to achieve certain savings each year. 220 ILCS 5/8-103(b). CFL carryover ensures that the focus is kept on measures actually implemented rather than just purchased. ComEd Ex. 3.0 at 17. The AG also recommends against allowing the carryover of CFL savings from PY5 and PY6 to be incorporated into Plan 3, and appears to conflate "banking" kWh savings with the distinct concept of CFL carryover. AG Ex. 1.0C at 20. Banked kWh savings reflect excess savings associated with measures that were actually installed in a previous year, with a portion of those savings being carried over for application in a future year. ComEd Ex. 3.0 at 17. CFL carryover, on the other hand, reflects the deferred installation of measures purchased in a previous year. *Id*. Counting CFL carryover is consistent with Section 8-103 as the deferred installations are still being implemented in the year that savings are claimed, regardless of whether banked kWh savings may be applied. ComEd Init. Br. at 24.

ComEd agrees with Staff that this docket is not the correct forum to consider the AG's proposal. Staff notes that if the AG "wants to remove CFL carryover from the IL-TRM," then the AG "should submit a recommendation for a TRM Update through the TRM Update Process outlined in the Commission-adopted IL-TRM Policy Document. (Staff Ex. 3.2 at 5-8.) The proper forum to raise this issue is not a single utility's three-year plan filing docket, when the IL-TRM impacts all the Illinois program administrators. Thus, [Staff] recommends that the Commission decline to rule on [the AG's] proposal to discontinue CFL carryover in this docket." Staff Ex. 3.0 at 23-24. ComEd Init. Br. at 24-25.

ComEd further notes that in its Initial Brief, the AG reverses course and acknowledges that the Commission should reject its original proposal that the Commission dispose of the carryover process altogether *for evaluation purposes* and simply assume that CFLs are installed in the year they are purchased. AG Ex. 1.0C at 20; AG Init. Br. at 34 ("To be clear, the proposal was just a suggestion … That being said, the OAG supports retaining the existing carryover policy … .") ComEd agrees that the AG's initial suggestion should be rejected. ComEd Rep. Br. at 12-13, 13 fn. 5 and 6.

<u>Proposals that the modified goals should include a 5% downward adjustment to account for risk.</u>

ComEd explains that it has certainly made efforts to minimize risks associated with its programs by, for example, vetting them through the SAG and conducting studies and analyses prior to inclusion in the Plan, no portfolio is without risk. As a result, ComEd has reduced its goals by approximately 5% to account for risks inherent in the portfolio and in the evaluation process. ComEd Ex. 2.0 at 11, 24. While no party contends that the portfolio is without risk, several parties object to the 5% downward adjustment to account for risk. AG Ex. 1.0C at 13-14; NRDC Ex. 1.0 at 19-21; CUB/City Ex. 2.0 at 9-10. Elimination of the risk factor, however, ignores the variety and nature of the risks associated with the portfolio and its ability to achievement the energy savings goals. ComEd Init. Br. at 25.

ComEd describes the risks associated with the Large C&I Pilot program, evaluation, and planning. Specifically, the level of participation, the number of projects that will be implemented and completed over the three year Plan period, and the cents per kWh savings per project in the Large C&I Pilot program are all unknown and particularly difficult to forecast, as the Large C&I Pilot program is both a new program and the first pilot program of its kind to be offered in the State. ComEd Ex. 3.0 at 19. While ComEd has proposed fixed energy savings goals for the Plan's three-year period, ComEd faces risks due to the fact that the planning assumptions for the Plan are not fixed and will likely change during the three-year period. *Id*. at 18. For example, the deemed values set by the TRM will be updated during Plan 3 and therefore impact achievement of the fixed energy savings goals. Further, the unpredictability of Staff and intervenor positions in efficiency dockets – exemplified, for example, by their proposals to change the NTG and RR frameworks in this docket – increases risk, especially when these proposals would introduce retroactive application, if adopted. Finally, the development of the portfolio and calculation of its costs and energy savings involve very complex planning that inherently presents significant planning risk. For example, ComEd recently discovered a "bug" in the DSMore software program that produced a calculation error based on misstated incremental energy savings in certain circumstances. ComEd Ex. 3.0 at 35-36. The error caused the PY8 and PY9 savings for ComEd's Residential Lighting program to be overstated by 5,514,020 kWh and 7,872,285 kWh, respectively. *Id*. at 36. Although this error was identified after the filing of Plan 3 and the calculation of ComEd's proposed modified energy savings goals, this newly introduced risk can likely be managed if the 5% risk adjustment is adopted by the Commission. *Id*. If this needed risk factor is eliminated, then the goals for PY8 and PY9 must be reduced to reflect the overstatement. *Id*. ComEd Init. Br. at 25-26. No party disputes these amounts. While ComEd stated in its testimony and its Initial Brief that it could absorb this risk if the 5% discount were adopted, it cannot do so without such protection. ComEd has set forth in its Reply Brief how its goals would need to be adjusted to account for the error if the Commission were to eliminate ComEd's proposed risk factor. ComEd Rep. Br. at 14.

Finally, ComEd notes that both Staff and the AG take the contradictory position that this risk adjustment should be eliminated while, at the same time, proposing to increase ComEd's evaluation risks through their NTG frameworks. Indeed, both Staff and the AG acknowledge that their various proposals increase evaluation risk for ComEd. AG Ex. 1.0C at 32, 35; Staff Ex. 3.0 at 14-15, 19. According to ComEd, these parties should not be permitted to introduce additional risks while simultaneously recommending that ComEd be denied any protection against these risks. The

Commission should approve ComEd's proposed modified goals, which include the modest risk factor proposed by ComEd. ComEd Init. Br. at 26-27; ComEd Rep. Br. at 13-14.

Budget-related proposals.

ComEd argues that the NRDC, ELPC, Staff, and CUB/City proposals to significantly reduce the Education and Outreach budget are mistaken and, in some instances, are based on assumptions or positions whose consideration is beyond the scope of this docket. NRDC Ex. 1.0 at 14-15; ELPC Ex. 2.0 at 29-31; Staff Ex. 3.0 at 32-33; CUB/City Ex. 2.0 at 4. ComEd believes that it has never been more important to increase and enhance the education and outreach component of the portfolio, especially as ComEd searches for new and creative approaches to encourage participation and increase kWh savings within the overall budget constraints. ComEd Ex. 3.0 at 20. To this end, ComEd believes that its Customer Engagement Process model described in Plan 3 provides the platform for aggressive education and outreach efforts during Plan 3, and it is ComEd's understanding that this model has been well received by stakeholders. *Id*. at 20-21; ComEd Ex. 1.0 at 88. Indeed, ComEd believes much more can be gained by increasing the resources devoted to this effort. ComEd Ex. 3.0 at 21. While some intervenors proposed that the Education and Outreach budget not exceed Plan 2's budgets based on language in Plan 3 that ComEd intends to "continue" its current efforts, ComEd clarifies that it should not be inferred that ComEd's level of effort during Plan 3 would remain unchanged. *Id*. To the contrary, ComEd intends to continue building on the foundation it has established over the last several years, and is proposing to significantly expand and enhance its efforts. *Id*. ComEd Init. Br. at 27-28.

With respect to ELPC's proposal, in particular, ComEd observes that ELPC would take funds from the Education and Outreach budget and apply them to an Advanced Metering Infrastructure ("AMI") Education and Outreach effort, which is not only mistaken but also beyond the scope of this docket. Like ELPC's Smart Device Enablement proposal, AMI proposals are governed by a separate Article and Section of the Act. Article XVI of the Act already establishes funding "for the purpose of providing consumer education regarding smart meters and related consumer-facing technologies and services and the peak time rebate program described in subsection (g) of Section 16-108.6 of this Act." 220 ILCS 5/16-108.6(f); 220 ILCS 5/16-108.7. ELPC does not explain why the existing AMI funding should be supplemented with the limited funds available under Section 8-103, and, in any event, its proposal to apply funds to an AMI Education and Outreach effort is beyond the scope of this docket. ComEd Init. Br. at 28.

Similarly, ComEd contends that the NRDC, Staff, and CUB/City proposals to reduce the Emerging Technology / R&D budget and, in the case of ELPC to eliminate it, similarly are shortsighted and, again, beyond the scope of this docket in some instances. NRDC Ex. 1.0 at 15-16; ELPC Ex. 2.0 at 31-32; Staff Ex. 3.0 at 32-33; CUB/City Ex. 2.0 at 4-5. Section 8-103 specifically contemplates an Emerging Technology / R&D budget amounting to up to 3% of the overall spending screen. 220

ILCS 5/8-103(g). This is exactly what ComEd proposed, and the Commission approved, for Plans 1 and 2. *Plan 1 Order* at 24; *Plan 2 Order* at 56. According to ComEd, for Plan 3 it is more important than ever for ComEd to have the ability to explore new energy efficiency concepts as they arise, and therefore it is crucial that money be set aside for this function. ComEd Ex. 3.0 at 22. While intervenors correctly observe that ComEd did not fully exhaust the R&D budget under Plan 1 and may not do so under Plan 2, ComEd notes this is not reason enough to constrain the Plan 3 budget below the statutorily-permitted 3%. *Id*. ComEd Init. Br. at 28-29.

ComEd explains that during Plans 1 and 2 it has exercised caution in its expenditures on R&D activities, and intends to continue to do so under Plan 3. ComEd Ex. 3.0 at 22. However, with the many pressures on the portfolio to investigate and identify new kWh savings within the limited budgets, the research activities funded by these dollars will become more important going forward. *Id*. In fact, ComEd witness Mr. Brandt has identified in several places in his testimony where ComEd would be willing to explore new concepts or ideas raised by Staff and intervenors that would be most appropriately funded through the Emerging Technology / R&D budget. *Id*. Oddly, some of the same intervenors who propose additional workshops, studies and analyses are also proposing to eliminate the very budgets that would fund these activities. *Id*. Also, ELPC's proposal to take funds from this budget and apply them to an AMI education and outreach effort is misplaced and consideration of such an effort is beyond the scope of this docket. These budgets should remain as proposed to accommodate as many of these proposals as possible. *Id*. ComEd Init. Br. at 28-29.

ComEd also contends that the NRDC, Staff, and CUB/City proposals to reduce non-program specific Labor costs (included in Portfolio Administration) ignore the evidence and, in any event, prematurely seek to litigate the prudence and reasonableness of these costs prior to their incurrence. NRDC Ex. 1.0 at 16-17; ELPC Ex. 2.0 at 32-33; Staff Ex. 3.0 at 32-33; CUB/City Ex. 2.0 at 8-9. In brief, Staff and intervenors complain that the Labor budget should remain at essentially the same level as Plan 2. As ComEd explained in rebuttal testimony, however, ComEd continued to build up its staffing during Plan Years 4 through 6, but at no point was the portfolio fully staffed. ComEd Ex. 3.0 at 23. Moreover, Plan 2's proposed budget inadvertently neglected to include certain components of employees' total compensation, such as healthcare benefits. *Id*. Accordingly, ComEd's Plan 3 budget for non-program specific Labor includes the fully embedded labor costs to completely staff the portfolio across all three Plan Years, and includes the projected *total* compensation and inflation assumptions. *Id*. In short, ComEd states that it has consistently managed its portfolio to date under budget while exceeding the statutory energy savings goals. *Id*. Indeed, the AG acknowledges that the cost per kWh savings is reasonable. AG Ex. 1.0C at 8. As with its prior Plans, ComEd believes its combination of employees and contractors is a successful business model that should be continued. ComEd Ex. 3.0 at 23. According to ComEd, now is not the time to arbitrarily cut the Labor budget and, consequently, eliminate portfolio jobs. *Id*. As with all costs incurred by ComEd, the labor costs are subject to a prudence and reasonableness review in the annual reconciliation dockets. *Id*. ComEd Init. Br. at 29-30.

Finally, and perhaps most importantly, ComEd points out that the fact that dollars could be freed up from cutting budgets does nothing to show how these dollars would generate actual kWh savings. To be sure, Staff and intervenors make no specific showing as to which programs would receive these funds or how programs would be modified to achieve increased kWh savings. Indeed, ComEd observes that no intervenor took issue with ComEd witness Mr. Brandt's testimony that the current program designs already reflect the maximum amount of kWh savings that can be achieved thereunder. ComEd Ex. 3.0 at 8-12; ComEd Ex. 1.0 at 33; NRDC Ex. 1.0 at 9. Cutting important budgets just to pour cash into undefined programs is not a proposal capable of adoption in this docket. ComEd Reply Br. at 15-16.

ComEd also recommends that the Commission reject Staff's request to provide a definition for "breakthrough equipment and technologies" out of concerns that the 3% budget limitation on these costs be maintained. Staff Ex. 1.0 at 26. As NRDC witness Mr. Neme testified, "it is not obvious why a 'clearer definition' is needed," and Staff "offers no evidence to suggest that this is … currently a problem or can be expected to be a problem in the future." NRDC Ex. 2.0 at 20. Indeed, Staff's proposal would appear "to open the door to inappropriate, after-the-fact challenges to cost-recovery for measures and/or programs that, in hindsight only, fail cost effectiveness screening." *Id*. In short, Staff's proposal is a solution in search of a problem, and should be rejected. ComEd Init. Br. at 30-31; ComEd Rep. Br. at 16.

However, in the event that the Commission is inclined to establish a definition for this category, ComEd proposes the following: "technologies, measures or programs that are generally nascent nationally, for which energy savings have not been validated through robust evaluation, measurement and verification efforts, either in Illinois or elsewhere, and for which significant performance risk may exist that would otherwise deter utilities from offering such technologies, measures or programs in traditional programs." ComEd Ex. 3.0 at 24. ComEd Init. Br. at 31.

Finally, while ComEd does not take issue with Staff's and CUB/City's recommendation that ComEd should spend the entire budget during Plan 3 given the severe budget limitations and modified goals, ComEd disagrees with Staff's and CUB/City's complaints that ComEd should have spent the entire budget in each of Plan Years 1 through 5. To date, ComEd observes that it has been able to achieve the statutory savings goals under budget for each of Plan Years 1 through 5. CUB/City Ex. 1.0 at 13-14; Staff Ex. 1.0 at 13. Section 8-103 requires that ComEd achieve the Commission-approved energy savings goals through cost-effective measures (220 ILCS 5/8-103(b)), and establishes a maximum – not a minimum – spending level to achieve those goals (220 ILCS 5/8-103(d)). According to ComEd, the goal of Section 8-103 is decidedly <u>not</u> to maximize spending; rather, Section 8-103 requires the implementation of programs (and expenditures of funds in support thereof) for the purpose of achieving the applicable energy savings goals. Staff's and CUB/City's proposal that spending should be maximized is not supported by Section 8-103 and perverts its plain intent and goals. ComEd Init. Br. at 31-32; ComEd Rep. Br. at 16.

ComEd also observes that Staff's and CUB/City's opposition to carrying over banked savings from Plan 2 to Plan 3 highlights the quixotic nature of their proposal. By opposing carrying over banked savings from Plan 2 to Plan 3, Staff and CUB/City oppose the recognition of excess energy savings achieved through increased spending. In other words, Staff and CUB/City wish that ComEd had spent and achieved *more* during Plan Years 1 through 5, but would not permit ComEd or the State to recognize those savings. ComEd notes the proposal is incoherent and illogical and should be rejected. ComEd Init. Br. at 32.

Relatedly, and consistent with ComEd's previous Plan filings, ComEd requests in Plan 3 the ability to seek recovery of prudently and reasonably incurred costs that incidentally exceed the spending screen in a given Plan year. ComEd Ex. 1.0 at 6. Staff supports this request: "the Commission previously approved this request as reasonable because the Commission believed that there may be situations in which it would be inevitable that *de minim[i]s* cost overruns would occur and the Commission further noted that the statute provides no barrier to utilities to recover cost overruns. *Plan 1 Order* at 41; *Plan 2 Order* at 40. The Commission should approve ComEd's request in this regard for the same reasons it approved this request in past Plans." Staff Ex. 1.0 at 14. ComEd Init. Br. at 31, fn. 6.

<u>The AC Cycling program.</u>

ComEd explains that under the Plan 1 AC Cycling program (then known as "Nature First"), ComEd offered residential customers a financial incentive if they allowed ComEd to install a direct load switch on their central air conditioner, which allows ComEd to cycle off the air conditioner on key usage days. ComEd Ex. 3.0 at 40. This program predates Plan 1, but was transferred to that Plan in order to achieve the demand-response goal. *Id*.; Plan 1 Order at 14, 46-49. In order to free up additional funds to achieve increased kWh savings within limited budgets during Plan 2, ComEd proposed, and the Commission approved, achievement of the demand response goals through its energy efficiency programs. ComEd Ex. 3.0 at 40; *Plan 2 Order* at 20. Accordingly, ComEd no longer offered the AC Cycling program to new participants through Plan 2, but new customers could continue to sign up for the program outside of the portfolio. However, the costs of enrolling and servicing these customers are recovered through base rates rather than through Rider EDA. ComEd Ex. 3.0 at 40. Under Plan 3, ComEd proposes to continue the AC Cycling program in "maintenance mode", meaning that it will continue the program but, like Plan 2, it will no longer accept or fund new customers under or through the Plan. *See* ComEd Ex. 1.0 at 59. ComEd Init. Br. at 32-33.

Staff agrees with ComEd's proposal to continue the AC Cycling program in maintenance mode but questions why $3.69 million of AC Cycling program costs are allocated to the energy efficiency portfolio in Plan 3. Staff Ex. 1.0 at 15-16. ComEd explains that this $3.69 million is comprised of two components, each of which is directly related to AC Cycling participants who joined the program during Plan 1 when the AC Cycling program was part of the portfolio. ComEd Ex. 3.0 at 41. The first cost component is the annual incentive that ComEd pays the customer *who signed up during*

Plan 1 based on the cycling option chosen, and the second cost component is the amortization costs of the capital investment in the direct load control switches installed in these participants' homes. *Id*. For accounting purposes, these switches are considered capital equipment and must be treated as such, requiring amortization over the life of the measure. *Id*. As it did for Plan 2, the Commission should recognize that these costs are incremental energy efficiency costs incurred in the implementation of the Plan that will be a part of the portfolio for the life of the capital investment and until these customers are no longer part of the program. *Id*. ComEd Init. Br. at 33-34.

ComEd also disagrees with the NRDC proposal that the amortized costs associated with the capital investment in the Plan 1 AC Cycling program be recovered through base rates rather than through Rider EDA. NRDC Ex. 1.0 at 18. This proposal should be rejected as contrary to Section 8-103, the *Plan 1 Order*, the *Plan 2 Order*, and Rider EDA. Under Plan 1, the Commission approved the implementation of the AC Cycling program during Plan 1. *Plan 1 Order* at 46-49. Because the costs associated with the AC Cycling program are "incremental costs" incurred to implement the Plan, they must be recovered through Rider EDA. *Plan 1 Order* at 23-25, 46-49, 56 ¶ 6 (approving Nature First as a demand response measure, approving the recovery through Rider EDA of costs associated with demand response measures, and describing the Nature First costs to be recovered through Rider EDA as "all incremental costs," including, *inter alia*, "incremental capital investment to purchase and install Nature First switches"). Under Plan 2, the Commission rejected a Staff proposal to carve out certain plan costs and recover them through base rates, and again confirmed that all costs related to the implementation of energy efficiency plans must be recovered through Rider EDA:

> [T]he General Assembly has determined that the costs associated with ComEd's plans are to be recovered through the automatic adjustment clause authorized under Section 8-103. Specifically, Section 8-103(e) provides that a utility 'shall be permitted to recover costs of [the] measures through an automatic adjustment clause tariff filed with and approved by the Commission. The tariff shall be established outside the context of a general rate case.' 220 ILCS 5/8-103(e). Accordingly, Staff's suggestion is contrary to the statute because it would have ComEd recover most of the Plan costs through Rider EDA, but then recover the incentive compensation costs through base rates.

Plan 2 Order at 44. ComEd Init. Br. at 34-35

ComEd explains that while it has not added new participants to the AC Cycling program through the portfolio since Plan 1 due to budget constraints, the law is clear that the legacy costs of the Plan 1 investment cannot be recovered outside of Rider EDA. Indeed, ComEd continued to recover these costs through Rider EDA during Plan 2, and proposes to continue to do so during Plan 3. ComEd Ex. 3.0 at 26. ComEd further observes that the AC Cycling participants that joined the program during Plan 1 (when the portfolio funded their participation) are part of the portfolio and their costs (and revenues) are part of the portfolio. *Id*. at 26-27. Indeed, the PJM revenues associated with the demand response procured from these Plan 1 participants are also credited back to customers through Rider EDA during the annual reconciliation dockets. *Id*. at 27. NRDC's proposal accordingly should be rejected as contrary to Section 8-103, the *Plan 1 Order*, *the Plan 2 Order*, and Rider EDA. ComEd Init. Br. at 35; ComEd Rep. Br. at 16-17.

Other NRDC proposals.

In its Initial Brief, NRDC now claims that the 62% increase in the assumed cost of acquired savings from ComEd's C&I Incentives program and a 25% increase in the cost per unit of savings in the Appliance Recycling program support raising the savings goals because the costs are too high and should be lowered. NRDC Init. Br. at 6. In reply, ComEd notes that these costs, along with the analysis of every individual measure for every program in the portfolio, were included in the DSMore analysis provided to all of the parties during the discovery phase of this docket. *See* App. B to ComEd Init. Br.; ComEd Ex. 3.1; ComEd Ex. 3.0 at 9. No intervenor challenged the inputs to or results of the DSMore analysis or proposed data or inputs that they believed to be more accurate or credible. ComEd Ex. 3.0 at 9. Indeed, AG witness Mr. Mosenthal testified that "[f]or the most part, [sic] I believe overall costs per unit of savings are reasonable and reasonably consistent with past performance." AG Ex. 1.0C at 5, 8.

Moreover, as to NRDC's claims regarding the assumed cost of acquired savings from the C&I Incentives program, NRDC cites four factors identified in ComEd's Response to NRDC Data Request 5.05, and claims these factors do not justify the increased costs. NRDC Init. Br. at 8-11. Yet, ComEd observes that NRDC plainly ignores the other factors identified by ComEd in the same Response. Specifically, ComEd responded: "Because of the factors described above, ComEd anticipates that it will need to increase marketing, outreach and bonus offerings to meet projected C&I Incentives program energy savings goals. This will translate to a higher cost per kWh overall." NRDC Cross Ex. 1, ComEd Response to NRDC Data Request 5.05. As to the increase in the cost per unit of savings in the Applicance Recycling program, ComEd notes that NRDC errs in its claim that the projected increase in costs is unsupported. NRDC Init. Br. at 6. To the contrary, while NRDC may disagree with ComEd's assumptions, it has not provided any substitute. Indeed, ComEd explains that its assumptions are based on, *inter alia*, over five years of managing this program in the marketplace and working with implementation contractors. Accordingly, ComEd concludes that NRDC's claims fail to provide any evidentiary basis to raise the savings goals. ComEd further observes that the same is true concerning NRDC's speculative assertion regarding potential additional PJM revenue. NRDC Init. Br. at 6, 16-17. As Section IV.A of ComEd's Initial Brief repeatedly explains, the portfolio reflects maximum kWh savings under the current program designs and there is no indication that additional funding would produce additional savings. ComEd Ex. 3.0 at 8-12; ComEd Ex. 1.0 at 33; NRDC Ex. 1.0 at 9. ComEd Rep. Br. at 17-18.

CUB/City's proposal that the PY7 through PY9 goals should be consistent with the PY4 through PY6 goals.

ComEd disagrees with CUB/City's proposal that the PY7 through PY9 goals should be consistent with the PY4 through PY6 goals. CUB/City Ex. 1.0 at 9-10. The proposal lacks foundation and should be rejected. According to ComEd, CUB/City take an overly simplistic approach that wrongly assumes that the same factors that impacted ComEd's performance during Plan 2 will also impact its performance during Plan 3. For example, as NRDC witness Mr. Neme explained, ComEd's least expensive or "cheapest" program on a first-year cost basis in Plan 2 – the residential HER program – was transferred to the IPA portfolio of energy efficiency programs. The loss of this program to the IPA portfolio deprived Plan 3 of its cheapest kWhs. No replacement program at this cost level has been identified. NRDC Ex. 1.0 at 9. Mr. Neme also has noted that the EISA legislation has dramatically reduced the impact of the Residential Lighting program, because of lower gross savings per CFL and the loss of low cost kWh savings for Plan 3. *Id*. In fact, the MWh savings goal of 233,000 in PY6 has dramatically fallen to 86,000 MWh savings in PY9. *See* ComEd Ex. 1.0 at 33. ComEd explains that these examples demonstrate that the factors that will determine ComEd's performance during Plan 3 accordingly will differ from those that determined its performance during Plan 2 and establish that there is basis for consistency between the Plan 2 savings goals and Plan 3 savings goals. ComEd Init. Br. at 35-36; ComEd Rep. Br. at 18.

<u>ELPC's claims that the modified goals should be two-thirds of the statutory goals related proposals.</u>

ComEd notes that like CUB/City, ELPC also claims that the modified goals should be higher – *i.e.*, two thirds of the statutory goals – but does not cite to any considerations or analysis that would make this arbitrary fraction of the statutory goals achievable or more "correct" than the reasoned and thoroughly supported goals calculated by ComEd. ELPC Ex. 1.0 at 6. ELPC only states that "ComEd should acquire more of the identified economic savings potential," but offers no specific proposals or substantive modifications as to how to achieve this objective. *Id*. at 2. Rather, ELPC recommends that a host of proposals (like its proposals relating to additional financing) be studied further in the SAG. ComEd observes that while ELPC suggests that the Commission direct ComEd to revise Plan 3 or prepare a supplement within 6 months of the Plan 3 order addressing a list of "solutions/partial solutions," Section 8-103 forecloses this option. Rather, the Commission must review and approve Plan 3 – and any proposed changes to that Plan 3 – within the five-month statutory period set by the statute. 220 ILCS 5/8-103(f). Moreover, as the AG observes, ELPC's proposal is unworkable in any event, which confirms the wisdom of the statutory framework. *See* 220 ILCS 5/8-103; AG Ex. 2.0C at 16 ("I do not believe it is realistic to expect ComEd to submit a revised plan on the day the Plan period starts. ComEd needs the time and certainty provided by timely Commission approval of its plan to put in place the many activities and decisions necessary to run an effective and efficient portfolio of programs."). ComEd Init. Br. at 36-37.

ComEd further notes that ELPC's array of ideas has not been presented previously or vetted through the SAG. These include the use of aggressive and targeted marketing, public service announcements, additional technical assistance, third party financing, smart meters, rate modifications, and PJM resource bidding, and additional financing of the portfolio through amortization and capitalization of costs. ELPC Ex. 1.0 at 15-16. According to ComEd, the ELPC financing proposals, indeed, are particularly egregious because the *Plan 2 Order* previously rejected them as contrary to Section 8-103:

> The Commission further finds that there is no basis for requiring a utility subject to Section 8-103 to procure additional funding outside of the cost recovery mechanism authorized by Section 8-103. In the Commission's view, Section 8-103 does not contemplate such outside funding. Rather, the statutory framework contemplates funding of the measures through the Commission-approved tariff mechanism and a reduction in measures and goals to the extent the budgets constrain the utility's ability to achieve the goals.

Plan 2 Order at 36. ELPC's Initial Brief (at 10-11) offers nothing new and no basis to alter these conclusions. ComEd Rep. Br. at 19-20.

ComEd further observes that ELPC also suggests that ComEd modify or expand existing programs to improve cost-effectiveness, but offers no concrete recommendations as to which programs could be modified or expanded. ELPC Ex. 1.0 at 16-17. According to ComEd, ELPC generally provides no support for these proposals, including any indication of how much they would cost or whether they would achieve any savings, if implemented. Absent this support (and in light of the fact that many of these ideas are presented only for consideration and study rather than immediate implementation), there is nothing that ComEd or the Commission can or should do with these proposals in this docket. Rather, adoption of ELPC's arbitrary fraction of the statutory goals or adoption of any unsupported recommendations requires substantial evidence, and that has not been provided in this docket. ComEd Init. Br. at 37-38; ComEd Rep. Br. at 19-20.

ComEd further notes that CUB/City and ELPC continue to suggest in their Initial Briefs that the Commission direct ComEd to submit a revised Plan 3. CUB/City Init. Br. at 3, 9, 13, 14; ELPC Init. Br. at 7. As Section IV.A.2.h of ComEd's Initial Brief explained, Section 8-103 forecloses this option, practically if not legally. ComEd explains that the Commission must review and approve Plan 3 – and any proposed changes to that Plan 3 – within the five-month statutory period set by the statute. 220 ILCS 5/8-103(f). As the AG's witness Mr. Mosenthal observed: "I do not believe it is realistic to expect ComEd to submit a revised plan on the day the Plan period starts. ComEd needs the time and certainty provided by timely Commission approval of its plan to put in place the many activities and decisions necessary to run an effective and efficient portfolio of programs." AG Ex. 2.0C at 16. ComEd Rep. Br. at 20.

REACT's claims regarding ComEd's achievement of energy savings goals.

ComEd identifies a number of instances in which the assertions made by REACT were incorrect or unsupported. *First*, Mr. Fults incorrectly claimed that ComEd had not achieved the statutory energy savings goals to date. REACT Ex. 1.0 at 10. When asked in a data request for the data supporting his claim, Mr. Fults could cite to no evidence. ComEd clarified that it *has* achieved each of the statutory energy savings goals under budget for every completed Plan year. Indeed, well before Mr. Fults filed his direct testimony, ComEd had explained in its Data Request Response to REACT 2.05 that it had achieved all of the Commission-approved energy savings goals for Plan Years 1 through 5. As reflected in the applicable Commission Orders, each of these savings goals is the statutorily-set (*i.e.*, unmodified) savings goal. *See Plan 1 Order* at 7; *Plan 2 Order* at 21. ComEd is currently in the midst of Plan Year 6. While the Commission approved a modified goal for PY6, it also directed that ComEd apply its banked savings to the extent necessary to achieve the statutory goal. At this time, ComEd believes it may be possible to achieve the PY6 statutory goal through the application of banked savings. ComEd Ex. 3.0 at 31. ComEd Init. Br. at 38-39.

Second, ComEd notes that while REACT witness Mr. Fults harshly criticizes the modified goals proposed in this docket, he does not offer any proposals for how the goals might be increased or by what amounts. Indeed, Mr. Fults provides no suggested programs or other means by which the proposed modified goals could be further increased. ComEd Init. Br. at 39.

Third, ComEd explains that REACT's unfounded and inaccurate assertion that the Plan 3 overhead budgets are "staggering" (REACT Ex. 1.0 at 14) similarly exemplifies the lack of credibility of its positions. As an initial matter, ComEd submitted a data request to REACT requesting that it provide its proposed budget for overhead costs. The response provided by REACT states that its witness "Mr. Fults' has not formed an opinion regarding the specific level of administrative costs for an overall energy efficiency portfolio." Although Mr. Fults did not identify any experience in designing, implementing or administering a portfolio of energy efficiency programs, ComEd explains that it is in its sixth year of doing so, and believes its overall portfolio costs are reasonable. ComEd Ex. 3.0 at 24. Indeed, a key indicator regarding the reasonableness of the portfolio's costs is the cents per kWh cost of achieving kWh savings, and no one has challenged the reasonableness of ComEd's cents per kWh cost of achieving savings. In fact, the AG acknowledges that the "overall costs per unit of savings are reasonable and reasonably consistent with past performance." AG Ex. 1.0C at 8:3-6. ComEd notes that the AG further took issue with REACT's unfounded assertions regarding portfolio administration and overhead costs. AG Ex. 2.0C at 4 (footnote omitted). ComEd Init. Br. at 39-40.

Finally, ComEd also took issue with Mr. Fults' speculation that "[t]here is a serious question whether ComEd has appropriate motivations and incentives relating to energy efficiency" (REACT Ex. 1.0 at 12). ComEd again notes that Mr. Fults cites to no evidence to support what are admittedly nothing more than "suspicions." To the contrary, ComEd explains that it has performed at the highest levels since the inception of its energy efficiency portfolio – in each of Plan Years 1 through 5, ComEd has greatly exceeded the statutory energy savings goal under budget. In fact, ComEd has been recognized several times at the national level for its energy efficiency portfolio. Last year alone ComEd was awarded the U.S. Environmental Protection Agency 2013 ENERGY STAR Partner of the Year Sustained Excellence Award in Energy Efficiency Program Delivery and the American Council for an Energy-Efficient Economy Exemplary Energy Efficiency Program award. ComEd Ex. 3.0 at 31-32. And regarding Mr. Fults' "question as to whether ComEd is the proper party to be responsible for developing and implementing energy efficiency programs in ComEd's service territory" (REACT Ex. 1.0 at 13), ComEd observes that the General Assembly directed the utilities to develop and implement the energy efficiency programs in their respective service territories, and subjected them to penalties for failures to achieve the energy savings goals. *See generally* 220 ILCS 5/8-103. ComEd follows this law. With respect to ComEd's performance in its service territory during these first five Plan Years, ComEd notes there is no basis for Mr. Fults' questioning of the General Assembly's decision in this regard. He cites to no evidence; nor is he a legal expert in statutory interpretation. To the legislature's credit, the framework it established has resulted in exceeding the statutory energy savings goals for Plan Years 1 through 5 under budget. ComEd Ex. 3.0 at 32. ComEd Init. Br. at 40-41.

Staff and Intervenors' Positions

Commission Analysis and Conclusions

The Commission finds that ComEd has satisfied the requirement of Section 8-103(f) that requires that the Plan "[d]emonstrate that its proposed energy efficiency and demand-response measures will achieve the requirements that are identified in subsections (b) and (c) of this Section, as modified by subsections (d) and (e)." 220 ILCS 5/8-103(f)(1). The Commission acknowledges that ComEd faces increasing energy savings goals during Plan Years 7 through 9 while the spending screens have remained at the Plan Year 4 level. Indeed, Staff and virtually all intervenors agree with the core assumption that the energy savings goals for Plan Years 7 through 9 must be adjusted downward because of the severe budget constraints and other programmatic limitations applicable to the portfolio. For this reason, it is reasonable to modify the goals consistent with the statute and pursuant to Section 8-103(d). This conclusion is also consistent with the report that the Commission issued in 2011 following a study of the budgetary constraints and the manner in which the energy savings goals for Plan Year 6 were modified.

Furthermore, we find that the process by which ComEd derived the modified energy savings goals for the Plan's three years was thorough and well documented. In fact, no party to this proceeding challenged the inputs or the results of ComEd's DSMore analysis or suggested that any of the inputs or data to that model were flawed. We appreciate ComEd's transparent presentation of its assumptions and "bottom up" approach to building the portfolio. For these reasons, the Commission approves the Plan and the modified energy savings goals set forth therein. As discussed further below, the Commission is rejecting the various proposals of Staff and intervenors to adjust the modified goals. In general, we found most of these proposals to be "ideas" or "concepts" that were based on hopes about future "potential" within the ComEd service territory. Admittedly, many of these proposals conceded that they must be studied further following this docket, yet suggested that they could be adopted at a later date and incorporated into the Plan. As noted previously in this order, however, Section 8-103 requires that the Commission enter a final order approving the Plan within 5 months of filing. In the few instances where a proposal identified specific kWh savings that could be added to the modified goals, we found that they were based on an incorrect assumption of law or fact.

The AG and NRDC advance proposals that they claim would increase the MWh savings of the Plan over the three-year period; yet, each is based on an incorrect assumption. First, the AG seeks to transfer the Residential Lighting program from the ComEd Section 8-103 portfolio to the IPA's Section 16-111.5B portfolio. We agree with ComEd and IIEC that such a proposal is outside the scope of this proceeding because the Commission considers and approves the IPA portfolio pursuant to a wholly separate statutory framework and approval criteria. As such, the AG is asking the Commission to sever the popular Residential Lighting program from the Plan and leave it stranded until the IPA decides what, if anything, to do with the program. The Commission finds this result to be unacceptable and contrary to Section 8-103(f)(5), which requires that the Plan offer opportunities for all customers to participate. The loss of the Residential Lighting program would substantially diminish residential customers' ability to participate in the Plan.

Second, the AG and NRDC propose to add MWh savings to the Large C&I Pilot program based on the mistaken assumption that no savings were reflected in the Plan. Yet, this proposal ignores the rebuttal testimony of ComEd witness Brandt, who testified that a savings estimate was included in the Plan along with the budget estimate. In both instances, the amounts were included in the larger C&I Incentives program budgets and savings goal projections. While ComEd admits this should have been more clearly presented in the Plan, we have no reason to doubt ComEd's explanation of this matter. Moreover, we appreciate that the Large C&I Pilot is just that – a pilot – and it is difficult to attribute any estimated energy savings to a brand new and experimental program. Accordingly, we agree with ComEd that its savings estimates for the Pilot program – which assume that the projects under the Pilot will obtain kWh savings at the same rate as projects in the larger C&I Incentives program – is reasonable and already included in the Plan. The AG's and NRDC's proposals are rejected.

Third, we understand that the parties propose different methodologies for determining how to account for CFL carryover in the planning assumptions for the Plan. Because the TRM versions establishing the CFL carryover values for Plan Years 7 through 9 do not yet exist, ComEd assumed, for these Years, that all CFLs sold in a given year were installed in that year. AG and NRDC, on the other hand, attempted to estimate the CFL carryover values that would ultimately be approved by the Commission in future TRM versions. Although neither approach can predict the ultimate, Commission-approved values with certainty, we appreciate the simplicity of ComEd's approach, and that it does not require the Commission to approve preliminary values here that it will later be required to overturn in the TRM versions ultimately approved. Accordingly, we adopt ComEd's position.

With respect to the proposals that ComEd's proposed 5% risk adjustment should be rejected, the Commission observes that no party in this proceeding has taken the position that the ComEd portfolio is without risk and, in fact, parties have expressly acknowledged these risks and even taken positions that increase the risks associated with the portfolio. For example, we appreciate that ComEd faces new uncertainty regarding the Large C&I Pilot program that it will attempt to implement over the next three years. Further, we acknowledge that there is inherent risk in designing and analyzing a portfolio of measures and programs of this magnitude, as evidenced by the DSMore software bug. To further incent ComEd to propose and implement innovative pilot programs such as the Large C&I Pilot and to accommodate the planning risks encountered, we agree with the proposed 5% risk adjustment, which is modest in light of the risks facing ComEd during this Plan.

Several parties also propose that budgets be cut in an effort to fund more efficiency savings or fund programs such as AMI that are already funded under Article XVI of the Act. Notwithstanding that the budgets are particularly important as ComEd seeks to investigate new programs in the coming years, the Commission declines to adopt these proposals because they are not tied to any particular proposals for how the re-allocated funds would be used to procure additional savings. Indeed, ComEd witness Brandt testified in his rebuttal testimony that kWh savings are maximized under the current program designs. Absent specific proposals from Staff and intervenors regarding which programs would be funded and what kWhs could be obtained, we cannot adopt these proposals here. Relatedly, the Commission also declines to provide a "clearer definition" for "breakthrough equipment and technologies." No party, including Staff, has provided any evidence to suggest that any party has interpreted this phrase in an overly broad or narrow way. The Commission agrees with NRDC and ComEd that such definition is not required and accordingly rejects Staff's recommendation. Finally, with respect to concerns about spending the annual budgets, the Commission appreciates that ComEd has prudently and reasonably used EDA funds to achieve (and exceed) the statutory savings goals under budget over the past five years, and we disagree with Staff's and CUB/City's suggestions that ComEd should have spent the entire budget each year regardless of how far ComEd exceeded the energy savings goal. The statute does not direct the funds to be used in this way, and the Commission finds this position particularly troubling given Staff's and CUB/City's positions on banking. That being said, we encourage ComEd to fully utilize the Plan Year 7 through 9 budgets in light of the modified goals, and, to that end, we again approve ComEd's request to seek recovery of prudently and reasonably incurred costs that incidentally exceed the spending screen in a given Plan Year.

With respect to NRDC's proposal to recover amortized Plan 1 AC Cycling costs through base rates, the Commission agrees with ComEd that these costs are incremental energy efficiency costs incurred in the implementation of the Plan that will be a part of the portfolio for the life of the capital investment and until these customers are no longer part of the program. Accordingly, these costs should continue to be recovered through Rider EDA. NRDC's proposal to shift these costs from recovery under Rider EDA to base rates is rejected.

Regarding both CUB/City's and ELPC's vague claims that the modified savings goals should be increased by different amounts, neither proposal is supported by any evidence. CUB/City claim that the PY7 through PY9 goals should be consistent with the PY4 through PY6 goals, and ELPC claims that the PY7 through PY9 goals should be two-thirds of the statutory goals. Yet, there is no evidence regarding how the proposed portfolio would be reconfigured to achieve these results. As ComEd and NRDC have explained, the portfolio faces new challenges, such as EISA and the transfer of the HER program to the IPA portfolio. Similarly, while ELPC has offered a host of undeveloped ideas or concepts to be explored later, these proposals lack any information about their cost or projected kWh savings. And, as we concluded in Docket No. 10-0570, we continue to believe that outside financing sources are neither contemplated nor authorized by Section 8-103. Accordingly, the Commission rejects these unsupported proposals.

Finally, the Commission finds REACT witness Mr. Fults' testimony to lack foundation and credibility regarding these matters. We accordingly give it no weight.

2. The Proposed Measures in ComEd's Plan Are Designed to Achieve the Requirements of Section 8-103(c).

ComEd recites that under Section 8-103(c), it must "implement cost-effective demand-response measures to reduce peak demand by 0.1% over the prior year for eligible retail customers … ." 220 ILCS 5/8-103(c). ComEd has proposed to maintain, but not expand, the existing demand response program offered under its first Plan, the AC Cycling program element. ComEd Ex. 2.0 at 11-12. This is the same approach approved by the Commission for Plan 2. *Plan 2 Order* at 23, 35-36. ComEd witness Mr. Brandt explained that ComEd would still be able to meet the demand response goal through the energy efficiency programs. ComEd Ex. 2.0 at 12. Staff does not oppose ComEd's demand response proposal. Staff Ex. 1.0 at 15. ComEd Init. Br. at 41.

ComEd points out that CUB/City is the only party that opposed the ComEd demand response proposal. CUB/City argued that the Commission should require ComEd to "investigate potential demand response programs that could meet the statutory requirements, especially those that relate to AMI deployment, discuss these programs with the SAG, and include these programs in a Revised Plan." CUB/City Ex. 1.0 at 24. ComEd again notes, however, that the statute does not permit continued litigation regarding the Plan's programs following the close of the five-month period set by the statute. Indeed, as Staff explained, "the recommendation is not feasible. If the Commission adopts CUB-City's recommendation, ComEd would be submitting a revised Plan that includes Demand Response programs that were not reviewed and vetted as part of this proceeding." Staff Ex. 4.0 at 2. There are, moreover, no funds available for any new demand response programs, and there is no need for these programs given that ComEd can achieve the demand response goals through the energy efficiency programs being offered in Plan 3. ComEd Ex. 3.0 at 42; see also Staff Ex. 1.0 at 15. ComEd Init. Br. at 41-42; ComEd Rep. Br. at 21-22.

Staff and Intervenors' Positions

Commission Analysis and Conclusions

As ComEd and Staff explain, the proposed energy efficiency measures in ComEd Plan are designed to achieve the demand response goals in Section 8-103(c). Accordingly, we approve ComEd's proposal to continue the AC Cycling program in maintenance mode, and, as explained in Section V.A.1., *supra*, we approve the continued recovery of the AC Cycling program costs related to the Plan 1 program through Rider EDA.

Given the constrained budgets during Plan Years 7 through 9, the Commission agrees with Staff and ComEd that CUB/City's recommendation that the Commission require ComEd to investigate potential demand response programs for inclusion in a Revised Plan should be rejected. There is no funding for such proposal, additional demand response programs are not needed to achieve the demand response goals, and a "Revised Plan" filing is unlawful.

B. Whether ComEd Satisfies the Statutory Requirements Regarding New Building and Appliance Standards.

ComEd's Position

Section 8-103(f)(2) requires that the utility "[p]resent specific proposals to implement new building and appliance standards that have been placed into effect." 220 ILCS 5/8-103(f)(2). ComEd witness Mr. Brandt testified that ComEd coordinated with DCEO with respect to this requirement, and noted that the Market Transformation programs offered by DCEO will address this requirement. ComEd Ex. 2.0 at 19. As Mr. Brandt further testified, ComEd also has been working with DCEO and the other state electric and gas utilities on a codes and standards initiative, which they intend to launch as part of their plans and which ComEd proposes to launch under the emerging technology banner. ComEd Ex. 2.0 at 19. In response, Staff stated that ComEd's Plan contains proposals to implement new building and appliance standards that have been placed into effect. Staff Ex. 1.0 at 17. ComEd Init. Br. at 42-43.

Staff and Intervenors' Positions

Commission Analysis and Conclusions

The Commission finds that ComEd's Plan satisfies the requirement of Section 8-103(f)(2). Staff notes that the requirement has been met, and no party contests that ComEd has complied with this requirement.

C. Whether ComEd Provided Estimates of the Total Amount Paid for Electric Service Associated with the Plan.

ComEd's Position

As required by Section 8-103(f)(3), the utility must "[p]resent estimates of the total amount paid for electric service expressed on a per kilowatthour basis associated with the proposed portfolio of measures designed to meet the requirements that are identified in subsections (b) and (c) of this Section, as modified by subsections (d) and (e)." 220 ILCS 5/8-103(f)(3). ComEd notes that it has provided the estimates of the total amount paid for electric service, expressed on a per kilowatt-hour basis, that are associated with the proposed portfolio of measures designed to ensure statutory compliance. ComEd Exs. 2.0, 2.1. No party contests that ComEd has complied with this requirement. In fact, Staff affirmatively notes that ComEd has presented these estimates. Staff Ex. 1.0 at 17. ComEd Init. Br. at 43.

Staff and Intervenors' Positions

Commission Analysis and Conclusions

The Commission finds that ComEd's Plan satisfies the requirement of Section 8-103(f)(3). Staff agrees that the requirement has been met, and no party contests ComEd's compliance with this requirement.

D. Whether ComEd Has Cooperated with State Agencies in Developing Its Plan.

ComEd's Position

Section 8-103(f)(4) requires that ComEd "[c]oordinate with [DCEO] to present a portfolio of energy efficiency measures proportionate to the share of total annual utility revenues in Illinois from households at or below 150% of the poverty level." 220 ILCS 5/8-103(f)(4). At the outset of the planning process, ComEd and DCEO agreed that DCEO would oversee the low-income portfolio. ComEd Ex. 2.0 at 23. Staff has confirmed that ComEd has complied with this statutory requirement. Staff Ex. 1.0 at 18. ComEd Init. Br. at 43.

Staff and Intervenors' Positions

Commission Analysis and Conclusions

The Commission finds that ComEd's Plan satisfies the requirement of Section 8-103(f)(4) and notes that Staff agrees that the requirement has been met. No party contests ComEd's compliance with this requirement.

E. Whether the Measures and Programs Set Forth in ComEd's Plan Are Diverse and Cost-Effective.

<u>ComEd's Position</u>

ComEd notes that no party disputes that ComEd's Plan complies with the requirement of Section 8-103(f)(5) that its "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 5/8-103(f)(5); ComEd Ex. 2.0 at 53-54. Both the Plan and Mr. Brandt describe in great detail that ComEd's diverse portfolio includes energy efficiency measures that are cost-effective under the Illinois TRC test. Staff and intervenors, indeed, were generally complimentary of the portfolio's design – stating that it "includes a diverse cross-section of opportunities for customers of all rate classes to participate in the programs" and "a wide range of energy efficiency programs that reach all customer classes that fund the EEPS" (Staff Ex. 1.0 at 19; CUB/City Ex. 1.0 at 5) – and noting that it is "cost-effective at the portfolio level" with "a TRC benefit-cost ratio of 1.65" for ComEd's portion of the portfolio, excluding gas costs and benefits. CUB/City Ex. 1.0 at 5; Staff Ex. 1.0 at 19. ComEd credits the SAG process for this result, during which ComEd solicited stakeholder comments and concerns and worked to address them as appropriate. ComEd Ex. 3.0 at 32. ComEd Init. Br. at 44.

ComEd explains that Staff and intervenors have proposed various program design recommendations that generally fall into one of two categories – (i) those to be adopted in this docket, and (ii) those to be considered outside of this docket, either through the SAG or pursuant to a separate statute. Putting aside that most of these recommendations have not been analyzed or discussed with the SAG, ComEd observes that none of these proposals can be adopted in this docket because they are not supported by substantial evidence. 220 ILCS 5/10-201(e)(iv)(A). Specifically, none of these proposals has the program detail or savings projections required to support its adoption within Plan 3. *Id.* While these recommendations may, in some cases, be worthy of further consideration in the SAG, ComEd contends they cannot be adopted here. *Id.* According to ComEd, still other recommendations are outside the scope of this docket, which calls for approval of energy efficiency and demand-demand response measures *pursuant to Section 8-103*. To the extent parties are seeking to invade upon matters governed by other statutory provisions (such as the IPA Act and AMI matters), ComEd states that the Commission should recognize that these recommendations exceed the scope of this docket and cannot lawfully be addressed or adopted. ComEd Init. Br. at 44-45.

Residential Lighting. ELPC proposes what it terms a "light bulb turn-in" program under which a customer could trade four working 100 watt incandescent bulbs for either several CFLs or a single LED bulb at no cost to the customer. ELPC Ex. 1.0

at 29. ComEd observes that like other recommendations in this docket, this proposal was not presented and vetted with the SAG when these portfolio elements were being discussed. ComEd Ex. 3.0 at 34. Furthermore, ComEd notes that the ELPC proposal is not offered with any support, including any estimates of the costs to implement or savings that could be achieved through such a program. ComEd Ex. 3.0 at 34. Indeed, in response to a data request, ELPC witness Mr. Crandall recalls only one such program, and admits that he is not sure whether it is still in existence. ComEd further observes that the proposal fails to consider the many logistical issues that would need to be addressed before implementing such a program – the location(s) for bulb turn-ins, identification of who will purchase, own or store the CFLs or LEDs to be distributed, and considerations of safeguards needed to ensure that customers do not "game" the system. ComEd Ex. 3.0 at 35. Without any support or estimates of what such a program might cost or how it might be funded, this proposal cannot be adopted. ComEd Init. Br. at 45-46. Tellingly, ELPC's Initial Brief does not address this proposal.

While Staff observes that the light bulb market is evolving and expresses concerns in this regard (Staff Ex. 1.0 at 42-44), it is not clear to ComEd how these concerns relate to the Residential Lighting program or whether these are concerns with such program. As Mr. Brandt testified, ComEd monitors the implementation of EISA regulations and will modify its marketing if and when that is appropriate. *Id.* ComEd notes that while EISA regulations are law, their actual impact on the marketplace in the ComEd service territory have been minimal to date. *Id.* ComEd Init. Br. at 46.

ELPC's Various Proposals.

<u>Voltage Optimization ("VO") Concept.</u>

ELPC also proposes a voltage reduction program for eventual inclusion in the portfolio, although admits that the proposal cannot be adopted at this time. ComEd observes that like other ELPC proposals calling for further development following the close of this docket and the eventual filing of a "Revised Plan", this attempt to extend the docket is not lawful. ComEd Init. Br. at 46-47.

According to ELPC, this program, which is a combination of Conservation Voltage Reduction ("CVR") and Volt/VAR Optimization (VVO), would be designed to reduce end-use customer energy consumption and peak demand while also reducing utility line losses. ELPC Ex. 2.0 at 5. ELPC makes several recommendations regarding the program. *See* ComEd Init. Br. at 47.

ComEd notes that similar to other ELPC proposals, this is the first time ELPC has presented this proposal to ComEd and stakeholders, and unfortunately, a proposal of this magnitude is being proposed too late and after months of SAG meetings regarding the proposed Plan 3. Indeed, even ELPC witness Mr. Volkmann admits that the proposal cannot be adopted at this time, but rather should be studied and then implemented, if appropriate, at a later date under a "revised" plan filing. ELPC Ex. 2.0 at 33. While ComEd is willing to investigate the VO concept further through the SAG, ComEd again notes that a "revised" plan filing is not lawful under Section 8-103.

Pursuant to Section 8-103(f), the Commission is required to issue an order approving or disapproving the plan within 5 months of its submission. 220 ILCS 5/8-103(f). ComEd observes that AG witness Mr. Mosenthal takes a similar view, noting that Mr. Volkmann's proposal that ComEd reprioritize its Plan 3 programs and resubmit a revised plan by June 1, 2014 is not reasonable or feasible. AG Ex. 2.0 at 16. Finally, while ComEd expresses a willingness to discuss the VO concepts further through the SAG, it notes that it has understood the concept to be more of a utility optimization measure rather than a "true" energy efficiency measure. If ComEd's understanding is correct, then it may not be appropriate to further discuss the concept in the SAG. ComEd Ex. 3.0 at 38. ComEd Init. Br. at 47-48.

In the event the Commission were to approve the proposed feasibility study, ComEd proposes that the study be funded through its Emerging Technology / R&D Budget, assuming it would cross both PY6 and PY7 in terms of expenses. However, this assumes that this Budget is not eliminated or reduced as others have proposed in this docket. Based on the results of the feasibility study, which are not known at this time, ComEd can work with the SAG to determine whether a pilot VO program should be developed within ComEd's service territory. ComEd Init. Br. at 48.

ComEd further notes that in their Initial Briefs, both ELPC and the AG concede that the proposed feasibility study should not be funded under Section 8-103. ELPC Init. Br. at 22; AG Init. Br. at 23. According to the AG, the VO program is not even an energy efficiency program. AG Init. Br. at 24-26. As such, ComEd concludes that this proposal cannot be entertained in this docket and should be rejected. ComEd Rep. Br. at 23.

<u>Smart Device Enablement.</u>

ComEd explains that while ELPC has also proposed a smart device enablement program for inclusion in the portfolio (ELPC Ex. 2.0 at 14), it is unclear what is specifically being proposed around device enablement because it does not seem to be a fully-developed program. ComEd Ex. 3.0 at 38. ELPC's recommendations appear to be focused on AMI statutory provisions and Commission Orders unrelated to Section 8-103 and are therefore outside the scope of this docket. *Id.* ComEd Init. Br. at 49.

Because ComEd believes that AMI has the potential to offer new, innovative approaches to energy efficiency, ComEd is participating in the new provisions of the Act regarding the implementation of AMI in its service territory, which includes the filings of its AMI Plan under Section 16-108.6 of the Act and the filing of its Smart Grid Test Bed Plan under Section 16-108.8 of the Act. ComEd Ex. 3.0 at 39. However, in light of this statutory framework – which is entirely separate and apart from Section 8-103 at issue in this docket – ComEd concludes that any proposals to revisit or expand on certain AMI-related orders or statutory provisions in this docket are not legally permissible. ComEd Init. Br. at 50; ComEd Rep. Br. at 23.

While ComEd intends to investigate the convergence of energy efficiency and AMI under the Emerging Technology / R&D budget, ComEd further observes that ELPC oddly recommends eliminating this budget from the portfolio. ComEd Ex. 3.0 at 39. For these reasons, ELPC's proposals should not be adopted, and the Emerging Technology / R&D Budget should continue to be funded to support the proposed investigation. ComEd Init. Br. at 50.

Tariff modifications.

ComEd observes that ELPC vaguely proposes that ComEd either modify existing tariffs or propose new tariffs to offer light-emitting diode ("LED") street lighting. However, no costs or energy savings projections are offered, much less any tariff language. ELPC Init. Br. at 9-10. ComEd therefore concludes that the proposal is wholly undeveloped and must be rejected. ComEd Rep. Br. at 23-24.

Further study of strategies to capture wasted energy.

ELPC recommends that "ComEd (in conjunction with the SAG) explore and develop approaches to capture reduction of wasted energy potential that exists in its service territory. ComEd with extensive SAG input should issue an RFP to secure the services of marketing and energy awareness expertise to formulate proposals and strategies to capture wasted energy in ComEd's service territory. Those recommendations should be presented to the Commission within six months of the issuance of an order in this proceeding." ELPC Init. Br. at 8-9. ComEd notes that by ELPC's own admission, this "program," which is essentially another study, itself requires further study by the SAG. According to ComEd, ELPC also has neither estimated the cost of this program nor indicated the source of the funding for it. As ELPC defines it, moreover, this program is beyond the scope of this docket because it is not capable of being proposed, much less adopted, before the February 1, 2014 deadline for this docket. ComEd Rep. Br. at 24.

Large C&I Pilot Program. For Plan 3, ComEd proposed a Large C&I Pilot program ("Pilot" or "Pilot program") to directly address the unique characteristics and needs of its largest customers. As explained further below, this program would provide pilot participants with unprecedented access to their Rider EDA contributions while also setting the co-funding requirement at the lowest level in the Plan. Since the filing of Plan 3, ComEd has worked with REACT to further refine the Pilot and respond to concerns of REACT and its members. These discussions culminated in a refined Pilot – the "Modified Pilot program" – that is set forth in App. A to ComEd's Initial Brief. Because Section 8-103 does not authorize a "self-direct" program for large electric customers, ComEd believes that the proposed Modified Pilot program reflects the maximum flexibility permitted by law and should be adopted. For this reason, the self-direct programs proposed in this docket must be rejected. While REACT and IIEC have proposed self-direct programs, REACT now supports the Modified Pilot program. Indeed, for the reasons explained in this section, the proposed self-direct programs are not permissible under Section 8-103. ComEd Init. Br. at 50-51.

Factual and statutory background.

On April 30, 2013, REACT member FutureMark made a presentation to the SAG regarding its frustrations in attempting to participate in the Request for Incentive ("RFI") program offered under Plan 2, and recommended that a self-direct program be offered to large customers instead. REACT Ex. 2.0 at 5-6; REACT Ex. 4.0 at 7. In his rebuttal testimony, Mr. Brandt explained that ComEd had to sunset the RFI program due to various implementation issues, and attempted to transfer existing projects to the Custom program, including FutureMark's project. ComEd Ex. 3.0 at 52-53. Mr. Brandt acknowledged that FutureMark's transition was less than ideal, and this experience, coupled with FutureMark's SAG presentation, provided ComEd with the impetus to quickly pull together a proposed pilot program for the soon-to-be filed Plan 3. *Id.* at 42-43, 52-53. Despite repeated claims in REACT witness Mr. Fults' testimony that large C&I customers are dissatisfied with ComEd's portfolio, ComEd noted that it is not aware of any other large C&I customers that have had a negative experience participating in the portfolio. In fact, in response to data requests from both ComEd and ELPC, REACT was unable to identify any other large C&I customer that was dissatisfied with the portfolio. ComEd Init. Br. at 51; App. I to ComEd's Init. Br. In response to REACT's and IIEC's characterizations of the portfolio in their Initial Briefs as providing only "off-the-shelf" or "cookie cutter" programs (IIEC Init. Br. at 2; REACT Init. Br at 10-11), ComEd observes that they may be unaware of the *Custom* program, which by definition is neither off-the-shelf nor cookie cutter. ComEd Rep. Br. at 31.

Because Section 8-103 governs the energy savings goals, budgets and timeframe of each triennial plan filing, ComEd embarked on a pilot design that would respond to the concerns expressed by FutureMark while also complying with the complex statutory framework and energy savings goals for the three-year period. According to ComEd, this meant that ComEd could not pursue the development and offering of a "self-direct program" under Section 8-103 because the General Assembly did not authorize an electric self-direct program in the same way it did under Section 8-104 for large gas customers. There, the legislature explicitly defined and carved out such customers from participation in the gas energy efficiency portfolio. *See generally* 220 ILCS 5/8-104(c),(d),(e) & (m) (Section 8-104(m) provides that "[s]ubsections (a) through (k) of this Section do not apply to [self-direct] customers … ."). Rather, these customers must deposit funds (equal to 2% of the customer's annual cost of natural gas) into a reserve account, which the customer can freely access on whatever timeframe it wishes to implement energy efficiency projects. To accommodate this autonomy and flexibility, ComEd notes that the General Assembly expressly exempted gas self-direct customers from the applicability of the automatic adjustment clause tariff providing for the recovery of the portfolio's costs, and further modified the statutory goals to account for the loss of the self-direct customers' funding. Section 8-103 contains none of the Section 8-104 provisions required to enable a self-direct program. ComEd Init. Br. at 51-52.

ComEd's Proposal.

Faced with the constraints of Section 8-103 and the goal of granting large C&I customers more flexibility and access to their Rider EDA contributions, ComEd explains that it moved quickly to develop a program template for a pilot program that could be implemented under Plan 3. While ComEd had very little time to develop the Large C&I Pilot, the program template included in the Plan sets forth many of the key requirements and features of the contemplated pilot. Specifically, ComEd notes that the Pilot would allow participants to enroll for the three-year Plan cycle that would continue through the end of PY9. *See* ComEd Ex. 1.0 at 82. Projects must be completed by the end of PY9, which directly ties the Plan dollars associated with the projects to the Plan kWh savings achieved by the projects. ComEd Ex. 3.0 at 43. While ComEd would continue to collect Rider EDA charges from Pilot participants, ComEd would begin tracking the specific amounts paid by the participants during PY7 through PY9. *See* ComEd Ex. 1.0 at 82. Subject to the restrictions described below, a participant would be permitted to apply a pre-specified percentage of the EDA charges that it has paid as a credit to the cost of implementing energy efficiency measures. Any unused funds at the end of the three-year pilot would be returned to the general Rider EDA pool of funds. *Id.* According to ComEd, these key features continue to be reflected in the Modified Pilot program now proposed by ComEd and REACT. ComEd Init. Br. at 53-54; App. A to ComEd's Init. Br.

As part of the Pilot development, ComEd also articulated a series of necessary restrictions to ensure that the Pilot operates within the legal confines of Section 8-103 and promotes the goals of the State's energy efficiency framework. Based on the refinements to the Pilot agreed to by ComEd and REACT, ComEd states that the proposed Modified Pilot program includes the following restrictions:

> Projects must be cost-effective on a TRC basis. ComEd will review the project application and, working with the pilot participant, will determine the project's cost effectiveness. ComEd and the pilot participant will integrate the independent evaluator in the review process and will defer to them for final acceptance of savings methodology, savings estimates, and evaluation procedures. The parties will develop an agreed upon project review process and will make best effort[s] to abide by this timeline.
>
> Identified potential participants should submit notice of intent to participate in this pilot within the first three months of the plan cycle. Once accepted, tracking of participants' Rider EDA fund contributions will commence, and participant will no longer be eligible to participate in any other Smart Ideas programs funded under Rider EDA. A participant may withdraw from the pilot at any time, at which time the participant's funds will revert to the applicable EDA pool and the participant will regain eligibility to participate in other Smart Ideas program. Reapplying for the pilot will not be allowed.
>
> Participants further acknowledge that 40% of their Rider EDA contribution shall be used to fund portfolio costs, including DCEO programs (25%), M&V (3%) and program administration (12%). A key component of this pilot will be to monitor and track program administration costs so that the cost allocation can be recalculated based on actual results for future implementation of this program.

The final number of participants shall be limited to ensure that total project incentive disbursements during the pilot do not exceed the Plan 3 budget over the three-year pilot window.

Participants may submit a project at any time within the 3 year planning period, provided that the project will be completed within the 3-year planning period. Upon submission of a project application, ComEd and its independent evaluator shall review the application to ensure it satisfies regulatory and statutory requirements. Best efforts shall be used to complete the review within 30 business days, subject to complete and sufficient data being provided by the participant on a timely basis. Funds associated with the proposed project shall be reserved upon the approval of a project application by ComEd.

Participants must co-fund projects at a minimum of 33% of total project costs. However, operational optimization projects may not require any co-funding by the participant, which is consistent with current Smart Ideas programs. This determination will be up to the discretion of ComEd.

Project funding comes from the tracked amount of EDA charges paid by the participant to date. Additionally, advanced funding may occur under the "grant" approach outlined in ComEd's Rebuttal Testimony (ComEd Ex. 3.0 at 51). In no event will actual cash disbursement exceed the cumulative tracked EDA charges for the participant.

No more than 20% of funds will be spent on non-project costs (e.g., engineering studies, design work).

Progress payments will be allowed with sufficient support documentation.

Approved projects must be completed by May 31, 2017.

Project savings are subject to ComEd's normal EM&V process that is lead by the independent evaluation.

Any changes to the scope of a project shall be brought to ComEd's attention immediately. Participants acknowledge that any scope change that would render a project as non-qualifying under the original scope approval criteria may result in a forfeiture of any incentives and repayment to ComEd of any progress payments already issued.

Unused funds at end of three-year pilot are returned to the general pool.

ComEd Init. Br. at 54-56; App. A to ComEd's Init. Br.

According to ComEd, while REACT had been critical of the originally proposed Pilot and what it perceived to be a lack of development, ComEd defined the key features in a very compressed timeframe, and expected that the additional details of the

Pilot would be developed after the Commission approves the Pilot during the final program design phase. In fact, because pilots have typically fallen under the R&D umbrella of the portfolio, ComEd notes that it has not previously proposed program templates for pilot programs in past Plans. Given the interest in this pilot program, however, ComEd believed that it was important for parties to review and comment on the overall framework and for the Commission to review and approve the concept. To that end, ComEd and REACT, joined by other interested stakeholders, entered into discussions regarding the proposed Pilot. These discussions culminated in the Modified Pilot framework, which was agreed to by ComEd and REACT and is reflected in Joint Ex. 1. ComEd Init. Br. at 56.

ComEd also highlights that this revised framework proposes an upfront payment – or grant – option in response to REACT's and IIEC's comments that participants in the Large C&I Pilot would "pay twice" before receiving reimbursement. Although Section 8-103 currently authorizes a grant payment option only for DCEO (220 ILCS 5/8-103(e)), ComEd would be willing to implement an upfront payment option for Pilot participants if the Commission were to approve this feature of Joint Ex. 1. ComEd Ex. 3.0 at 51. With respect to implementing a grant concept within the Pilot, ComEd explains that the participant's application would first have to be approved. This would include demonstration that the project is cost effective under the TRC test. *Id.* Subsequent to that approval, the participant would receive – in the form of an upfront grant – an appropriate amount of funding for the proposed project. *Id.* Depending on the scope, duration, cost and payment terms of the project, grants might be made once or in increments. The terms set forth in the modified Pilot program would otherwise apply. *Id.* ComEd Init. Br. at 56-57.

Following Commission approval of the Modified Pilot program, ComEd would work with interested stakeholders during the final program design phase to button down details such as the delivery strategy, market strategy, and program targets. ComEd Init. Br. at 57. In their Initial Briefs, ComEd and REACT confirmed their agreement that the Commission should adopt the Modified Large C&I Pilot program (Joint Ex. 1.0) in lieu of ComEd's originally proposed Large C&I Pilot program and REACT's proposed Self-Direct program. *See* ComEd Init. Br. at 50-51; REACT Init. Br. at 11-12. While ComEd noted in Joint Ex. 1.0 and its Initial Brief that the details of the Modified Pilot program would be worked out with stakeholders following Commission approval of the Pilot (*e.g.*, through the SAG), REACT's Initial Brief requests that "the Commission also should direct the initiation of a stakeholder-driven process to formulate the implementation details of that Program." REACT Init. Br. at 12. Because the Commission has already established the SAG, however, ComEd does not believe a separately initiated "stakeholder-driven process" is needed, and stakeholders can work within the existing SAG framework to "formulate the implementation details of [the] Program." ComEd Rep. Br. at 24-25.

<u>Self-Direct Program Concepts.</u>

Although ComEd and REACT now support adoption of the Modified Pilot program in this docket (Joint Ex. 1), ComEd recognizes that the self-direct programs originally advanced by REACT and IIEC remain in the record and parties did not have an opportunity to voice their support for Joint Ex. 1 (or some other proposal) until the filing of their initial briefs. In their Initial Briefs, ComEd observes that IIEC and REACT raise the issue of an electric self-direct program in different ways. IIEC proposes changes to the Modified Pilot program that, if adopted, would permit participants to essentially opt-out of the three-year plan period currently under review. IIEC Init. Br. at 4-6. REACT, on the other hand, argues that self-direct programs are lawful under Section 8-103, and asks that the Commission reach that conclusion here. REACT Init. Br. at 12-20. Because REACT no longer advocates for adoption of its self-direct program in this docket, ComEd notes that its request apparently relates to what might be proposed in a future plan docket. According to ComEd, however, no proposal has been made in this docket that would overcome the plain and serious legal issues with self-direct proposals in the context of Section 8-103 or otherwise provide the Commission with a basis for ruling on the issue at this time. ComEd Init. Br. at 57.

The legality of an electric self-direct program.

According to ComEd, as the name of the self-direct concept indicates, it bears many of the key features of Section 8-104's self-direct program. Although REACT has attempted to characterize its self-direct proposal as something other than an "opt-out" program (presumably in an effort to distance it from Section 8-104), ComEd notes that the proposed pilot – on its face – very quickly reveals that pilot participants would effectively be opting out of the statutory three-year planning period such that neither ComEd, other stakeholders nor the Commission could rely on the contributions of these customers – whether in terms of funding or energy savings – to achieve the Plan 3 energy savings goals. ComEd Init. Br. at 57-58. ComEd further observes that although the self-direct proposal has changed during the course of this proceeding, the final REACT proposal admitted into evidence in this docket continues to ignore the statutory framework. ComEd also notes that while IIEC witness Mr. Stephens was supportive of a self-direct program concept, he admitted that his support hinged on whether such a concept was "legally permissible." IIEC Ex. 1.0 at 5. ComEd Init. Br. at 58. Even so, ComEd notes that IIEC proposed revisions to the Modified Pilot program would transform the Pilot into a statutorily-prohibited self direct program.

Although IIEC witness Mr. Stephens noted in his direct testimony that his support of a self-direct concept hinged on whether it was "legally permissible" (IIEC Ex. 1.0 at 5), ComEd notes that IIEC's Initial Brief declined the challenge of its own witness to show the legal basis for a self-direct program under Section 8-103. IIEC Init. Br. at 3-6. While REACT does take up the issue, ComEd observes that the totality of its argument is simply to repeat that nothing in Section 8-103 expressly prohibits the adoption or implementation of a self-direct program under Section 8-103. *See, e.g.,* REACT Init. Br. at 13-14. Yet, ComEd contends that these positions (or lack of a position, in IIEC's case) rely on nothing more than willful blindness of the plain legislative history of Sections 8-103 and 8-104, the obvious differences between the two statutes, and the interdependent provisions of Section 8-103, each of which forecloses implementation of a self-direct program. ComEd Rep. Br. at 25-26.

With respect to the legislative history of Sections 8-103 and 8-104, ComEd explains that the General Assembly enacted the first energy efficiency portfolio requirements under Section 8-103 in 2007, and limited the applicability of these provisions to certain electric utilities. 220 ILCS 5/8-103; Public Act ("P.A.") 95-0481, Art. 5 § 5-935, eff. Aug. 28, 2007. In 2009, the General Assembly passed an omnibus bill (Senate Bill 1918) that made a number of changes to the Act. Importantly, ComEd points out that the legislature made certain revisions to Section 8-103, and also enacted the first energy efficiency portfolio requirements applicable to gas utilities under new Section 8-104. ComEd observes that when these statutes are held up to each other, Sections 8-103 and 8-104 mirror each other in many important ways – each sets annual energy savings goals, each establishes the annual budgets through rate screens, each provides for the recovery of the portfolio costs through an automatic adjustment clause tariff, and each provides for annual independent evaluation of the portfolio's performance and goal achievement. *See* 220 ILCS 5/8-103(b),(d),(e),(f); 220 ILCS 8-104(c),(d),(e),(f). Even so, ComEd notes that there is one fundamental and lengthy change the legislature made to Section 8-104 that it did not also make to Section 8-103 – Section 8-104 sets forth new subsection (m) establishing an opt-out, self-direct program, and makes numerous changes to other subsections of Section 8-104 to accommodate this program. *See* 220 ILCS 5/8-104(m). ComEd Rep. Br. at 26.

Importantly, ComEd explains that Section 8-103 does not permit customers to retain their EDA contributions. Section 8-103 provides for the recovery of the portfolio's costs through an automatic adjustment clause tariff, and further requires that each utility file such tariff for approval. 220 ILCS 5/8-103(e), (f)(6). In ComEd's case, it developed and filed Rider EDA in conjunction with Plan 1, which the Commission approved and which remains in effect. *Plan 1 Order* at 56-57. To be clear, because efficiency programs must be offered to all of ComEd's retail customers, ComEd notes that all retail customers fund the programs through payment of the EDA charge applicable to their customer class. 220 ILCS 5/8-104(e), (f); *Plan 1 Order* at 36. Section 8-104, on the other hand, carves out self-direct customers from the application of the tariff mechanism. *See* 220 ILCS 5/8-104(e) ("The tariff … shall be applicable to the utility's customers other than the [self-direct] customers described in subsection (m) of this Section.") Accordingly, ComEd notes that Section 8-103 does not authorize customers to discontinue paying their EDA charges through Rider EDA and retain them in their own reserve account. As AG witness Mr. Mosenthal noted, ComEd is "the custodian of ratepayer funds under Section 8-103 of the Act, [and] ComEd is obligated to oversee the delivery of cost effective energy efficiency programs." AG Ex. 2.0C at 6. ComEd Init. Br. at 58-59.

While REACT claims that none of Section 8-104's enabling provisions are needed in Section 8-103 to accommodate a self-direct program, ComEd explains that Illinois law reaches a different conclusion. In *Town of Cicero vs. Metropolitan Water Reclamation Dist. of Greater Chicago*, 2012 IL App (1st) 112164, plaintiff sought to read into the statute a cause of action that was not expressly stated. In concluding that the statute could not be so enlarged, the Appellate Court carefully analyzed other sections of the applicable Act, and found that the legislature's decision not to amend the section in question precluded its expansion:

> Our interpretation of the intent of section 19 is further supported by the fact that the legislature has amended other sections of the Act while retaining section 19 in its original form ... . As set forth above, section 7 was amended in 1921 to give the District the addition power to construct and maintain "sewage disposal and treatment plants and works." However, the legislature did not amend section 19 to provide a cause of action with regard to the exercise of these new powers.
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> * * *
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> When the legislature amends one statutory provision, but not another, it is presumed to have acted intentionally. Accordingly, in this case, we can presume that when the legislature amended section 7 in 1921 and in 1959, it intentionally did not amend section 19 to allow property owners to recover for flooding caused by anything other than construction of the main channel.

Town of Cicero, 2012 IL App (1st) 112164, ¶¶ 29-31 (internal citations omitted). Applying this law to Sections 8-103 and 8-104, ComEd contends that it cannot be clearer that the legislature intended the self-direct program to be limited to Section 8-104. Although it amended Section 8-103 *at the same time* it enacted new Section 8-104, it expressly chose not to incorporate the self-direct program within Section 8-103. ComEd Rep. Br. at 27-28.

ComEd observes that REACT attempts to distinguish its original self-direct proposal from Section 8-104 by claiming that "customers … would not have been 'exempt' from participating in ComEd's energy efficiency plan." REACT Init. Br. at 16. According to REACT, "all energy savings resulting from the program would have been subject to ComEd's cost-effectiveness test as well as its monitoring and verification processes, and would have counted toward the energy savings goals to which ComEd referred." *Id.* at 16. As ComEd explained in its Initial Brief, however, REACT's and IIEC's proposed self-direct program *would permit participants to opt-out of the three-year plan* being proposed and approved in this docket.

To clarify, ComEd first explains that Section 8-103 requires, and is limited to, the approval of a three-year energy efficiency and demand response plan. Similar to Plans 1 and 2, Plan 3 reflects the proposed energy savings goals, budgets and programs for the next statutorily prescribed three-year planning period. 220 ILCS 5/8-103(f). Although the General Assembly has established annual energy savings goals, it has grouped them together in threes for planning purposes, and then required that the utility manage a portfolio of programs over the three-year period to achieve each annual goal. Since Section 8-103 became law in late 2007, ComEd observes that the General Assembly has made only one change to this general framework. Effective July 15, 2013, Public Act 98-0090 amended Section 8-103 to permit utilities to demonstrate achievement of a plan's three annual goals at the end of the three-year plan period rather than at the end of each plan year. Importantly, the legislature confirmed the importance and centrality of the three-year planning horizon and implementation period, which continues to sync up with the penalty provision of subsection (i). ComEd Init. Br. at 62-63.

ComEd states that throughout the course of this docket, however, the self-direct proposals and accompanying testimony have consistently ignored the statutory three-year period. According to ComEd, REACT witness Mr. Fults characterizes the three-year period as an out-of-touch construct of ComEd's own choosing. REACT Ex. 1.0 at 24. Similarly, in its Initial Brief, REACT claims that the three-year planning horizon is one of ComEd's choosing for "administrative convenience." REACT Init. Br. at 19. In place of the three-year period, the self-direct proposal would permit customers to retain the annual contributions for five years. Thus, monies retained under Plan Year 7 would not have to be spent until Plan Year 12, if at all. And, in the same vein, contributions retained by participants in Plan Years 8 and 9 need not be invested in either Plan 3 or Plan 4. ComEd further explains that under the self-direct proposal, if those monies are not spent, one of two things might occur. First, if the participant can show that there were no projects to implement, then it may keep the funds. Second, if the participant cannot make that showing, then the funds are finally released and credited back through Rider EDA. In sum, ComEd observes that the self-direct concept is not at all concerned with the subject matter of this docket – approving a *three-year* energy efficiency plan designed to achieve the three annual savings goals using the three annual budgets. To the contrary, ComEd notes that the concept is designed to pull the largest customers' contributions out of the portfolio and hope that efficiency projects might materialize and be completed at some point in the future under some other three-year plan. ComEd Init. Br. at 63-64. According to ComEd, REACT's and IIEC's proposal is thus an opt-out proposal for purposes of Plan 3 because the three annual budgets approved by the Commission would not go toward achieving the three annual energy savings goals at issue in this docket. Rather, ComEd points out that under REACT's and IIEC's proposals, self-direct program participants would be permitted to retain their funds on a rolling, five-year timeline, at which time they may have to return the retained funds if they are not spent. REACT Init. Br. at 17-19; IIEC Init. Br. at 5-6.

Second, contrary to REACT's measurement and verification claims, ComEd notes that the self-direct program largely overlooks the statute's emphasis on the evaluation, measure and verification ("EM&V") process, as underscored by the brevity with which REACT addresses the issue. *See* ComEd Init. Br. at 64; App. K to ComEd's Init. Br. In other words, unlike every other customer participating in ComEd's portfolio, self-direct program participants would be in charge of their own evaluation plans. Like the program's other features, ComEd observes that this too ignores the express statutory requirements of Section 8-103, which here require that the portfolio must be subject to an annual independent evaluation. 220 ILCS 5/8-103(f)(7). According to ComEd, the self-direct concept provides no detail regarding when these evaluations will occur or who will conduct them. Moreover, ComEd notes that it is unclear how the independence of the "Monitoring and Verification Plan" will be assured and whether it even contains the correct criteria. Similarly, IIEC witness Mr. Stephens warns that "[d]ue to the customized nature of self-directed large industrial energy efficiency projects, [self-direct program] results may not easily be verified using the standard measurement and evaluation process that ComEd applies to the programs within its own energy efficiency portfolio." IIEC Ex. 1.0 at 9. ComEd Init. Br. at 64.

ComEd observes that other intervenors are, understandably, also concerned about the self-direct proposal's scant detail on the EM&V process. NRDC notes that "[t]here must be rigorous and independently-conducted EM&V … . However, [REACT] appear[s] to assume that all the detail would be worked out later. It must be clear up front that all EM&V must be conducted in a manner consistent with industry best practices. REACT also does not make any mention of the need for evaluators who are independent of the customers and the projects (and, for that matter, the utility)." NRDC Ex. 2.0 at 7. ComEd Init. Br. at 65.

Finally, ComEd observes that although REACT wishes that the Commission would opine on the legality of some undefined self-direct concept to be proposed in the future, there is no evidence in the record supporting a lawful self-direct proposal. For example, before approving any feature whereby program participants could retain their EDA funds beyond the three-year statutory period, ComEd points out that the Commission would have to determine by what amount ComEd's energy savings goals must decrease. This is because a portion of the three annual budgets – which are to be spent on the three annual savings goals – would instead be carried into future Plans. According to ComEd, because this portion of the budget cannot be relied upon by ComEd to achieve annual savings during the three-year period at issue in this docket or some future three-year plan docket, the Commission would have to adjust the goals downward to account for this loss of funding and energy savings. Yet, ComEd notes that there is no evidence presented in this docket as to how much further ComEd's energy savings goals would need to be reduced, much less a proposed algorithm for determining those amounts. ComEd Rep. Br. at 29-30.

And, with respect to REACT's and IIEC's proposed "reserve accounts", ComEd again notes that neither Section 8-103, Commission orders, nor Rider EDA itself permit this proposal. *See* ComEd Init. Br. at 58-59. This prohibition equally applies to proposals made by REACT that would give the appearance of leaving Rider EDA intact while requiring that ComEd deposit the funds collected by EDA into the customers' own reserve accounts. *See* REACT Ex. 3.02. ComEd Rep. Br. at 30.

REACT's and IIEC's incorrect assumptions relating to the self-direct program.

ComEd also notes that – in lieu of the statutory framework – REACT's and IIEC's self-direct proposals rely on unlawful and incorrect assumptions that (i) large C&I customers should "get back" all of the money they contribute to the portfolio, and that (ii) the funds paid by large C&I customers should cover 100% of project costs. REACT Ex. 1.0 at 24. While these assumptions may be true for self-direct customers under Section 8-104 who do not participate or contribute to the gas energy efficiency portfolios, ComEd clarifies that these assumptions are fatally flawed in the context of the Section 8-103 electric energy efficiency portfolios. ComEd Init. Br. at 59.

With respect to the *first assumption*, ComEd witness Mr. Brandt testified that the portfolio is not designed to pay out to customers, dollar for dollar, the amount they have paid in through Rider EDA charges. ComEd Ex. 3.0 at 45. For example, Section 8-103 requires that 25% of the funds paid by customers must go toward funding the programs implemented by DCEO. *Id.;* 220 ILCS 5/8-103(e). Further, he notes that Section 8-103 requires that funds be dedicated to paying for the annual independent evaluation of the programs and contemplates specific funding for research and development. ComEd Ex. 3.0 at 45; 220 ILCS 5/8-103(f). And finally, in order to ensure adequate participation levels to achieve the required kWh savings and compliance with the regulatory framework set forth in Section 8-103, funds must also go toward administration, implementation and marketing. ComEd Ex. 3.0 at 45; 220 ILCS 5/8-103(e).[1] Indeed, in subsection (a) of Section 8-103, ComEd observes that the General Assembly noted that enactment of the statute and subsequent implementation of efficiency programs were not solely for the purpose of delivering energy savings benefits to participants who install efficiency measures. ComEd Ex. 3.0 at 45; 220 ILCS 5/8-103(a). Rather, the General Assembly acknowledged that the programs "will 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." 220 ILCS 5/8-103(a). Similarly, AG witness Mr. Mosenthal notes that there are societal benefits to the program (*e.g.*, less power generated) that all customers realize from the savings achieved by ComEd's energy efficiency portfolio. AG Ex. 2.0C at 7. ComEd Init. Br. at 59-60.

Moreover, if self-direct pilot participants were permitted to retain their own funds, ComEd observes that the latest self-direct proposal would permit these customers to keep 70%, with 25% going to DCEO for low-income programs and just 5% going to ComEd for all administrative, marketing, implementation and evaluation costs. ComEd Ex. 3.0 at 47. Yet, ComEd points out that this 5% must cover the costs of a full-fledged program that relies on extensive ComEd support to implement. Indeed, the self-direct proposal would permit 25 large C&I customers to participate in the "pilot," and would further require that "ComEd account managers … serve as ComEd's main outreach arm for the [self-direct] program." *Id.* at 48. ComEd, moreover, would be charged with receiving project applications and playing a role in the approval process and cost-effectiveness testing. *Id.* at 48-49. ComEd Init. Br. at 60-61.

Echoing AG and NRDC concerns, ComEd notes that IIEC conceded that it is crucial that ComEd continue to conduct the cost-effectiveness testing because "[i]t may be impractical for large industrial customers to produce TRC test results for their proposed energy efficiency programs because the development of these test results to ComEd's satisfaction may require specialized expertise that such customers do not possess." IIEC Ex. 1.0 at 6-7. And finally, the self-direct proposal would require that "ComEd's most senior engineer [] be tasked with" undefined "monitoring and verification" activities. ComEd Ex. 3.0 at 49. ComEd Init. Br. at 61.

[1] Pursuant to the *Plan 1 Order*, Rider EDA allocates expenses across the three customer classes of residential, small C&I and large C&I. As a result, large C&I customers are not paying for the residential and small C&I customers.

With respect to the *second assumption* that a pilot should pay 100% of a project's costs, ComEd notes that the self-direct proposal again misunderstands the overall goal of a portfolio of energy efficiency measures, which is to obtain the most kWh savings possible within the budget while also satisfying other criteria such as offering a diverse portfolio. ComEd Ex. 3.0 at 45. To do that, utilities try to offer the minimal incentive required to induce a customer to implement an energy efficiency measure. *Id.* at 46. According to ComEd, REACT's complaint that ComEd expects the customer to pay two-thirds of a project and that ComEd will "only" fund one-third of the project shows a basic misunderstanding of how the portfolio is designed to operate. REACT Ex. 2.0 at 15. ComEd Init. Br at 61. ComEd observes that AG witness Mr. Mosenthal perhaps best summarized these incorrect assumptions when he testified that REACT and IIEC essentially ask that the very large C&I customers be treated like low-income customers who receive 100% energy funding for an energy efficiency measure due to limited resources. AG Ex. 2.0C at 4-5.

In sum, ComEd concludes that Section 8-103 does not permit large C&I customers to retain their EDA payments and "self-direct" those funds to pay for 100% of a project's costs without regard to the larger costs and goals of the portfolio. While the largest customers may "prefer" to retain their funds, this preference does not square with the law. ComEd Init. Br. at 61-62.

CHP Proposal. ComEd notes that Public Act 98-0090 ("P.A. 98-0090") became effective July 15, 2013 and changed the definition of "Energy Efficiency" to include "measures that reduce the total Btus of electricity and natural gas needed to meet the end use or uses." 20 ILCS 3855/1-10. In Plan 3, ComEd recognizes this new legislation, and confirms that, because of the definitional change, "certain technologies, such as ground source heat pumps that replace gas furnaces, as well as combined heat and power projects [now can] be included in an energy efficiency portfolio." ComEd Ex. 1.0 at 11. As the MCA explained, combined heat and power, or "CHP", means a system that simultaneously produces thermal energy and electricity, and waste heat to power, or "WHP", refers to a system that captures process waste heat and transfers or converts it to electrical or mechanical energy using no additional fuel. Although MCA commended ComEd for recognizing the change in legislation, it claims that Plan 3 should (1) explicitly include combined heat and power projects ("CHP") as an allowable measure in its proposed Large C&I Program and its Custom Programs, and (2) include a separate pilot program similar to the one that DCEO has proposed in ICC Docket 13-0499. MCA Ex. 1.0 at 2. ComEd Init. Br. at 65.

ComEd contends that because P.A. 98-0090 became law just a month prior to ComEd filing Plan 3, neither the SAG nor ComEd had an opportunity to evaluate CHP for inclusion in Plan 3. ComEd Ex. 3.0 at 54. Indeed, a DCEO-sponsored workshop (held prior to passage of PA 98-0090) identified critical policy issues that would first need to be addressed, not least of which are the measurement and allocation of energy savings between electric and gas utilities and whether there would be load building benefits to natural gas utilities. *Id.* As Mr. Brandt testified at the evidentiary hearing, ComEd is an electric-only utility, which presents policy issues that are not necessarily confronted by a combination utility that provides both electric and natural gas services.

Tr. at 46:2-14 (Dec. 4, 2013). Furthermore, ComEd would need to examine and address issues such as the high potential for free ridership and a long project implementation life cycle. ComEd points out that none of these issues, however, are addressed, much less resolved, by MCA. ComEd Init. Br. at 66. In fact, MCA states in its Initial Brief that ComEd witness Mr. Brandt testified that "combined heat and power projects ["CHP"] are eligible for consideration" (Tr. at 36:8-14 (Dec. 4, 2013)), have not yet been evaluated (Tr. at 36:16-37:1 (Dec. 4, 2013)), and should be studied. Tr. at 45:5-46:14 (Dec. 4, 2013); MCA Init. Br. at 2-3. According to ComEd, these statements show that MCA's CHP proposal is undeveloped, fails to address the complicated implementation and evaluation issues posed by this combined technology, and cannot yet be adopted. ComEd Rep. Br. at 31.

Finally, although ComEd has objected to a CHP pilot under Plan 3, ComEd explains that individual CHP projects can be proposed under the Custom Incentive or Large C&I Pilot programs. ComEd Ex. 3.0 at 54-55; MCA Ex. 1.0 at 5-7. No party in this docket has taken issue with that proposition. Accordingly, the Commission should reject MCA's proposal to include a separate pilot program for CHP and rather allow ComEd and stakeholders the opportunity to study this technology over the next three years to determine whether it should be or needs to be separately addressed in an energy efficiency plan. ComEd Init. Br. at 66.

Staff and Intervenors' Positions

Commission Analysis and Conclusions

The Commission finds that ComEd's Plan complies with Section 8-103(f)(5) of the Act in that its "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 5/8-103(f)(5). With regard to the various Staff and intervenor proposals, the Commission addresses them each separately below. In general, these proposals were either undeveloped or outside the scope of Section 8-103 and this docket, and therefore must be rejected.

With respect to ELPC's and MCA's various proposals, these undeveloped programs cannot be considered, much less adopted, in this docket. With regard to ELPC's proposed "light bulb turn-in" program, ELPC has not provided any support relating to the costs or any projected savings of such program, and does not address it in its Initial Brief. Relatedly, the Commission is unclear as to how Staff would like the Commission to address its concerns relating to the light bulb market and any related issues. Accordingly, the Commission will not address these concerns here.

Concerning MCA's proposal, the Commission agrees with ComEd and MCA that the type of CHA projects for which MCA seeks a pilot may be proposed in ComEd's Custom Incentive or Large C&I Pilot programs. Accordingly, the Commission declines to include a separate pilot program for such projects. Indeed, as explained by Mr. Brandt in his rebuttal testimony and at the evidentiary hearing, there are still many complicated issues that must be addressed before the legislative change including CHP can be implemented.

The Commission similarly rejects ELPC's recommendation that ComEd either modify existing tariffs or propose new tariffs to offer LED street lighting. Again, ELPC failed to support this proposal with an estimate of costs or energy savings projections. Furthermore, ELPC proposed no tariff language for consideration, and no tariffs are at issue here.

ELPC itself admits that its proposal relating to strategies to reduce waste is no more than a request for another study. Again, ELPC provides no information regarding the cost of such a program (or study) or how the program would be funded. This matter requires input from the SAG before it is considered here and, in any event, ELPC concedes that it could not be proposed, much less adopted, prior to the February 1, 2014 deadline in this docket. It is therefore rejected.

Regarding ELPC's proposed Voltage Optimization and Smart Device Enablement concepts, each of these proposals is not only undeveloped, but outside the scope of this docket. For example, with respect to the Voltage Optimization program, the AG notes that it is not an energy efficiency program at all, and therefore neither the program nor the proposed feasibility study can be funded through the Section 8-103 budgets. ELPC also agrees that the program should not be funded through the Plan. The Commission agrees that the program is not within the scope of this docket, and therefore cannot be considered at this time. Concerning the Smart Device Enablement concept, this proposal too must be rejected because AMI deployment issues are not within the scope of Section 8-103 or this proceeding. Rather, AMI deployment, the Smart Grid test bed, and the Direct Load Control pilot program were approved under provisions of Article XVI of the Act. These provisions are not at issue here, and, in any event, there is no evidence that the funding already dedicated to these initiatives should be further supplemented by the severely constrained budgets set by Section 8-103.

With respect to the proposed Pilot, the Commission commends ComEd for its efforts to address the concerns of a large C&I customer and facilitate increased participation by large C&I customers in the Plan. ComEd's initial proposal was reflected in its Plan as the Large C&I Pilot program. The Commission further appreciates the collaborative efforts of ComEd and REACT to reach agreement on the pilot, which is reflected in the Modified Large C&I Pilot proposal. The Commission approves the Modified Pilot program framework, including the "grant" concept reflected therein. As the Commission understands it, this would involve an upfront payment option to alleviate concerns that customers "pay twice" before receiving reimbursement. While Section 8-103 currently only authorizes this option for DCEO (220 ILCS 5/8-103(e)), ComEd has expressed a willingness to provide this option for purposes of this Modified Pilot program. Subject to the criteria articulated by ComEd, the Commission approves this upfront payment option as part of the Modified Pilot program. The Commission also directs the parties to work together through the SAG to develop the implementation details. As discussed further below, the Commission concludes that the Modified Pilot program reflects the maximum flexibility permitted under Section 8-103.

Although REACT withdrew its proposed self-direct program, the Commission notes that REACT still seeks Commission guidance regarding whether a self-direct program could be entertained under future Section 8-103 plan filings. Moreover, IIEC's proposed changes to the Modified Pilot program would, if adopted, transform the Pilot into the self-direct proposal originally made by REACT. In either case, the Commission concludes that a self-direct program as originally proposed by REACT or as proposed by IIEC through its changes to the Modified Pilot program cannot be adopted under Section 8-103. Indeed, the law could not be clearer on the issue. Only Section 8-104 of the Act authorizes a self-direct program. Contrary to REACT's claims, Section 8-103's silence does not mean that a self-direct program is authorized. To the contrary, when the General Assembly enacted Section 8-104 and its self-direct program, it also made changes to Section 8-103 *in the same bill*. Yet, the General Assembly chose not to implement the self-direct structure within Section 8-103. According to well-established Illinois law, the legislature's decision not to amend Section 8-103 demonstrates that it did not intend for the self-direct option to exist under Section 8-103. *Town of Cicero v. Metro. Water Reclamation Dist. of Greater Chicago*, 2012 IL App (1st) 112164; *City of Altamont v. Baltimore & O.R. Co.*, 348 Ill. 339, 342 (Ill. 1932) (when General Assembly amends a statute and no change is made to parts of it, those parts are a continuation of such law and not an enactment of new law on the subject). Indeed, as ComEd demonstrated in its Initial and Rely Brief, Section 8-103 does not contain the many self-direct provisions that would be required to implement the proposal.

Finally, the Commission observes that REACT's attempts to style its self-direct proposal as something other than an "opt-out" program do not cure the fundamental legal defects. First, Section 8-103 does not permit customers to retain monies they would otherwise contribute through EDA changes. This is true even if ComEd were to collect the funds first through EDA and then turn around and deposit the funds back in a customer's "reserve account." Second, Section 8-103 does not contemplate that funds would be used beyond a three-year planning period for projects that may or may not take place following the three-year planning period. To the contrary, the three-year planning period at issue in this docket must approve three annual budgets for the purpose of funding the achievement of the three annual goals. No proposal was made in this docket regarding how the current Plan would have to be adjusted to account for the loss of funding under the current Plan. At a minimum, ComEd's modified energy savings goals would have to be further adjusted downward to account for the loss of available funds to spend on the achievement of kWh savings. And, even if such a proposal had been made, it is not at all clear that it would be lawful. REACT's proposal in this docket contemplated that customers retain a year's worth of contributions for five years, which may very well go unspent. If that happens, REACT proposes a vague standard by which a customer could demonstrate that there were no projects to implement and thereby continue to retain the funds. The Commission finds the entire self-direct concept to be unlawful and unworkable within the framework of Section 8-103, and accordingly rejects it.

F. ComEd's Proposal to Continue to Recover the Costs Incurred Under Its Plan Through Rider EDA.

<u>ComEd's Position</u>

Consistent with Section 8-103(f)(6) of the Act, ComEd will continue to recover the incremental costs it incurs related to Plan 3 through Rider EDA, which was originally approved by the Commission in Docket No. 07-0540. ComEd Ex. 2.0 at 16. No party opposed this proposal, and Staff witness Ms. Hinman agreed with this approach. Staff Ex. 1.0 at 24. ComEd Init. Br. at 66-67.

<u>Staff and Intervenors' Positions</u>

<u>Commission Analysis and Conclusions</u>

The Commission approves ComEd's proposal to continue to recover the incremental costs that it incurs related to its Plans through Rider EDA. Staff agrees with this approach and no party has opposed this proposal.

G. Whether ComEd's Filing Includes an Evaluation, Measurement & Verification Plan That Comports with Standard Industry Practice.

1. Continuation of the current process for selection and management of the independent evaluation contract

<u>ComEd's Position</u>

ComEd proposes to continue the current process for selection of the evaluator and management of the independent evaluation contract. ComEd notes that no party disputes that the process has worked well. Staff, however, has proposed that ComEd file the contract with the independent evaluator within 14 days of its execution. Staff Ex. 1.0 at 25. Consistent with the *Plan 1 Order*, however, ComEd observes that Staff is thoroughly involved in overseeing the execution of the contract, and receives a copy of the contract along with ComEd. Given that no other party supports Staff's proposal, ComEd recommends that it should be rejected – Staff can achieve the result of its proposal without Commission intervention by filing the contract within 14 days of its execution. ComEd Init. Br. at 67.

<u>Staff and Intervenors' Positions</u>

<u>Commission Analysis and Conclusions</u>

The Commission approves the continuation of the current process for selection of the evaluator and management of the independent evaluation contract. The

Commission fails to see the value in Staff's proposed contract filing requirement and therefore rejects its proposal.

2. Net-to-Gross Framework

<u>**ComEd's Position**</u>

ComEd's Proposed NTG Framework. For Plan 3, ComEd has proposed a continuation of the Net to Gross ("NTG") framework approved in the *Plan 2 Order* (*Plan 2 Order* at 46-47), and included refinements to the process based on stakeholders' experiences in implementing the framework over the past three years. As set forth in the following bullets and discussed further below, ComEd's proposal appoints the independent evaluator as the key decision-maker consistent with Section 8-103, and also responds to concerns raised by Staff and intervenors in testimony to include a role for the SAG:

> For existing programs, when a ComEd evaluation of a program has identified an estimated NTG ratio, that ratio will be used prospectively until a new ComEd evaluation estimates a new NTG ratio. The prevailing NTG ratio provided by the EM&V contractor by March 1 of any Plan year is the NTG ratio value to be applied to the next Plan year beginning June 1.
>
> For new programs, planning NTG ratio values that have been provided by the EM&V contractors by March 1 of any Plan year, will be applied prospectively to the next Plan year beginning June 1. These values will be used until a ComEd evaluation estimates a revised NTG ratio. If the revised NTG ratio is provided by the EM&V contractor by March 1, then the ratio will be applied to the next Plan year beginning June 1. Thereafter, NTG ratios shall be revised according to the framework for existing program described above.
>
> Prior to March 1st of each year, the independent evaluator will present its proposed NTG values for each program to the SAG. The purpose of this meeting will be for the independent evaluator to present its rationale for each value and provide the SAG, in their advisory role, with an opportunity to question, challenge and suggest modifications to the independent evaluator's values. The independent evaluator will then review this feedback and make the final determination of values to be used for the upcoming year.

ComEd Ex. 2.0 at 64-65; ComEd Ex. 3.0 at 67. ComEd Init. Br. at 68.

ComEd observes that while Staff and intervenors also propose NTG frameworks, each proposal elevates the SAG to the role of the decision maker, which violates past Commission orders expressly limiting the SAG's role to an advisory body, a limitation reflected in the very name of the group. Because no party objects to the premise that a NTG framework should be adopted, ComEd states that the question is simply which framework should prevail. According to ComEd, its proposed NTG framework is the only lawful framework in evidence and therefore should be adopted. ComEd Init. Br. at 68-69.

ComEd notes, as an initial matter, that an NTG framework is designed to address – or provide the "rules" for – how and when the NTG values determined by the independent evaluator will be applied within the portfolio. In brief, the evaluator determines a NTG value for each program, which ultimately determines the kWh savings from the program. ComEd Ex. 3.0 at 56. Accordingly, the NTG values typically take into account the impact of "free riders" (*e.g.*, program participants who would have taken the same action in the absence of the program) and the "spillover" impact (*e.g.*, program participants and non-participants who are impacted by the presence of the program but did not participate). *Id.* Multiplying this NTG value by the gross kWh savings for the program determines the net kWh savings, or the "actual" program impacts. *Id.* at 57. As a result, ComEd states that the NTG value represents one of the biggest risks to the utility – the value can dramatically alter the program's kWh savings and, as the NTG value is not determined until well after the program year has ended, can result in substantial changes in results without the utility having any chances to respond or react. *Id.* ComEd Init. Br. at 69.

ComEd explains that because the risk imposed by this hindsight review is unmanageable, an NTG framework adds some certainty as to what values will be used and when, which reduces the risk to the utility and makes the portfolio much more manageable. ComEd Ex. 3.0 at 57. ComEd notes that its proposed NTG framework carries forward the Plan 2 framework's emphasis on prospective application of new NTG ratios while also addressing certain issues that proved incapable of resolution in the SAG. For example, under the Plan 2 NTG framework, "market change" was a criterion that was supposed to determine whether a new NTG ratio would apply retrospectively or prospectively (*i.e.,* NTG ratios that were revised due to a market change were to be applied retrospectively). ComEd Ex. 2.0 at 64. In practice, however, ComEd explains that it quickly became clear that the term "market change" meant different things to different stakeholders, which led to confusion and a lack of direction in the implementation of the NTG framework. *Id.* ComEd Init. Br. at 69-70.

To address these shortcomings, ComEd states that its proposal places the statutorily-appointed independent evaluator and its findings as the central reference point for setting the NTG values for the upcoming Plan year. *See* 220 ILCS 5/8-103(f)(7). Based on past and current work on ComEd evaluations and on numerous similar programs across the country, ComEd confirms that it has every confidence that the independent evaluator is in the best position to make the determination or projection of the NTG values going forward. Indeed, NRDC witness Mr. Neme appears to take a similar view, and also suggests that the independent evaluator should be the "final arbiter." NRDC Ex. 2.0 at 26. As "independent" evaluators, they are beholden to no utility or stakeholder. ComEd Init. Br. at 70.

Staff's and Intervenors' Proposed NTG Frameworks. ComEd observes that Staff and intervenors share the basic view that an NTG framework should again be approved in this docket, and they further agree that prospective application of revised

NTG ratios should continue to varying degrees. According to ComEd, however, each of the proposed NTG frameworks – one advanced by Staff and the other proposed by the AG – seeks to elevate the role of the SAG to a decision-maker rather than advisor, which the Commission has expressly prohibited in prior orders. Staff would grant *every* attendee at a SAG meeting a vote on the NTG values, while the AG would divide up the SAG into certain voting parties, which would not be open to all SAG participants. Staff Ex. 1.1; AG Ex. 1.0C at 36-38; AG Ex. 1.1. ComEd notes that each of these proposals requires absolute consensus in order to approve an NTG value, and each provides a separate, burdensome, and unworkable process for attempting to resolve a lack of consensus, which ultimately results in the unacceptable practice of partial *retroactive* application of NTG values. Moreover, ComEd observes that the sharp conflict that has arisen between Staff and the AG regarding their competing frameworks only further underscores that the SAG was never intended to be a decision-making body, and is quite ill-suited for this role. Interestingly, each of their proposals requires that SAG participants reach consensus on NTG values even though the participants cannot reach consensus on the framework itself. ComEd Init. Br. at 70-71. Finally, ComEd notes that Staff's references to over 50 requests for reports and analyses, as well as the AG's proposed Illinois Energy Efficiency Policy Manual, only further underscore the extent to which Staff and the AG are attempting to overtake the evaluation and oversight of the portfolio. ComEd Rep. Br. at 32.

<u>AG's Proposed NTG Framework.</u>

ComEd observes that the AG's NTG framework is very close to the final version of the framework that had been under consideration in the SAG, but the SAG could not reach consensus regarding its adoption. In brief, the AG's framework proposes, among other things, the following: (i) the evaluators collaborate and propose NTG values for all programs; (ii) these proposed values are submitted to the SAG for a vote, but only "voting parties" can vote (*i.e.*, the only SAG participants who have a vote are program administrators, Staff, and other parties that have traditionally intervened in efficiency dockets and consistently participated in the SAG); (iii) in the event consensus is reached regarding a value and it is filed by program administrators by March 1, then that NTG ratio value is the deemed value for the following year; and (iv) if there is no consensus for a given NTG ratio value, then the value shall be the average of the last two years' evaluation results. AG Ex. 1.1. ComEd Init. Br. at 71-72.

ComEd notes that the illegality of the SAG voting process was first raised by Staff witness Ms. Hinman in her rebuttal testimony, where she devotes approximately 17 pages to criticizing AG witness Mr. Mosenthal's proposed framework. Staff Ex. 3.0 at 4-21. Although Staff's own proposal also includes a SAG voting process requiring absolute consensus of NTG values, ComEd observes that Ms. Hinman oddly attacks the AG's proposal for bearing essentially the same feature. According to her, "[t]he Commission has repeatedly declined to give SAG decision-making authority", and she is "concerned that the development of voting parties in this proceeding would be the first step toward such a structure." Staff Ex. 3.0 at 8. Indeed, ComEd points out that the Commission has decidedly rejected proposals to grant the SAG decision-making authority. *In re Ameren*, ICC Docket No. 10-0568, Order (Dec. 21, 2010) at 86 ("The

Commission finds that extending decision-making authority to the SAG is not appropriate at this time."). Moreover, it is well established that the Commission cannot delegate its authority to another body. *Union Electric Co. v. Ill. Commerce Comm'n,* 77 Ill. 2d 364, 383 (1979) (barring the Commission from delegating its decision-making authority). ComEd Init. Br. at 72.

Ms. Hinman further observes that the AG's attempt to create "voting parties" would be virtually impossible to implement. She notes, for example, that "Mr. Mosenthal does not set forth a process where the Commission would approve the addition of new voting parties. Presumably, a Commission determination that the party does not have any obvious conflicts would be necessary…. It is also not clear how exactly the voting process would work if certain voting parties are unavailable to participate during NTG discussions." Staff Ex. 3.0 at 11-12. Finally, Ms. Hinman also identifies a handful of timing issues with Mr. Mosenthal's proposal that further make it unworkable. According to ComEd, Ms. Hinman's proposal suffers from the same defects, and the procedural and implementation concerns she identifies only further underscore why the Commission has declined to grant the SAG a decision-making role. ComEd concludes that it is simply impossible, as well as unlawful, for the Commission to delegate its authority to, and impose a quasi-legal/adjudicatory process upon, a voluntary and collaborative grouping of stakeholders. The AG's (and Staff's) attempts to establish the SAG as the forum in which these values will be adjudicated is unworkable precisely because this informal, advisory body was never intended to make binding decisions. ComEd Init. Br. at 72-73.

Because the AG adopts Staff's proposal to average the last year's (*i.e.*, prospective application) and current year's (*i.e.*, retrospective application) NTG ratio values in the event there is no consensus, ComEd observes that Staff does not take on this proposal. ComEd Ex. 3.0 at 61. However, ComEd urges that this proposal must be rejected because it actually increases ComEd's risk when compared to the Plan 2 NTG framework, and thus undermines the entire purpose of the framework to increase certainty and decrease risk. *Id.* Indeed, ComEd notes that the more certainty the utility has at the start of a Plan year regarding inputs such as the NTG values, the better the utility can manage the portfolio toward a defined goal. *Id.* However, Staff's and the AG's proposal to average the past two years when there is no consensus admittedly adds a retrospective application risk to the NTG framework. Staff Ex. 1.1; AG Ex. 1.1. Indeed, ComEd observes that any of these voting parties could, at any time, "force" retrospective application of a value by simply refusing to agree to a value. ComEd Init. Br. at 73-74.

Accordingly, ComEd strongly objects to both the retroactive application component of the non-consensus calculation, as well as the overly simplistic way in which a voting party could require that this calculation to be applied. ComEd Ex. 3.0 at 61. Any such party could demand the partial retrospective implementation of the NTG value for any program, even if the party does not understand the program or, in a worst case scenario, is doing so for some untoward purpose. *Id.* at 61-62. ComEd states that this introduces unmanageable risk for ComEd and goes a long way toward dismantling all of the progress stakeholders have made over the last several years to better manage the NTG risk. *Id.* at 62. Indeed, this is one of the key reasons why ComEd believes the independent evaluator should be the central decision-maker, as ComEd's NTG framework proposes. ComEd Init. Br. at 74.

Staff's Proposed NTG Framework.

ComEd notes that while Staff's framework was never introduced to the SAG, it appears for the first time in this docket. While at some level it bears many similarities to the AG's proposal because the AG accepted certain features of Staff's proposals, ComEd observes that Staff's proposal is riddled with the addition of numerous steps and procedural requirements that are summed up into a complicated 11-step process. In short, these steps include, *inter alia*, the following: (i) the evaluators submit their proposed NTG ratio values to the SAG by November 1 for residential programs and by December 1 for non-residential programs; (ii) every SAG meeting attendee is permitted to vote, but only non-evaluators may oppose a proposed value; (iii) in the event consensus is not reached, then the value shall be the average of the last available NTG value and the next calculated NTG value (*i.e.*, one prospective value and one retrospective value); however, in some instances the issue may be brought before the Commission. Staff Ex. 1.1. ComEd Init. Br. at 74-75.

ComEd states that, similar to Staff's attack of the AG's proposal, the AG takes issue with Staff's approach to SAG voting. In his direct testimony, AG witness Mr. Mosenthal correctly observes that "Staff's approach in practice could allow literally anyone to attend a SAG meeting and refuse to agree to an NTG consensus position regardless of whether that party has any particular knowledge or expertise on the issue, or whether they have ever intervened or otherwise been involved in energy policy in Illinois." AG Ex. 1.0C at 37. ComEd agrees with these concerns, and again notes that the voting issue only further underscores that the SAG was never intended by the Commission to be a decision-making body. Indeed, it is unclear how Staff can elevate the role of the SAG to a decision-maker and push the evaluator aside while Staff's own witness admits in rebuttal testimony that the Commission intended the SAG to be limited to an advisory group and attacks the AG's proposed voting parties for this reason. Staff Ex. 3.0 at 10. ComEd Init. Br. at 75.

Relatedly, ComEd explains that Ms. Hinman's proposal that every single SAG attendee must reach consensus on various NTG issues is implausible, as demonstrated by the fact that Staff and intervenors cannot reach consensus on the framework that is to govern the deeming of the NTG values. Moreover, because Staff's framework would give every SAG participant a vote and require consensus, ComEd observes that just one participant out of dozens could undo the entire process and trigger Ms. Hinman's non-consensus contingency. While ComEd would like to think that all participants would act in good faith, ComEd notes that it is impossible to control such broad participation or ascertain the motives of each participant. ComEd Init. Br. at 75.

ComEd also finds troubling Ms. Hinman's reliance on side conversations she has purportedly had with the current independent evaluators. Indeed, the initial dates by which the *future* (and yet unknown) evaluator must submit its values – which triggers

Staff's entire framework and 11-step process – are based on a one-off email from the current evaluator to Ms. Hinman. Importantly, no other party, including ComEd, was included on the email. *See* Staff Ex. 1.0 at 34; Staff Ex. 1.2. Putting aside the fact that the contents of those communications cannot be probed in this docket because the independent evaluator is not testifying, any such testimony by the evaluator would be pure speculation because it is not known at this time who the Plan 3 evaluator will be. The current evaluation cannot bind a future unknown party. ComEd Rep. Br. at 36. And, in any event, ComEd witness Mr. Brandt testified that the history of evaluations and production of evaluation-related documents and reports is one of extreme delay. ComEd Ex. 3.0 at 63. According to ComEd, that Staff's proposal hinges on a deliverable by an unknown evaluator by a date certain only further underscores the proposal's folly. ComEd Init. Br. at 76.

ComEd further contends that steps 2 through 7 of Staff's proposed framework would effectively turn the evaluators' role into mediators of non-consensus NTG issues, which the evaluators have neither the time nor resources to facilitate. ComEd Ex. 3.0 at 64. Moreover, because Ms. Hinman proposes that the Commission review and resolve non-consensus NTG values for new programs through a "rocket docket", ComEd notes that the Commission would be further encumbered to review and resolve these issues through what could very well be protracted litigation. *Id.* at 64. ComEd Init. Br. at 76-77.

ComEd reiterates that the concerns previously articulated regarding the retroactive application of values in the context of non-consensus values are further exacerbated under Staff's proposal where every single SAG meeting attendee can force this non-consensus calculation of an NTG ratio value. As Mr. Brandt noted in his rebuttal testimony, a child could wander into a SAG meeting and cast her vote against a given value, which would have to be given weight under Staff's proposal and thus force a lack of consensus. ComEd Ex. 3.0 at 64. ComEd Init. Br. at 77.

ComEd further observes that following the pointed exchange between the AG and Staff in testimony regarding their competing NTG framework proposals, the parties were largely silent about each other's proposals in their initial briefs. Having spent 17 pages of its rebuttal testimony attacking the AG's proposed NTG framework (Staff Ex. 3.0 at 6, 26, 29), Staff is now silent about the problematic voting feature. ComEd further observes that while the AG claims that ComEd's criticism of the SAG voting feature is "disingenuous" (AG Init. Br. at 48), Staff was the first to raise the point that the AG's proposed "voting parties" feature violates past Commission orders limiting the SAG's role to an advisory body while expressly declining to grant it a decision-making role. Staff Ex. 3.0 at 7-8. ComEd Rep. Br. at 34.

As a final matter, ComEd notes that it is troubled by unfounded claims by the AG and Staff questioning the independence of the evaluator and ComEd's motives. AG Init. Br. at 57; Staff Init. Br. at 12, 14. Having worked collaboratively with ComEd through the SAG for the past five years, ComEd is surprised that the AG and Staff would now rely on these baseless insinuations in an attempt to prop up their proposals. Indeed, given the AG's and Staff's reliance on the evaluator's email correspondence in this docket, it would appear that they find the evaluator to be a credible source of information. Absent any evidence, the Commission need not give these claims any weight. ComEd Rep. Br. at 36-37.

Staff and Intervenors' Positions

Commission Analysis and Conclusions

The Commission approves the NTG framework set forth by ComEd in its Plan as modified by Mr. Brandt's rebuttal testimony. As Staff and intervenors acknowledge, an NTG framework should be adopted in this docket because it provides certainty and assists utilities in managing their portfolios. As explained further below, ComEd's proposed framework is the only lawful framework in evidence, and furthers the laudable goals of certainty as to what values will be used and when they will be used, thereby reducing the risk to the utility and making the portfolio more manageable. Finally, the ComEd NTG framework appropriately recognizes and gives effect to the statutorily-appointed independent evaluator, who is already tasked with determining NTG values. 220 ILCS 5/8-103(f)(7).

Consistent with the Commission's approval of the ComEd NTG framework, the Commission rejects the frameworks proposed by Staff and AG. First, the proposals misconstrue the role of the SAG and ignore that the Commission has decidedly rejected proposals to grant the SAG decision-making authority. *In re Ameren,* ICC Docket No. 10-0568, Order (Dec. 21, 2010) at 86 ("The Commission finds that extending decision-making authority to the SAG is not appropriate at this time"). Second, Staff and the AG's proposed NTG frameworks greatly increase evaluation risk. With relative ease, a SAG "voter" could trigger the non-consensus process, thereby forcing partial retroactive application of an NTG ratio value. Because the AG's and Staff's proposals would make it relatively easy to reintroduce retroactive application of values, their proposals undermine the entire purpose of an NTG framework, which is to increase certainty and decrease risk. We reject this substantial step backward in the NTG framework.

Finally, the Commission is troubled by the evidentiary issues associated with Staff's proposals in this docket. With respect to this issue in particular, the ALJ already properly denied a Staff motion to have an email from the independent evaluator admitted into evidence that lacked foundation and had not been circulated to any other witness or party in this docket. Yet Staff, and now the AG, continue to rely on a one-off email from the independent evaluator to Staff witness Ms. Hinman as the foundation for their NTG frameworks. Staff Ex. 1.2. Similar to the correspondence that was the subject of Staff's Motion to Admit, this email was circulated to no other party. Moreover, the email reflects the opinion of the current Plan 2 evaluator regarding whether the future (and unknown) Plan 3 evaluator will be able to prepare and file reports by a certain deadline. This is not competent evidence, and the Commission accords it no weight.

3. Calculation of Spillover and Free Ridership Impacts Within the NTG Ratio

<u>ComEd's Position</u>

ComEd explains that the independent evaluator calculates NTG values by taking into account the impacts of free ridership and spillover. To date, the NTG Ratio has always been calculated by including an analysis of free ridership, which takes into account (and excludes) those kWh savings associated with program participants who would have installed the measure even in the absence of the program. However, ComEd observes that the spillover impact, which considers (and includes) the kWh savings associated with those who were motivated by a program to install a measure but did not take advantage of the program's incentive, has only been included in the NTG Ratio infrequently and treated as a low-priority item. ComEd Ex. 3.0 at 68. According to ComEd, to date the NTG Ratio has always been adjusted downward to account for free ridership, and rarely adjusted upward to account for spillover. *Id.* at 68-69. This means that energy savings have likely been underreported to the utility's and customers' detriment. *Id.* at 69. As a result, ComEd proposed the following approach to the calculation of free ridership and spillover during Plan 3:

> Starting with Plan 3, ComEd proposes that all program evaluations must address, in addition to free ridership, spillover from both the participant and non-participant perspectives. Without these perspectives, the evaluation is unduly reducing the net program impacts that should be realized by a program. We propose that if an evaluation does not account for spillover, then the free rider effect should also be ignored.

ComEd Ex. 2.0 at 66. ComEd Init. Br. at 78-79.

In response to ComEd's proposal, ComEd observes that Staff and intervenors generally acknowledged that spillover impacts have been neglected to date and that more could be done in the future to incorporate these impacts. ComEd Ex. 3.0 at 69. Because Staff and some intervenors misinterpreted ComEd's proposal as requiring that every evaluation *report* calculate new free ridership *and* spillover values, they accepted the proposal to varying degrees. ComEd Init. Br. at 79-80.

To incorporate spillover impacts for a program where a study failed to do so, ComEd notes that both the AG and NRDC recommend proposals that would direct the evaluator to estimate the spillover impacts for the program. NRDC Ex. 2.0 at 19; AG Ex. 1.0C at 41-42. ComEd notes the agreement among ComEd, NRDC, AG and others that the NTG ratios for each Plan year should take into account the impacts of both free ridership and spillover, and further agreed that the independent evaluator should estimate an appropriate spillover impact where the complexity of the spillover measurement precludes its calculation due to evaluation budget constraints (or for some other reason). ComEd Ex. 3.0 at 71. In short, ComEd clarifies that it was not proposing that free ridership must be ignored if spillover is not specifically calculated in a given study. Rather, ComEd simply seeks to ensure that the spillover impact is taken into consideration by the independent evaluator in all cases and, where a program-specific value cannot be calculated for a given Plan year, an estimate of spillover should be calculated as a proxy. *Id.* ComEd Init. Br. at 79-81.

ComEd understands that the spillover effect can be much more difficult to measure than free ridership, and agrees that a separate study might be required to address spillover properly. Moreover, ComEd agrees that these studies can be expensive, and it may not always be possible to undertake this research given the limited evaluation budget. While ComEd would prefer that spillover be analyzed and calculated for every program in every Plan year, ComEd recognizes that this is unlikely. Yet, these practical challenges do not mean that spillover should continue to be ignored. ComEd states that its goal in this docket is to ensure that evaluations – not necessarily each evaluation *study* – account for both free ridership and spillover when calculating the NTG ratio. ComEd believes this approach will result in the most accurate reflection of the program's impact. The spillover effect is obviously a positive impact to the program savings, and any spillover impact will increase the kWh savings. While certain spillover studies may prove costly or difficult, ComEd notes that this is not a reason to exclude a key input to the NTG ratio calculation. It is important to all stakeholders, including customers, that the best estimates of program impacts are made, which is the only way we can know the true impact and value of the energy efficiency portfolio. ComEd Ex. 3.0 at 70-71. ComEd Init. Br. at 81.

Indeed, ComEd observes that no stakeholder is in a better position to make this estimate than the independent evaluators, who can rely on their knowledge of the program, the marketplace and their past evaluation work for both ComEd and other utilities across the country that are running similar programs. ComEd Ex. 3.0 at 71. Of course, this task is also consistent with one of the evaluators' key objectives – to determine the impacts of ComEd's portfolio. *See* 220 ILCS 5/8-103(f)(7); ComEd Ex. 3.0 at 71. Only Staff takes issue with the agreed to approach, and bases its argument solely on the unfounded claims that "a utility has an incentive to find as high a spillover estimate as possible as it increases the calculated savings." Staff Init. Br. at 11. Yet, ComEd explains that it is the independent evaluator, not the utility, that conducts the study and establishes the spillover estimate. Given Staff's enthusiastic reliance on the evaluator's correspondence in this docket, ComEd notes that Staff appears to have great confidence in the evaluator's opinions and findings. ComEd Rep. Br. at 37. With respect to Staff's proposal that the evaluator conduct a spillover analysis across the entire portfolio, ComEd believes the issue should be taken up in the SAG and the independent evaluator for further review and discussion. ComEd Init. Br. at 81.

<u>Staff and Intervenors' Positions</u>

<u>Commission Analysis and Conclusions</u>

The Commission agrees with ComEd, the AG and NRDC that both free ridership and spillover should be considered during each program evaluation. The Commission rejects Staff's proposal because it has provided no support for its claim that the utility has an incentive to inflate its spillover estimate to increase calculated savings. Rather, it is the independent evaluator that determines the spillover estimate. Finally, the Commission agrees that Staff's proposal that the evaluator conduct a spillover analysis across the entire portfolio may be the topic of discussions in the SAG where it can be reviewed to determine whether such an analysis would provide any value.

4. Realization Rate ("RR") Framework

ComEd's Position

ComEd proposes a framework similar to the NTG framework under which the realization rate would only apply prospectively. ComEd Ex. 3.0 at 73. As an initial matter, ComEd explains that a realization rate is the ratio of measured savings to projected savings. *Id*. Under ComEd's proposed framework, the newly calculated realization rates would not apply until the start of the next Plan year. Similar to the NTG framework, ComEd proposes the following:

> For existing programs, when a ComEd evaluation of a program has identified an estimated realization rate, that rate will be used prospectively until a new ComEd evaluation estimates a new realization rate. The prevailing realization rate provided by the EM&V contractor by March 1 of any Plan year is the realization rate to be applied to the next Plan year beginning June 1.
>
> For new programs, planning realization rates that have been provided by the EM&V contractors by March 1 of any Plan year, will be applied prospectively to the next Plan year beginning June 1. These rates will be used until a ComEd evaluation estimates a revised realization rate. If the revised realization rate is provided by the EM&V contractor by March 1, then the rate will be applied to the next Plan year beginning June 1. Thereafter, realization rates shall be revised according to the framework for existing program described above.

ComEd Ex. 2.0 at 65. ComEd Init. Br. at 82.

ComEd explains that its proposal is a continuation of the same RR framework approved by the Commission for Plan 2, which would again allow ComEd to prospectively apply a RR. ComEd Ex. 3.0 at 73; *Plan 2 Order* at 47-49. And, like Plan 2, the deemed RR only applies to those variables outside of ComEd's control. ComEd Ex. 3.0 at 73; *Plan 2 Order* at 47-49. ComEd confirms that it will continue to be accountable for all variables within its control. ComEd Ex. 3.0 at 73; *Plan 2 Order* at 47-49. Both NRDC and ELPC support the RR framework as long as it only accounts for factors outside of ComEd's control. NRDC Ex. 1.0 at 22, 27-28; ELPC Ex. 1.0 at 3, 28. Although the AG initially opposed the proposed RR framework based on a misunderstanding that it applied to factors within ComEd's control, it appears the AG now supports the proposal with the clarification it only applies to factor outside ComEd's control. AG Ex. 2.0C at 18. ComEd Init. Br. at 82-83.

ComEd emphasizes that only Staff objects to the proposed RR framework, which is based on the mistaken belief that the Technical Reference Manual obviates the need for the RR framework approved in Docket No. 10-0570. Staff Ex. 1.0 at 40. Staff also claims that ComEd should be held accountable for errors within its control, and apparently ignores that any errors within ComEd's control are <u>not</u> included within the deeming proposal. According to ComEd, what Staff fails to recognize, is that the TRM, while a fairly comprehensive document, is not all-encompassing with respect to energy efficiency measures. ComEd Ex. 3.0 at 74. A number of measures offered in ComEd's residential and business programs are not currently addressed in the TRM. *Id*. For example, the current version of the TRM ("Version 2.0"), which was approved by the Commission on November 6, 2013 in Docket No. 13-0437, does not include an A-line LED replacement lamp as a residential measure. *Id*. ComEd points out that this measure is part of ComEd's Plan 3, however, and ComEd is forecasting 250,000 of these bulbs to be incented in the Residential Lighting program in PY7, increasing to 2 million bulbs in PY9. *Id*. While ComEd believes that this measure may be incorporated into the TRM in time for the next three-year plan, there is no assurance that this will be the case. *Id*. Accordingly, ComEd notes that the proposed RR framework is an appropriate back-stop for those measures. ComEd Init. Br. at 83.

ComEd further observes that Staff devotes nearly 8 pages of its Initial Brief to quoting the TRM, apparently out of concern that parties are ignoring its impact. Yet, ComEd explained at length in testimony and its Initial Brief that the RR framework is only meant to supplement, not supplant, the TRM. ComEd Ex. 3.0 at 73-75; ComEd Init. Br. at 83. While it is true that the TRM was developed and approved following Plan 2, ComEd notes that the TRM does not include every measure proposed to be included within ComEd's Plan 3. As a result, the RR framework fills in the gaps for these measures that are not currently covered by the TRM. It is unclear to ComEd why Staff so strongly opposes this backstop, and ComEd requests that the Commission rejects Staff's arguments. ComEd Rep. Br. at 38.

Related to the RR framework, the AG also proposes that "realization rates going forward should be presumed for planning purposes to be 1.0" (AG Ex. 1.0C at 38), and then recommends that "the Commission should direct ComEd to recalculate its modified goals to reflect 1.0 realization rates for all programs" (*id*. at 40). ComEd urges the Commission to reject this proposal because it would artificially inflate ComEd's proposed modified goals. ComEd Ex. 3.0 at 75. As ComEd demonstrated in its Data Request Response to NRDC 2.16, ComEd's historic realization rates vary greatly by program, and it therefore makes the most sense to model a program based on the data we have available for a realization rate. *Id.* Indeed, ComEd has used this approach for Plan 1 and Plan 2 without issue. Mr. Mosenthal's proposal should be rejected, and, if anything, discussed further in the SAG. *Id*. ComEd Init. Br. at 84; ComEd Rep. Br. at 37-39.

<u>Staff and Intervenors' Positions</u>

Commission Analysis and Conclusions

The Commission approves the RR framework proposed by ComEd and supported by all parties other than Staff in this proceeding. The TRM will serve as the principal source of the RR values. If the measure is not included in the TRM, however, then the RR framework will apply to establish the value, provided that it will only apply to variables that are outside of ComEd's control. The Commission recognizes that this RR framework is an appropriate backstop for measures that are not in the TRM and rejects Staff's opposition to the proposal. Finally, the Commission rejects the AG's proposal that realization rates going forward should be presumed to be 1.0 for planning purposes and that ComEd should be directed to recalculate its proposed modified goals to reflect realization rates of 1.0 for all programs. The AG provides no support for its proposal, and indeed it cannot because the evidence is decidedly to the contrary. The Commission instead will adhere to the approach previously approved for and used by ComEd during Plan 1 and Plan 2 without issue.

5. Adoption of a Statewide NTG Framework / Illinois Energy Efficiency Policy Manual

ComEd's Position

ComEd observes that to date, the Commission has considered the NTG ratios and frameworks proposed in each utility docket, and, consistent with Section 10-101 of the Act, has approved proposals on a case-by-case basis based on the unique evidence and arguments in those dockets. ComEd Ex. 3.0 at 67. In this docket, however, the AG proposed that a single, statewide NTG framework should be applied to all utilities, which presumably means electric and gas utilities. AG Ex. 1.0C at 30. Notwithstanding the lack of evidence to support a single NTG framework applicable to all Illinois gas and electric utilities, ComEd notes that the AG provides no real reasons why each utility should not have its own framework. ComEd Ex. 3.0 at 67. While adoption of different NTG frameworks will impact the way in which the independent evaluator conducts evaluations, there is no evidence in this docket that this would impose any hardship or inconvenience on the independent evaluator. *Id.* ComEd Init. Br. at 77-78.

Indeed, Staff's objections to the AG's proposal to create an Illinois Energy Efficiency Policy Manual (which ComEd also opposes for these same reasons) equally apply here. Specifically, Ms. Hinman notes that the efficiency statutes "also recognize that each utility's plan will likely <u>not</u> be consistent with other utilities' plans. Instead, it would be more appropriate to tailor each utility's plan to the characteristics of its specific service territory." Staff Ex. 3.0 at 27; *see also, Plan 1 Order* at 54 ("There are obvious differences in the territories of the two utilities regarding many items, including, but not limited to, labor costs, housing structure, population density, and, even topography."). Indeed, ComEd believes that these observations also apply to the evaluation portion of

Plan 3, and the Commission should approve ComEd's NTG framework based on the facts and legal argument of this case. ComEd Ex. 3.0 at 68. ComEd Init. Br. at 78.

ComEd further notes in its Reply Brief that Staff flip-flops on the Illinois Energy Efficiency Policy Manual, and inappropriately seeks to create evidentiary support for the proposal in its Initial Brief. In short, in AG witness Mr. Mosenthal's direct testimony, he proposed that ComEd work with the SAG on a long list of tasks, one of which included the following:

> An Illinois Energy Efficiency Policy Manual, designed to streamline and encourage consistency on various program-related policies for review and approval by the Commission....

AG Ex. 1.0C at 45. Because Mr. Mosenthal did not expand on the concept further in rebuttal testimony, ComEd observes that these three lines reflect the entirety of the proposal. In rebuttal testimony, ComEd joined Staff's objection to the proposed Manual based on provisions of Section 8-103 and past Commission orders, which emphasize that each utility's implementation of energy efficiency will be unique to its service territory and customers. ComEd Ex. 3.0 at 68. According to ComEd, it is unclear why Staff claims that "ComEd did not object to" the development of the Illinois Energy Efficiency Manual as proposed by the AG. To the contrary, Mr. Brandt testified that he "believes that Ms. Hinman's objections to Mr. Mosenthal's proposal to create an Illinois Energy Efficiency Policy Manual (which ComEd also opposes for these same reasons) equally apply here." *Id.* at 68. ComEd Rep. Br. at 39-40.

Yet, in Staff's Initial Brief, ComEd notes that they claim to have misunderstood these three lines of Mr. Mosenthal's testimony. Based on their review of an AG brief in *another* docket, Staff now claims to have an entirely different understanding of Mr. Mosenthal's testimony. In Docket Nos. 13-0498 and 13-0499, the AG attempted to "clarify" in its briefs that the Manual would "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 evaluation programs." *See* Staff Init. Br. at 13-14. Indeed, the AG's Initial Brief in this docket attempts to do the same thing. Yet, ComEd observes that these new claims about the Manual and its focus on "evaluations" are not in the record, and as a result parties were deprived of the opportunity to conduct discovery regarding the proposal. ComEd Rep. Br. at 40.

Notwithstanding that the entirety of the AG's proposal is reflected in three lines of testimony that never mention "evaluation", ComEd notes that Staff attempts to backfill the evidentiary hole over the course of nearly *10 pages* of its Initial Brief, and relies on 85 pages of documentation it produced to the AG on the morning of the evidentiary hearing in this case. As ComEd noted in its Response in Opposition to Staff's Motion to Admit, these kinds of games with the Rules of Evidence and Commission Rules of Practice should be rejected. *See* ComEd's Response in Opposition to Staff's Motion to Admit the Company's Response to Staff Data Request JLH 4.04 and Attachment Into Evidence (Dec. 5, 2013) at 3. According to ComEd, these documents were not previously issued data request responses being submitted in lieu of cross examination. Rather, it is now clear that these were self-serving data request responses that were served to supplement the evidentiary record at the last second. ComEd notes that this is highly inappropriate and unfair to the parties in this docket. Parties had no opportunity to review, much less determine, whether they had cross examination concerning Ms. Hinman's responses and the attached 85 pages of documentation. ComEd Rep. Br. at 40-41.

ComEd further notes that even if this "evidence" is accorded some weight (and it should not be), it cannot overcome the statutory and Commission directives that a utility's plan is to be tailored to its unique service territory. 220 ILCS 5/8-103(f)(5); *Plan 1 Order* at 54. Moreover, ComEd does not understand how the Commission can "direct ComEd to require its Evaluators to collaborate with the other Illinois Evaluators to reach consensus on the best approaches and most defensible well-vetted approaches to assessing NTG." Staff Init. Br. at 12, 19-20, 21. For example, ComEd observes that Staff does not propose how the evaluators are supposed to take on this new task when the statutorily-limited 3% evaluation budget was already fully accounted for under Plan 3 based on existing evaluation activities. Further, ComEd states that the independent evaluator is not an agent of ComEd – ComEd cannot force the evaluator "to reach consensus" any more than Staff could. Indeed, "forced consensus" does not even make sense. ComEd further points out that none of these issues can be clarified because these proposals were made for the first time in Staff's Initial Brief. They are not in evidence. ComEd Rep. Br. at 41.

<u>Staff and Intervenors' Positions</u>

<u>Commission Analysis and Conclusions</u>

The AG's proposed Statewide NTG Framework and Policy Manual are entirely unsupported by the record, and, in any event, contrary to Section 8-103 and Commission orders. Further, Staff's attempt to backfill the evidentiary record through self-serving data requests served on the morning of the hearing is entirely inappropriate and raises serious due process concerns. The proposed framework and Policy Manual are rejected, and Staff is directed to follow the Rules of Evidence in all dockets.

6. Cost-Effectiveness

<u>ComEd's Position</u>

ComEd urges the Commission to reject Staff's recommendations and disregard its "concerns" regarding cost-effectiveness. *First,* as to Staff's claims that the inclusion of some "cost-*ineffective*" measures raises the risk that the entire portfolio may become "cost-ineffective" (Staff Ex. 1.0 at 20), this risk is virtually nonexistent. Mr. Brandt testified that net benefits would have to be reduced by over $250 million over the 3-year plan for the TRC test result to be 1.0. Further, Staff's concerns appear to be based on an unsupported and short-sighted premise that a portfolio should not include any measure that diminishes the portfolio's net benefits. ComEd Ex. 3.0 at 76-77. As NRDC observed, however, there are a number of reasons why cost-ineffective measures should be included in the portfolio, including promotion of comprehensive treatment of energy efficiency opportunities and allowing programs to "get in the door" of customers and generate customer interest in future, cost-effective measures. NRDC Ex. 2.0 at 17-18. ComEd further notes, moreover, that the Commission has clearly stated in its prior Plan Orders that the *portfolio-level* TRC test is the relevant cost-effectiveness metric, which recognizes that some measures in the portfolio may be cost-ineffective. *Plan 1 Order* at 28; *Plan 2 Order* at 42. Staff's attempt to impose some other standard should be rejected. ComEd Init. Br. at 84-85.

Second, ComEd contends that the Commission should reject Staff's recommendations that the Commission require ComEd to provide cost-effectiveness screening for new measures in its reports to the Commission, that ComEd limit the participation of measures that are not cost-effective, and that ComEd provide screening results for measures that become cost-ineffective during the plan cycle. Staff Ex. 1.0 at 21. According to ComEd, capping participation levels for measures would be deleterious to portfolio performance. ComEd Ex. 3.0 at 77. Some measures, for example, are cost-effective for customers in some but not all businesses. *Id*. ComEd explains that if Staff's proposal were adopted, it could place ComEd in the untenable position of telling certain customers that it is unable to implement certain measures because these customers are in the wrong business. Moreover, as NRDC witness Mr. Neme observes in his rebuttal testimony, "Staff is inappropriately requesting that the Commission engage in micromanaging of ComEd's efficiency planning, the result of which would likely be an increase in the Company's administrative burden (and related costs) as well as other adverse consequences for the long-term effectiveness of efficiency program portfolio." NRDC Ex. 2.0 at 16. ComEd Init. Br. at 85.

Third, ComEd asks the Commission to reject Staff's proposals that ComEd file a number of reports with the Commission on a quarterly and semi-annual basis that would, *inter alia,* contain a variety of data comparing the programs to the filed plan and documenting any changes to programs – no matter how small they are. Staff Ex. 1.0 at 30-31. Consistent with NRDC witness Mr. Neme's rebuttal testimony (NRDC Ex. 2.0 at 16), the proposed additional reporting would create a significant administrative burden on ComEd (which would have to develop the reports) and the Commission (which would have to address them) and appear largely duplicative of all of the reporting and docketed proceedings to which ComEd is already subject throughout a given Plan year. ComEd Ex. 3.0 at 78. These include the following: Reconciliation Reports, Quarterly SAG Reports, and Evaluation Reports. ComEd Init. Br. at 85-86. According to ComEd, the current reporting structure has worked very well and ComEd is not aware of any complaints regarding a lack of information or transparency. *Id*. at 87.

ComEd also requests that the Commission reject two other Staff proposals. Staff proposes that ComEd closely monitor and report to the Commission concerning the RCx Program *ex post* cost effectiveness results along with program modifications and updated cost effectiveness projections. Staff also proposes that the Commission *order* ComEd to stay apprised of and respond prudently and reasonably to information concerning measure and program level cost-effectiveness during the course of implementing its portfolio to help ensure net benefits are maximized in Illinois. This level of micromanaging is not required and the proposals should be rejected. ComEd Init. Br. at 86-87.

In sum, ComEd urges the Commission to reject these recommendations because the Commission has clearly stated in its prior Plan Orders that the portfolio-level TRC test established by Section 8-103 is the relevant cost-effectiveness metric. *Plan 1 Order* at 28; *Plan 2 Order* at 42. Staff's proposal is another example of its attempt to micromanage the portfolio – it would essentially require ComEd to re-run its entire measure screening process every time an avoided cost input, TRM value, NTG value or program element cost changes. ComEd Ex. 3.0 at 79. Given how agile the program implementers try to be in response to the dynamics of the market, ComEd could end up having to add additional portfolio staff simply to comply with a terribly burdensome request. *Id*. No party, other than Staff, supports this position. ComEd Init. Br. at 87.

In reply to Staff's Initial Brief, ComEd admits to being overwhelmed by the volume of recommendations Staff has made in this docket regarding various reports, actions and analyses that ComEd should be "ordered," "directed" or "required" to file or undertake. Indeed, ComEd notes that a search of Staff's brief pulled up over <u>50</u> such requests, most of which focus on the level of cost-effectiveness, concerns that are not shared by any other party in this docket. *See* Staff Init. Br. at 9, 12, 20, 21, 37, 46, 47, 48, 49, 53, 55, 56, 58, 59, 60, 61, 64, 65, 66, 68, 71, 72, 75, 76. To be sure, the inquiry at issue in this docket – whether ComEd's proposed portfolio is cost-effective – has been satisfied. Staff readily admits that the proposed portfolio is cost-effective. Staff Ex. 1.0 at 19. ComEd Rep. Br. at 41-42. ComEd further observes that NRDC is in agreement that Staff's many recommendations reflect a costly attempt to micro-manage the portfolio at every turn, and which, in any event, are not well founded.

ComEd further notes that Staff's proposed reporting requirements are so poorly formulated that even Staff must go to great lengths in its Initial Brief to explain what they mean. For example, in its rebuttal testimony and Initial Brief, ComEd observed that Staff's proposed limits on cost-ineffective measures could result in ComEd having to tell some businesses that they cannot install a measure while other businesses can. Ignoring that its proposed limitation is vague, ambiguous and incapable of implementation, Staff tries to cure the defect by explaining its intent. *See* Staff Init. Br. at 60. Yet, the need for Staff to devote paragraphs of its Initial Brief to explaining what its proposals mean and how they are to be interpreted only further underscores that they are not well founded, capable of being implemented, or beneficial to the portfolio. ComEd Rep. Br. at 43-44

ComEd concludes that no additional reporting is needed or sought by any other party. To the extent Staff wishes to explore cost-effectiveness issues or other matters (*i.e.*, those that comprise its over 50 recommendations), it is free to serve relevant discovery in an appropriate docket, although it is not at all clear whether these dozens of requests are relevant to any issue. According to ComEd, there is no evidence justifying, or statute supporting, Staff's onerous request that the Commission *order* these reports here, especially where no other party seeks them. To the contrary, NRDC similarly opposes this waste of portfolio resources – the magnitude of which Staff has not event attempted to estimate.ComEd Rep. Br. at 43.

<u>Staff and Intervenors' Positions</u>

<u>Commission Analysis and Conclusions</u>

As an initial matter, the Commission rejects the 50-plus requests from Staff that ComEd be "directed," "ordered," or "required" to undertake, which include an overwhelming list of tasks, analyses and reporting. Indeed, it is difficult to parse through all of the recommendations, as they are littered throughout Staff's Initial Brief. While the Commission addresses several of the key proposals below, in general the Commission finds Staff's requests to be without foundation and extremely burdensome to the point of being punitive. It is unclear what Staff seeks to accomplish other than to amass a library of information, the relevance of which is not clear. Indeed, no other party supports Staff's requests. ComEd already prepares and files numerous reports related to Section 8-103, and we do not find them to be lacking. If any of Staff's requests has any relevance to any docket (and the Commission is not making any ruling in that regard), Staff should style it as a data request and submit it in the appropriate docket.

The Commission finds no merit to Staff's claim that the inclusion of some "cost-*ineffective*" measures raises the risk that the entire portfolio may become "cost-ineffective." The Commission agrees with NRDC that there are a number of reasons why cost-ineffective measures should be included in the portfolio, including promotion of comprehensive treatment of energy efficiency opportunities and allowing programs to "get in the door" of customers and generate customer interest in future, cost-effective measures. The new standard proposed by Staff – one that has not been followed before and is contrary to Section 8-103 – is rejected.

The Commission similarly rejects Staff's proposal that the Commission require ComEd to provide cost-effectiveness screening for new measures in its reports to the Commission, that ComEd limit the participation of measures that are not cost-effective, and that ComEd provide screening results for measures that become cost-ineffective during the Plan cycle. Staff provides no support for these added measures and they do not appear to find any support from other parties in this proceeding. As NRDC points out, this sort of micro-managing is likely to impose an administrative burden on ComEd and increase costs that are already paid for by limited funds.

Finally, the Commission rejects Staff's proposals (1) that ComEd closely monitor and report to the Commission concerning the RCx Program *ex post* cost effectiveness results along with program modifications and updated cost effectiveness projections, and (2) that the Commission order ComEd to stay apprised of and respond prudently and reasonably to information concerning measure and program level cost-effectiveness during the course of implementing its portfolio to help ensure net benefits are maximized in Illinois. No support has been provided to support imposing either of these requirements on ComEd nor has any other party expressed support for these proposals.

7. Single goal evaluation following PY9.

ComEd's Position

ComEd proposes that the Commission conduct a single goal evaluation docket following PY9, which is designed to reflect the modifications to Section 8-103(b) permitting the utility to demonstrate compliance with each annual goal at the end of the three-year period. 220 ILCS 5/8-103(b). Because the Commission need not reach a final determination regarding annual goal compliance following each Plan year, ComEd states that its proposal is designed to eliminate inefficiencies and unnecessary litigation. ComEd Ex. 2.0 at 3, 60. ComEd Init. Br. at 87-88. ComEd Rep. Br. at 44.

ComEd notes that Staff indicated that it does not oppose this proposal (provided that its proposed reporting requirements are approved), while NRDC rejected it. Staff Ex. 3.0 at 31-32; NRDC Ex. 1.0 at 29-30. NRDC's concerns appear to focus on an assumption that there would be no reporting during the three-year period. NRDC Ex. 1.0 at 30-31. Contrary to this assumption, ComEd explains that its proposal assumes that the independent evaluators will still produce annual evaluation results and reports for each program, as well as the annual summary of ComEd's performance, and all current reporting will continue. ComEd Ex. 3.0 at 81. To be clear, ComEd's proposal would only have the Commission forego the annual *docketed* proceeding, and the Commission can otherwise stay apprised of ComEd's performance through the required reporting. Id. at 81. ComEd Init. Br. at 88. ComEd Rep. Br. at 44-45.

ComEd further points out that NRDC's Initial Brief did not consider (or ignored) ComEd's rebuttal testimony on this point. NRDC Init. Br. at 23. Contrary to NRDC's assertion, ComEd notes that a single evaluation docket would not prevent "a review of progress toward the goal" and "updating savings assumptions based on on-going evaluation work." NRDC Init. Br. at 23 This is because independent evaluators will still produce annual evaluation results and reports for each program, as well as the annual summary of ComEd's performance, and all current reporting will continue. ComEd Ex. 3.0 at 81. ComEd Rep. Br. at 45.

Staff and Intervenors' Positions

Commission Analysis and Conclusions

Consistent with the modifications to Section 8-103(b) permitting the utility to demonstrate compliance with each annual goal at the end of the three-year period, 220 ILCS 5/8-103(b), the Commission approves ComEd's proposal to conduct a single goal evaluation docket following Plan Year 9. Because the utility need not achieve compliance with each annual goal by the end of each annual period and may instead demonstrate compliance for the three year period overall, the Commission agrees that annual dockets would be inefficient, unnecessary, and a poor use of limited Commission and stakeholder resources. The Commission fully expects ComEd to comply with its evaluation and reporting obligations.

H. Plan Operation: Banking and Flexibility

1. Banking

ComEd's Position

Background. ComEd explains that the Commission first addressed the issue of banked energy savings when it considered the utilities' initial energy efficiency plans. Specifically, as ComEd developed Plan 1, it became concerned about the disposition of excess energy savings achieved in a given Plan year. Because Section 8-103 does not address this issue, ComEd proposed that it be permitted to apply excess energy savings to future Plan years in the event it fell short of that year's goal. *Plan 1 Order* at 39. The Commission concluded that banking of energy savings was permissible, but limited the amount that may be banked in a particular year to "no more than 10 percent of the energy savings required by statute in the year, in which, it is 'banked.'" *Id*. at 41. ComEd Init. Br. at 88.

ComEd states that the Commission's policy on banking further evolved in response to the challenges facing ComEd and stakeholders in the development of Plan 2 due to the increasing energy savings goals but flat budgets beginning in Plan Year 5. These challenges were resolved by a comprehensive Stipulation, and included several provisions addressing banking. Specifically, the stipulation permits ComEd "to accumulate and apply 'banked' kWh savings across years – specifically from PY1 through PY4 for application in PY5," and "apply any banked savings or CFL carryover from PY1 through PY5 to PY6," subject to two restrictions. First, in any given Plan year, no more than 15% of that year's compliance obligation should be met with banked savings from previous Plan years. Except that, in any Plan year for which the statutory target has been adjusted downward to accommodate the rate impact screen, if the availability of banked savings, including banked savings in excess of 15% of the current year's target, plus planned program savings, would allow ComEd to come closer to reaching the statutory target, the target shall be readjusted upward accordingly. *Plan 2 Order* at 53. The Commission approved the Stipulation, including its banking provisions. *Id*. at 53-54. ComEd Init. Br. at 89.

Plan 3 banking proposals. ComEd observes that with respect to the banking proposals in this docket, parties agree on two points: (1) consistent with the legislative changes to Section 8-103, unlimited banking is allowed within Plan 3 ("intra-plan banking)" in order to demonstrate achievement of the PY7, PY8 and PY9 energy savings goals by the end of PY9 (NRDC Ex. 1.0 at 6-7; CUB/City Ex. 1.0 at 15); and (2) no decision on the applicability of banked savings to Plan 4 needs to be made at this time (as ComEd is willing to forego a ruling on this issue). As a result, the only remaining issue regarding banking is the applicability of any remaining banked savings at the close of Plan Year 6 to Plan 3. ComEd Init. Br. at 89-90.

According to ComEd, the Commission Order approving Plan 2 permitted ComEd to carry over savings from Plan 1 to Plan 2. *Plan 2 Order* at 53-54. ComEd similarly requests that the Commission permit ComEd to carry over savings from Plan 2 to Plan 3. ComEd notes that the Commission's reasoning in the *Plan 2 Order* for permitting ComEd to carry over savings from Plan 1 to Plan 2 is equally applicable to carrying over savings from Plan 2 to Plan 3. "Banked savings represent an important means for ComEd to achieve its savings goals effectively and efficiently by encouraging the steady flow of programs in the marketplace and ensuring that retail customers' investments in energy efficiency are not wasted." *Id*. at 53. "[A] banking allowance is necessary because of fluctuations in utilities' energy savings from year to year and to ensure that programs are not abruptly halted once goals are achieved, which would have a chilling effect on customer participation and enrollment." *Id*. at 54. ComEd Init. Br. at 90.

ComEd urges the Commission to reject the argument by the AG, NRDC and ELPC in opposition to permitting ComEd to carry over savings from Plan 2 to Plan 3. One of the main concerns identified by these parties is the fear that ComEd has amassed a large pool of banked savings, and that these savings could be used to achieve an entire Plan year's savings goal while ComEd essentially sits on its hands for the year. AG Ex. 1.0C at 5; NRDC Ex. 1.0 at 7; ELPC Ex. 1.0 at 8. Yet, ComEd explains that the Commission has already forbid such an absurd result based on the restrictions it set forth in its *Plan 2 Order*. *First*, the *Plan 2 Order* placed a limit on the amount of banked savings that could be applied to a given Plan year (*i.e.*, no more than 15% of the goal). *Plan 2 Order* at 52-53. ComEd confirms that it does not oppose the imposition of this limitation in Plan 3, and believes it strikes the right balance between providing ComEd some additional coverage if a program or two do not perform as planned and assuring stakeholders that ComEd will not simply rest on banked savings for a given Plan year. ComEd Ex. 3.0 at 82. *Second*, and equally important, ComEd notes that the *Plan 2 Order* provides that ComEd may apply more than 15% if the goal for a given year has been modified and the banked savings would help ComEd achieve the statutory savings goal. *Plan 2 Order* at 52-53. Indeed, ComEd believes this to be the case in the current Plan Year 6, and expects that it will exhaust much of its banked savings in Plan Year 6 in an effort to achieve the statutory energy savings goal. ComEd Ex. 3.0 at 83. As a result, ComEd concludes that intervenors' arguments based on fears of a large pool of banked savings simply do not take into account the protections of the Commission's *Plan 2 Order*, lack foundation, and should be rejected. ComEd Init. Br. at 90-91.

ComEd also contends that the argument against inter-plan banking based on the amendment of Section 8-103 is mistaken. According to ComEd, the AG and Staff wrongly assert that Section 8-103, by its amendment permitting compliance with savings goals to be determined by "total cumulative annual savings within a 3-year planning period," somehow precludes the carrying over ("banking") of savings from Plan 2 to Plan 3. *See* AG Init. Br. at 28, 30; Staff Init. Br. at 76, 76 fn 9. ComEd notes that this argument misconstrues the amendment to Section 8-103, however. Section 8-103, as amended, neither addresses, nor prohibits, the carrying over of savings from Plan 2 to Plan 3. ComEd Rep. Br. at 46.

ComEd points out that before its amendment, Section 8-103 neither expressly addressed, nor expressly prohibited, the carrying over of excess savings from one year to a later year, either within the same plan or within a later plan. In the *Plan 2 Order*, however, the Commission interpreted Section 8-103 as permitting the carrying over of excess savings from one year to a later year, and expressly permitted the carrying forward of energy savings from Plan 1 to Plan 2. *Plan 2 Order* at 53-54. Thus, ComEd contends that, as amended, Section 8-103 continues to neither expressly address, nor expressly prohibit, carrying over excess savings from one measurement period to a later measurement period. The amendment of Section 8-103 instead merely *permits the relevant measurement period to be three years.* 220 ILCS 5/8-103(b) ("Electric utilities may comply with this subsection (b) by meeting the annual incremental savings goal in the applicable year or by showing that the total cumulative annual savings within a 3-year planning period"). ComEd Rep. Br. at 45-47.

With a three-year measurement period, ComEd explains that banking *within the same plan* is no longer an issue – because a given plan only contains one measurement period. Section 8-103, however, continues to neither address, nor prohibit, carrying over excess savings from one three-year plan period to a later three-year plan period. ComEd notes that because banking remains necessary to achieve the policy goals of Section 8-103 (as expressed in the *Plan 2 Order* at 53), the Commission's reasoning in the *Plan 2 Order* for permitting banking from one plan period to a later plan period remains authoritative, equally applicable to Section 8-103 as amended, and supports permitting the carrying over of savings from Plan 2 to Plan 3. According to ComEd, the amendment of Section 8-103 provides no basis to oppose permitting the carrying over of savings from Plan 2 to Plan 3. ComEd Rep. Br. at 47-48.

With respect to the claim that inter-plan banking is irrelevant and a "zero-sum game," as the application of more than 15% will "only" help ComEd achieve the statutory savings goal, ComEd observes that this also is inconsistent with statutory policy and intent. AG Init. Br. at 29-30. According to ComEd, the policy and intent of Section 8-103 is to achieve the highest level of savings subject to the constraints imposed by Section 8-103. Permitting ComEd to apply banked savings from Plan 2 to Plan 3 to achieve a higher level of savings thus is consistent with this statutory policy and intent. ComEd Rep. Br. at 49.

Finally, ComEd cites to the Commission's key finding in the *Plan 2 Order* regarding the importance of banking. ComEd observes that the following finding remains fundamental and eviscerates the argument against inter-plan banking: "Banked savings represent an important means for ComEd to achieve its savings goals effectively and efficiently *by encouraging the steady flow of programs in the marketplace and ensuring that retail customers' investments in energy efficiency are not wasted*." *Plan 2 Order* at 53 (emphasis added). If inter-plan banking is not permitted, ComEd's incentives during the remaining months of Plan 2 – and perhaps even during Plan 3, when the possibility of carrying over savings from Plan 3 to Plan 4 will remain an open issue – will be diminished. ComEd Rep. Br. at 49.

<u>Staff and Intervenors' Positions</u>

<u>Commission Analysis and Conclusions</u>

The Commission agrees with all parties in this docket that the General Assembly's amendment to Section 8-103(b) permits unlimited banking within Plan 3 ("intra-plan banking"), which allows ComEd to demonstrate achievement of its annual goals by the end of Plan Year 9. Furthermore, the Commission agrees that no decision on the applicability of banked savings to Plan 4 needs to be made at this time. With regard to whether any remaining banked savings at the close of Plan Year 6 can be applied to Plan 3, the Commission agrees with ComEd that any such savings may be carried over and applied to Plan 3. This is consistent with the Commission Order approving Plan 2 in which the Commission permitted ComEd to carry over savings from Plan 1 to Plan 2. Indeed, the same policy objectives previously articulated by the Commission under Plan 2 also apply here – *e.g.*, ensuring the continuous flow of energy efficiency programs between Plans. No party in this docket has provided any support for modifying that approach.

Furthermore, the Commission finds the argument made by the AG, NRDC and ELPC that ComEd will bank significant savings and then sit on its hands to be unsupported and contrary to the evidence. As ComEd points out, it is not likely that the banked savings at the end of Plan Year 6 will be a large pool, and ComEd has demonstrated that it takes energy efficiency seriously and will not abandon that conviction to somehow game the system. Accordingly, the Commission agrees that banked savings at the end of Plan Year 6 may be applied to Plan 3, subject to the limitation that no more than 15% of the goal may be applied to a given Plan year. *Plan 2 Order* at 52-53.

2. Flexibility

<u>ComEd's Position</u>

ComEd points out that no party disputes that it requires flexibility to manage its portfolio. Indeed, there are a number of risks involved in implementing the measures and programs. ComEd Ex. 2.0 at 44. ComEd witness Mr. Brandt explained that this flexibility is critical for allowing ComEd to meet ComEd's statutory goals, as it allows ComEd to "adjust portfolio and program design based on the real-time information it receives." *Id*. at 57. While ComEd has conducted risk analysis of its programs, it is possible for programs to lose their cost-effectiveness in unpredictable ways. *Id*. at 58. To ensure that ComEd can respond to such changes, ComEd contends that "it must retain sufficient flexibility to reallocate funds across program elements, including the ability to modify, discontinue and add program elements within approved programs based on subsequent market research and actual implementation experience." *Id*.

And, consistent with the *Plan 1 Order* and *Plan 2 Order*, ComEd recognizes the importance of having stakeholder participation in this process of review and, as necessary, modification. *Id.* ComEd Init. Br. at 91-92.

As such, ComEd requests that the Commission grant it the same flexibility and discretion to adjust program design and budgets and to add or discontinue program elements within approved programs that the Commission granted ComEd in the *Plan 1 Order* and *Plan 2 Order,* and therefore proposes that the following matters would be discussed within the SAG: (i) the reallocation of funds among program elements within the *Smart Ideas for Your Home* and *Smart Ideas for Your Business* programs (excluding those elements managed by DCEO) to ensure ComEd's ability to achieve its goals, where the change in budget for any specific program element is greater than 20%; (ii) discontinuing approved program elements within the *Smart Ideas for Your Home* and *Smart Ideas for Your Business* programs; and (iii) adding new program elements within the *Smart Ideas for Your Home* and *Smart Ideas for Your Business* programs, as long as those program elements pass the TRC test. ComEd Ex. 2.0 at 59. ComEd Init. Br. at 92.

ComEd explains that the proposed portfolio represents its best effort to design a cost-effective mix of program elements with a high probability of success. ComEd Ex. 2.0 at 59. Following Commission approval of Plan 3, ComEd will proceed with final and detailed program designs and implementation plans. *Id*. ComEd notes that this process will include further discussions with stakeholders, customer groups and trade allies. *Id*. Continuing market research will also influence ongoing program direction. *Id.* Based on the information compiled through this process, these initial program designs most likely will be refined to strengthen the program offerings. *Id.* at 59. In the event ComEd revises the proposed budget for any specific program element within the *Smart Ideas for Your Home* and *Smart Ideas for Your Business* programs by more than 20%, ComEd confirms that it will notify the SAG of these changes. *Id*. ComEd Init. Br. at 92.

ComEd notes that other parties have taken positions concerning ComEd's proposal regarding flexibility, and responds accordingly.

AG's Position. According to ComEd, the AG has expressed concern that ComEd could "game" the system (despite having no evidence to support this newly announced concern). Specifically, AG witness Mr. Mosenthal states that "ComEd is proposing complete flexibility to modify its Plan 3 unilaterally throughout the Plan period" (AG Ex. 1.0C at 5) and requests that any change above 20% require a change in the goal. *Id*. at 26. ComEd observes that the AG's concern lacks foundation, as ComEd's flexibility proposal was approved for the last two Plans, ComEd has exercised flexibility without abuse or incident, and ComEd's proposal would not provide "unilateral" flexibility –material changes would be vetted with the SAG. ComEd Ex. 3.0 at 84. ComEd further explains that the AG's proposal to change the energy savings goals is unacceptable because it would undermine the most likely reason that ComEd would change a program – to make up for an underperforming program and ensure the applicable savings goal is achieved. *Id*. The AG's proposal to increase the goal thus would hamstring ComEd's ability to implement significant changes in response to a change in circumstances and make goal attainment more difficult, if not impossible, to attain. *Id*. ComEd Init. Br. at 93-94. Further, ComEd observes that the AG's proposal that the Commission "order ComEd, prior to implementing any proposed modifications, to bring them to the SAG for discussion and attempt to build consensus around the change" (AG Init. Br. at 39) would further undermine the purpose of flexibility by precluding ComEd from nimbly managing the portfolio. NRDC, indeed, has explained that even a far less time consuming requirement to notify the Commission of all changes, regardless of size, would be defeating. NRDC Ex. 2.0 at 21. ComEd Rep. Br. at 52.

ComEd further notes that the AG mischaracterizes ComEd's proposal as seeking "complete," "unlimited," and "unfettered flexibility," to "modify [ComEd's] Plan 3 unilaterally throughout the Plan period." AG Init. Br. at 35; AG Ex. 1.0C at 5. In response to the AG's Initial Brief, ComEd further clarifies a critical point – which some parties either missed or chose to ignore – *that ComEd seeks neither unlimited nor unfettered discretion*. ComEd only requests that the Commission grant it the *same* flexibility and discretion to adjust program design and budgets and to add or discontinue program elements within approved programs that the Commission granted ComEd in the *Plan 1 Order* and *Plan 2 Order.* ComEd Ex. 2.0 at 58-59. ComEd Rep. Br. at 52.

Staff's Position. ComEd observes that Staff again seeks to micromanage the portfolio through its proposal. Staff would require ComEd to notify the Commission in writing of *any* changes it plans to make to its program – regardless of whether the changes to the budget are more than 20% – and otherwise "include a discussion of how it uses its flexibility in its reports submitted to the Commission," including its quarterly reports to the Commission and the testimony filed in ComEd's Rider EDA annual reconciliation proceeding. Staff Ex. 1.0 at 30-31. In addition, Staff proposes that ComEd file semi-annual reports with the Commission describing program activities, implementation modifications, and spending and savings projections compared to the Plan filing. *Id*. at 30. Staff further proposes that to the extent ComEd's responses to past evaluators' recommendations and changes in the IL-TRM and NTG ratios "changes significantly impact the portfolio and expected cost-effectiveness, ComEd should also report a revised projected portfolio level TRC prior to the start of the program year." Staff Ex. 1.0 at 31. ComEd Init. Br. at 94.

ComEd explains that these are simply additional burdensome administrative requirements for which there is no need or purported value. ComEd already files quarterly reports with the Commission and the SAG, as well as annual reconciliation reports and evaluation reports. To implement Staff's proposal, ComEd notes that it would likely need to retain additional resources just to comply with the additional reporting requirements – with little to no value to any party involved. ComEd Ex. 3.0 at 85. NRDC witness Mr. Neme concurred NRDC Ex. 2.0 at 21. In its Initial Brief, Staff further proposed that instead of requiring ComEd to file semi-annual reports, the Commission should order ComEd "to provide all the information requested by Staff in its Reconciliation Reports it files with the Commission." Staff Init. Br. at 55. In other words, Staff would have the Commission order ComEd to provide in Reconciliation Report any and all information, of whatever kind, nature, or detail, that Staff might choose to demand – essentially unlimited micromanagement. ComEd Rep. Br. at 53-54. ComEd concludes that Staff's proposal is impractical, could be detrimental to the portfolio's success by burdening it with unjustified costs and resources demands, and would deprive ComEd of the flexibility to properly manage the portfolio consistent with its performance over the past five years. ComEd Ex. 3.0 at 85. ComEd Init. Br. at 94-95.

ComEd further objects to the proposals by the AG, Staff, and CUB/City to severely restrict ComEd's flexibility for the first time in the portfolio's history because they are not based on a single instance of this flexibility framework having been abused over the past six years. Rather, Staff and intervenors base their proposal solely on the fact that ComEd is proposing modified goals in this docket. In other words, although these parties each admit that ComEd must modify the goals due to the budget limitations, they go on to imply that the modified goals are somehow up to ComEd's discretion and, further, that this has suddenly created a substantial risk that ComEd will abuse the flexibility it is granted. To the contrary, the need to modify the goals is a statutory construct and requirement – the General Assembly originally set the goals and has decided to make no change to the budgets in order to fund increasing goals. Parties' attempts to punish ComEd for this legislative framework should be rebuffed. ComEd Rep. Br. at 51. In addition, ComEd notes that the evidence in this docket shows that it is maximizing available savings subject to the spending screen and in a changing regulatory environment that has limited the availability and size of some programs. ComEd Rep. Br. at 52-53.

<u>Staff and Intervenors' Positions</u>

<u>Commission Analysis and Conclusions</u>

The Commission agrees with ComEd that it requires the same level of flexibility and discretion to adjust program design and budgets and to add or discontinue program elements within approved programs that the Commission granted in the *Plan 1 Order* and *Plan 2 Order*. While ComEd has proposed modified goals due to the statutorily-imposed budget constraints, all parties agree this is necessary. This uncontested fact therefore should not cause ComEd to lose the flexibility it has been granted over the past six years. Indeed, there is no evidence in this docket that the flexibility granted to ComEd has ever been mishandled. Moreover, the new proposals by the AG and Staff would unduly burden ComEd and affect its ability to make necessary adjustments to its portfolio. These proposals are rejected.

I. Other Issues

1. Potential Study

<u>ComEd's Position</u>

ComEd explains that since the filing of Plan 2, the General Assembly enacted Public Act 97-0616, which, *inter alia*, added Section 8-103A to the Act. Section 8-103A requires that beginning in 2013, a utility must include with its energy efficiency and demand-response plan "an analysis of additional cost-effective energy efficiency measures that could be implemented, by customer class" absent the spending limits of Section 8-103. 220 ILCS 5/8-103A. ComEd states that it complied with this requirement by conducting a potential study of energy efficiency in the ComEd service territory. The potential study was conducted by ICF Consulting and covered the time period 2013 to 2018. The analysis is included in Appendix D to Plan 3. ComEd Init. Br. at 95.

Staff witness Mr. Brightwell proposes a change in the potential study methodology that would add a marginal analysis to how energy efficiency measures are analyzed. Staff Ex. 2.0 at 20-23. ComEd explains that while Mr. Brightwell's proposal is an interesting one, support for adopting such a methodology is lacking at this time. The proposal is also a bit premature because the potential study is conducted just once every three years, and one was recently completed. ComEd Ex. 1.0, App. D. As a result, ComEd and stakeholders have ample time to explore the novel approach that Mr. Brightwell advances. ComEd Ex. 3.0 at 86. ComEd notes that the methodology in the current potential study mirrors the standard employed by the industry and ComEd would like time to investigate why Mr. Brightwell's approach has not, to ComEd's knowledge, been implemented elsewhere. *Id*. Furthermore, ComEd observes that it needs to determine the magnitude of additional costs, if any, necessary to conduct this analysis. *Id*. Accordingly, ComEd concludes that the proposal raised by Mr. Brightwell relating to the potential study methodology is better suited for discussion and consideration by the SAG rather than the Commission's order in this docket. ComEd Init. Br. at 96; ComEd Rep. Br. at 55-56.

Staff and Intervenors' Positions

Commission Analysis and Conclusions

The Commission declines to comment on the merits of Staff's proposed change to the potential study methodology because, as ComEd notes, no support for adopting such a change exists at this time. Furthermore, given that a potential study was recently completed (and attached to ComEd's Plan), stakeholders have time to determine whether the proposed change would add value to the analysis. As ComEd observes, no analysis has been conducted of whether additional costs would be incurred in the implementation of this proposal. For these reasons, the SAG would be the appropriate forum to explore this proposal and the Commission declines to adopt Staff's recommendation.

2. Priority of TRM Measure-Level Evaluation Research

ComEd's Position

In response to Staff's recommendation that the TRM measure-level research be a "high priority" in the evaluation process, (Staff Ex. 1.0 at 25), ComEd acknowledges the importance of updating the TRM with new information, and opines that most stakeholders would concur with that position. However ComEd notes that it is not clear how Staff's recommendation would be implemented. ComEd Ex. 3.0 at 86. Specifically, it is not evident how TRM updates would be prioritized with regard to other evaluation issues, and a general, vague rule would prove to be ineffective. ComEd takes that position that these issues need to be reviewed on a case-by-case basis, keeping in mind that the evaluation budget is limited by statute and that it is the evaluator that establishes the annual plan regarding how best to use these limited funds. *Id*. at 86-87. Indeed, ComEd points out that NRDC shares these same concerns. NRDC Init. Br. at 28. For the reasons articulated by ComEd and NRDC, Staff's recommendation should be rejected. ComEd Init. Br. at 96-97.

<u>Staff and Intervenors' Positions</u>

<u>Commission Analysis and Conclusions</u>

The Commission concurs with ComEd and NRDC that Staff's proposal is unclear and would be difficult to implement. Rather, these issues should be evaluated on a case-by-case basis, and determinations should be made based on the facts and circumstances. We are mindful that the evaluation budget is limited and agree with ComEd that it should be up to the evaluator to determine the best use for these limited funds. For those reasons, the Commission rejects Staff's proposal to make TRM measure-level research a "high priority" in the evaluation process.

VII. FINDINGS AND ORDERING PARAGRAPHS

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

(1) Commonwealth Edison Company is an Illinois corporation engaged in the transmission, sale and distribution of electricity to the public in Illinois, and is a public utility as defined in Section 3-105 of the Public Utilities Act;

(2) the Commission has jurisdiction over Commonwealth Edison Company and the subject matter of this proceeding;

(3) the statements of fact set forth in the prefatory portion of this Order are supported by the evidence and the record and are hereby adopted as findings of fact;

(4) the testimony and exhibits admitted into the record provide substantial evidence that ComEd's 2014 – 2016 Energy Efficiency and Demand Response Plan meets the filing requirements of Section 8-103(f) of the Public Utilities Act, subject to the conditions, modifications, and requirements herein.

IT IS THEREFORE ORDERED by the Commission that ComEd's 2014 – 2016 Energy Efficiency and Demand Response Plan is hereby approved consistent with the conclusions contained herein.

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

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

By Order of the Commission this ____ day of ________________, 2014.

(SIGNED) DOUGLAS P. SCOTT

Chairman