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conference was held pursuant to notice on November 7, 2013, and a schedule was set by agreement of the parties. (Tr. 4-6, Nov. 7, 2013.) Testimony was pre-filed in accordance with the agreed-upon schedule by the Companies, Staff, AG, CUB/City, and ELPC. An evidentiary hearing was conducted on February 18, 2014. In accordance with the schedule as ordered by the ALJ, this Initial Brief follows.

II. STATUTORY LANGUAGE

Section 8-104(b) of the Act states:

"[C]ost-effective" means that the measures satisfy the total resource cost test which, for purposes of this Section, means a standard that is met if, for an investment in energy efficiency, the benefit-cost ratio is greater than one. The benefit-cost ratio is the ratio of the net present value of the total benefits of the measures to the net present value of the total costs as calculated over the lifetime of the measures. The total resource cost test compares the sum of avoided natural gas utility costs, representing the benefits that accrue to the system and the participant in the delivery of those efficiency measures, as well as other quantifiable societal benefits, including avoided electric utility costs, to the sum of all incremental costs of end use measures (including both utility and participant contributions), plus costs to administer, deliver, and evaluate each demand-side measure, to quantify the net savings obtained by substituting demand-side measures for supply resources. In calculating avoided costs, reasonable estimates shall be included for financial costs likely to be imposed by future regulation of emissions of greenhouse gases. The low-income programs described in item (4) of subsection (f) of this Section shall not be required to meet the total resource cost test.

220 ILCS 5/8-104(b).

Section 8-104(d) of the Act provides:

Notwithstanding the requirements of subsection (c) of this Section, a natural gas utility shall limit the amount of energy efficiency implemented in any 3-year reporting period established by subsection (f) of Section 8-104 of this Act, by an amount necessary to limit the estimated average increase in the amounts paid by retail customers in connection with natural gas service to no more than 2% in the applicable 3-year reporting period. The energy savings requirements in subsection (c) of this Section may be reduced by the Commission for the subject plan, if the utility

demonstrates by substantial evidence that it is highly unlikely that the requirements could be achieved without exceeding the applicable spending limits in any 3-year reporting period. No later than September 1, 2013, the Commission shall review the limitation on the amount of energy efficiency measures implemented pursuant to this Section and report to the General Assembly, in the report required by subsection (k) of this Section, its findings as to whether that limitation unduly constrains the procurement of energy efficiency measures.

220 ILCS 5/8-104(d).

Section 8-104(f) of the Act requires:

In submitting proposed energy efficiency plans and funding levels to meet the savings goals adopted by this Act the utility shall:

(1) Demonstrate that its proposed energy efficiency measures will achieve the requirements that are identified in subsection (c) of this Section, as modified by subsection (d) of this Section.

(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 gas service expressed on a per therm basis associated with the proposed portfolio of measures designed to meet the requirements that are identified in subsection (c) of this Section, as modified by subsection (d) of this Section.

(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. Such 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 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) Demonstrate that a gas utility affiliated with an electric utility that is required to comply with Section 8-103 of this Act has integrated gas and electric efficiency measures into a single program that reduces program or participant costs and appropriately allocates costs to gas and electric ratepayers. The Department shall integrate all gas and electric programs it

delivers in any such utilities' service territories, unless the Department can show that integration is not feasible or appropriate.

(7) Include a proposed cost recovery tariff mechanism to fund the proposed energy efficiency measures and to ensure the recovery of the prudently and reasonably incurred costs of Commission-approved programs.

(8) Provide for quarterly status reports tracking implementation of and expenditures for the utility's portfolio of measures and the Department's portfolio of measures, an annual independent review, and a full independent evaluation of the 3-year results of the performance and the cost-effectiveness of the utility's and Department's portfolios of measures and 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 portfolio resources in any given 3-year period.

220 ILCS 5/8-104(f).

The Act further provides that:

No more than 3% of expenditures on energy efficiency measures may be allocated for demonstration of breakthrough equipment and devices.

220 ILCS 5/8-104(g).

III. FILING REQUIREMENTS

A. SECTION 8-104(f)(5) OF THE ACT: GAS AND ELECTRIC BENEFITS IN TRC TEST

Section 8-104(f)(5) of the Act requires a utility to “[d]emonstrate that its overall portfolio of energy efficiency measures”, excluding programs administered by DCEO, “are cost effective using the TRC test and represent a diverse cross section of opportunities for customers of all rate classes to participate in the programs”. 220 ILCS 5/8-104(f)(5). The Companies’ filing does not comply with this requirement because the Companies’ TRC cost-effectiveness analysis does not include the electric costs and benefits for the joint EE programs implemented with Commonwealth Edison Company

("ComEd"). (Staff Ex. 1.0, 7:127-132; NS-PGL Ex. 3.0, 3:50-51.) The Companies assert that it is unnecessary for their cost-effectiveness analysis to consider electric costs and benefits, because the Companies allocated costs for joint programs consistent with the benefits between the two utilities, and therefore inclusion of the electric costs and benefits would not change the cost-effectiveness analysis. (NS-PGL Ex. 3.0, 3:52-55.) The AG agrees with Staff that analysis of the joint programs is required under Section 8-104(f)(5), and further that such analysis is necessary to demonstrate the actual net benefits of EE programs and the actual allocation and assignment of costs and benefits between and among the Companies and ComEd, gas and electric ratepayers, and different customer classes. (AG Ex. 2.0, 18:19-21, 19:3-16.)

The Companies' argument is contrary to Section 8-104(f)(5) and should be rejected. In construing a statute, the fundamental rule is to ascertain and give effect to the legislature's intent. Schultz v. Performance Lighting, Inc., 2013 IL 115738, ¶ 12, 999 N.E. 2d 331, 334 (2013). The best indicator of legislative intent is the statutory language, which is to be given its plain and ordinary meaning. Schultz, 2013 IL 115738 at ¶ 12, 999 N.E. 2d at 334. Under the maxim *expressio unius est exclusio alterius*, the enumeration of an exception in a statute is considered to be an exclusion of all other exceptions, based on the logical and common sense understanding that when "people say one thing they do not mean something else." Id. at ¶ 17, 999 N.E. 2d at 335. In the instant docket, the language of Section 8-104(f)(5) unambiguously requires a utility to demonstrate the cost effectiveness of its entire EE portfolio, and contains no exception for joint programs with other utilities. Moreover, the inclusion of the sole

exception for programs administered by DCEO demonstrates a clear legislative intent that any other exceptions to this requirement be excluded. Further, Staff entirely agrees with the AG that the Companies' failure to provide a cost-effectiveness analysis of its joint programs with ComEd deprives the Commission and parties of important and relevant information. (AG Ex. 2.0, 19:15-16.) Therefore, the Companies should be required to provide the cost-effectiveness results including both gas and electric benefits and costs for the joint EE programs in a compliance filing with their revised Plan submitted within 30 days of the date of the Commission's Order in this proceeding.

B. SECTION 8-104(f)(8) OF THE ACT: INDEPENDENT EVALUATION CONTRACT

Section 8-104(f)(8) of the Act states that

[i]n submitting proposed energy efficiency plans and funding levels to meet the savings goals adopted by this Act the utility shall: . . . [p]rovide for quarterly status reports tracking implementation of and expenditures for the utility's portfolio of measures and the Department's portfolio of measures, an annual independent review, and a full independent evaluation of the 3-year results of the performance and the cost-effectiveness of the utility's and Department's portfolios of measures and 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 portfolio resources in any given 3-year period.

220 ILCS 5/8-104(f)(8). As such, the Company should be required to ensure an annual independent review and independent evaluation is conducted. The Final Order should include the following findings: (1) The Companies shall file the independent evaluation contract and scope of work in this docket within fourteen days of execution; (2) The Companies shall continue to include language in the independent evaluation contracts such that the Commission can: (a) terminate the contract if the Commission determines the Evaluators were not acting independently; and (b) prevent the Companies from

terminating the contracts without Commission approval; and (3) The independent Evaluator is responsible for performing the three-year ex post cost-effectiveness analysis per Section 8-104(f)(8) of the Act. These proposed findings are consistent with prior Commission Orders. (Staff Ex. 1.0, 8.)

The Commission has established that a utility must not have total control over the evaluator in order to ensure the evaluator's independence, and moreover, that the "Commission has a supervisory capacity regarding the hiring and firing of . . . evaluator[s], meaning that [the utility] must gain Commission consent to make the hiring and firing decisions regarding [the] evaluator[s]. Commonwealth Edison Co., ICC Order Docket No. 07-0540, 45 (Feb. 6, 2008); Commonwealth Edison Co., ICC Order on Rehearing Docket No. 07-0540, 3 (March 26, 2008).

Additionally, the Commission has previously found that "[l]anguage should be included in the contracts of the independent evaluation such that the Commission can: (1) terminate the contracts if it determined the evaluator were not acting independently; and (2) prevent the utilities from terminating the contracts without Commission approval." North Shore Gas Co. and The Peoples Light Gas and Coke Co., ICC Order Docket No. 10-0564, 75 (May 24, 2011) ("Plan 1 Order").

The Companies have no objection to these recommendations, but argue additional language should be included in the Commission's order that would allow the Companies "to terminat[e] contracts for reasons unrelated to the evaluator's independence." (NS-PGL Ex. 3.0, 3-4.) While the Commission adopted similar language in the Companies' first 3-year EE plan, it should not do so here. See Plan 1 Order at 75. The language suggested by the Company could allow the possibility for an

evaluator to be terminated ostensibly for reasons unrelated to its independence, but actually related to its independence. Instead, the Commission should evaluate whether any proposed evaluator termination is related to the evaluator's independence through a review, and approve or disapprove the proposed termination according to its findings.

C. SECTION 8-104(g) OF THE ACT: DEMONSTRATION OF BREAKTHROUGH EQUIPMENT AND DEVICES

Section 8-104(g) of the Act provides that in a utility's Plan "[n]o more than 3% of expenditures on energy efficiency measures may be allocated for demonstration of breakthrough equipment and devices." 220 ILCS 5/8-104(g). The phrase "breakthrough equipment and devices" is not defined in the Act and is ambiguous, making it difficult to factually assess whether or not the Plan is consistent with this provision. (Staff Ex. 1.0, 12-13:262-267.) Further, spending on measures classified as "breakthrough equipment and devices" could conceivably be reclassified as part of a standard program for reconciliation purposes as a means to circumvent the 3% cost cap. *Id.* at 13:273-276.

In the Commission Orders in the ComEd, Ameren Illinois Company ("Ameren") and Department of Commerce and Economic Opportunity ("DCEO") Plan 3 dockets, the Commission concluded that a consistent definition for "breakthrough equipment and devices" should be adopted across the state, but declined to adopt a definition in those proceedings, instead directing Staff to conduct a workshop with other SAG participants on a clear definition that can be presented to the Commission for approval and applied during Plan 3. Ameren Illinois Co., ICC Order Docket No. 13-0498, 33 (Jan. 28, 2014) ("Ameren Plan 3 Order"); Commonwealth Edison Co., ICC Order Docket No. 13-0495,

136 (Jan. 28, 2014) (“ComEd Plan 3 Order”); Il. Dept. of Commerce and Economic Opportunity, ICC Order Docket No. 13-0499, 46-47 (Jan. 28, 2014) (“DCEO Plan 3 Order”). A “breakthrough equipment and devices” should be addressed in a workshop process consistent with the Commission’s direction in the above mentioned proceedings. The Companies should report on such definition and the programs and measures that qualify under it in their quarterly reports to the Commission in order to help ensure compliance with Section 8-104(g) of the Act.

D. SECTION 8-104(i) OF THE ACT: SAVINGS GOAL COMPLIANCE PROCEEDING

Section 8-104(i) of the Act states that a Utility that fails to meet its efficiency standards shall make a contribution to the Low-Income Home Energy Assistance Program. 220 ILCS 5/8-104(i). In order to determine whether a utility must make such a payment, the Commission should determine whether that utility has met its efficiency standards. Historically, this determination has been conducted separately from the independent cost-effectiveness evaluations for utilities. However, Staff believes these evaluations should be conducted concurrently in a single Commission proceeding because: (1) the two subjects are integrally related; (2) it is likely many of the same evaluation reports will be needed in both dockets; and (3) it is more efficient to conduct a single proceeding. (Staff Ex. 1.0, 14.) Therefore, the Companies should be ordered to petition the Commission to initiate a single proceeding to determine both the cost-effectiveness analysis and the savings goal compliance.

Therefore, the Commission’s Final Order should adopt the following findings: (1) The three-year cost-effectiveness results by program shall be reviewed and reported to the Commission in the three-year savings goal compliance proceeding per Section 8-

104(f)(8) of the Act; and (2) The Companies are directed to petition the Commission to initiate the three-year savings goal compliance proceeding once evaluation reports are available. (Staff Ex. 1.0, 14.) The Companies agreed with Staff's proposal. (NS-PGL Ex 3.0, 24:530-534.) The petition filing deadline should be consistent with a previous Commission Order wherein a utility was directed to petition the Commission for a review of whether it met its savings goals within 60 days after the independent evaluation reports are available. See Ameren Plan 3 Order at 47.

E. ILLINOIS STATEWIDE TECHNICAL REFERENCE MANUAL

The Illinois Statewide Technical Reference Manual for Energy Efficiency ("IL-TRM") and the IL-TRM Policy Manual was adopted by the Commission, in part, to help ensure the ease of review and analysis of programs and portfolios. See II. Commerce Comm'n On Its Own Motion, ICC Order Docket No. 13-0077 (March 27, 2013). In that proceeding, the Commission required program administrators to use "TRM Measure Codes in their plan filings to allow for easy review and transparency across programs and portfolios." (Staff Ex. 1.4, 11.) However, the Companies failed to include measure code information in this plan filing. For the sake of clarity, the Commission should order the Companies to include the IL-TRM measure codes in future plan filings for ease of review and greater transparency for all parties. (Staff Ex. 1.0, 15.) Specifically, the codes should be used in the spreadsheets used to adjust the savings goals and also be included in future compliance filings. *Id.*

IV. PORTFOLIO FLEXIBILITY, COST-EFFECTIVENESS, AND REPORTING

The Commission should grant the Companies' request for flexibility in implementing their Plan, including the latitude to reallocate funding between EE programs, add or delete cost-effective EE measures, increase or decrease incentive amounts, adjust/rebalance the portfolio in response to individual program performance or emerging market/technology opportunities, and add additional cost-effective EE programs (NS-PGL Ex 1.2, 29), subject to the following requirements:

- (1) The Companies are granted the flexibility to adjust their Plan in order to increase net benefits for ratepayers.
- (2) The Companies are directed to stay apprised of and respond prudently and reasonably to information concerning measure and program level cost-effectiveness while implementing their Plan to help ensure the Plan produces and maximizes the net benefits to Illinois ratepayers envisioned by Section 8-104 of the Act and remains in compliance with all other statutory objectives.
- (3) The Companies are directed to include a discussion of how they utilized the flexibility they were granted in their quarterly reports filed with the Commission in this docket. The quarterly reports shall summarize program activities, implementation modifications, additions or discontinuations of specific measures or programs, spending and savings amounts compared to the Plan filing, how the Companies respond to past Evaluators' recommendations and changes in the IL-TRM, NTG ratios, market research findings, and other relevant information the Companies rely upon in making their decisions. To the extent such changes significantly impact the portfolio and expected cost-effectiveness in the view of the Companies, the Companies shall also report revised projected program-level and portfolio-level TRC test cost-effectiveness results for the program year.
- (4) The Companies are required to provide cost-effectiveness screening results in their quarterly reports filed with the Commission in this docket for new energy efficiency measures the Companies add to their Plan during implementation.
- (5) The Companies are required to limit the participation of cost-ineffective measures to no more than the levels proposed in their Plan, with the following conditions:

- a. If a measure is cost-effective in the vast majority of building types to which it is directed and marketed to, the Companies need not attempt to limit participation of the energy efficiency measure within a program year.
- b. If the cost-ineffective measures are a necessary component for implementing cost-effective measures (e.g., comprehensive whole home dual fuel programs), the Companies need not attempt to limit participation of the energy efficiency measure within a program year.
- c. The Companies shall provide cost-effectiveness screening results in their quarterly reports filed with the Commission in this docket for measures previously projected to be cost-ineffective that become cost-effective over the course of the Plan such that it is clear that limitations on participation of these measures is no longer necessary.

(Staff Ex. 1.0, 18-19:390-428.)

Reporting should be required with respect to mid-Plan changes because the Companies' existing quarterly reports have not sufficiently explained changes to the Plan, nor documented the Companies' decisions to exercise their flexibility. Id. at 19:432-434. It is logical that in exercising the flexibility granted to them by the Commission, the Companies should report to the Commission the reasons for doing so, and such reporting will provide the Commission with greater transparency and insight into the Companies' decision-making process. Id. at 19:437-441.

The Companies should be ordered to provide cost-effectiveness screening results for new EE measures and to limit the participation of cost-ineffective measures to ensure that participation of cost-ineffective measures does not exceed expectations in the Companies' Plan. Id. at 19-20:445-453. While there may be circumstances in which it is appropriate to include cost-ineffective measures in the Plan, ultimately cost ineffective measures reduce net benefits to ratepayers and increase the risk that the portfolio may become cost-ineffective. Id. at 20:453-465. Accordingly, if evidence exists that a measure is both cost-ineffective and unlikely to promote longer-term, cost-

effective savings, that measure should be excluded. Id. at 20:467-470. To the extent the Companies believe it is necessary to exceed participation estimates for cost-ineffective measures, the Companies could petition the Commission for approval to do so. Id. at 22:508-511. Likewise, the addition of new cost-ineffective measures after Plan approval should be prohibited. Id. at 21:471-474. To ensure compliance with these restrictions, the Commission should order the Companies to provide the TRC cost-effectiveness screening results for any new measures the Companies decide to add to their Plan during implementation in their quarterly reports. Id. at 21:487-490.

The Companies assert that, given their prior history of prudently exercising program flexibility, no changes from the current process are required. Should the Commission choose to impose additional limits on the Companies' exercise of flexibility, however, they recommend adoption of Staff's requirements. (NS-PGL Ex. 3.0, 19:419-424; NS-PGL Ex. 5.0, 2:37-40.)

The AG opposes Staff's proposal, asserting incorrectly that Staff's requirements are "burdensome and complex" and would create "a burdensome and contentious regulatory process" that is ultimately ineffective. (AG Ex. 2.0, 3-4.) To the contrary, Staff's proposal is consistent with the reporting requirements and review processes that the Commission recently adopted for Ameren's and MidAmerican Energy Company's ("MidAmerican Energy") Plans in Docket Nos. 13-0498 and 13-0423/13-0424 (Cons.), respectively. MidAmerican Energy Co., ICC Order Docket Nos. 13-0423/13-0424 (Cons.), 11, 24-26 (Dec. 18, 2013) ("MidAmerican Order"); Ameren Plan 3 Order at 152-153. Staff's proposal is reasonable, imposes little, if any, additional administrative burden upon the Companies, and should not increase the costs necessary to implement

and administer the Plan. (Staff Ex. 1.0, 19:441-444, 22:499-508, 23:538-539.) Indeed, as the Companies' witness Mr. Marks recognized, Staff's proposed requirements are "reasonable and appropriate". (NS-PGL Ex. 5.0, 5:94-96.) Accordingly, the Commission should grant the Companies' request for flexibility subject to Staff's proposed requirements.

V. EVALUATION

A. FREE RIDERSHIP, SPILLOVER

The Companies propose that all program evaluations must address, in addition to free ridership, spillover from both the participant and non-participant perspectives. (NS-PGL Ex. 1.0R, 23-24.)

A free rider is someone who uses program funds to take actions that he or she would have taken anyway, even if no program funds were offered. The significance of a free rider is that since this customer would have installed the measure anyway, there is no incremental savings to attribute to an EE program. (Staff Ex. 2.0, 2-3.)

Spillover is more difficult to define, but "spillover" means changes in EE and conservation practices that result from increased knowledge of EE through experience with the program and/or word of mouth or a general increase in knowledge about EE that results from the existence of the EE program. *Id.* at 3.

A NTG ratio ("NTGR") is one minus the free ridership rate plus the spillover rate. If the free ridership rate is estimated as 20% and spillover is estimated as 10% then the NTGR is 0.9 ($1 - 0.2 + 0.1 = 0.9$). The value of the NTGR indicates what percentage of gross savings is attributable to actions of the program. In this example, it indicates that 90% of gross savings occurred as a result of program activities. Net savings is

calculated by multiplying gross savings by the NTGR. If gross savings for a program are calculated as 1,000 kWh and the NTGR is calculated as 0.9, then net savings equals 900 kWh ($1000 \times 0.9 = 900$ kWh). Id.

Staff agrees there is merit in attempting to quantify both free ridership and spillover. However, the measurement and quantification of spillover is much more difficult and expensive than that of free ridership, and, as a result, spillover might not be quantified. Under the Companies' proposal, any program for which it is too costly or difficult to measure both participant and non-participant spillover, the program will effectively be credited with net savings equal to gross savings. Given the costs and difficulty of measuring spillover, the Companies' proposal could result in most programs measuring gross savings rather than net savings. Id. at 3-4.

The Commission should direct the independent evaluators to make reasonable efforts to calculate both free ridership rates and spillover rates while being mindful of: (1) the costs of such evaluations; (2) the likely magnitudes of spillover and free ridership rates within a program; and (3) the significance of the program to the overall portfolio savings. Alternatively, the Commission could direct the Companies to perform a comprehensive evaluation of spillover across the utility territory rather than program-by-program. The first recommendation is more consistent with the evaluation approaches undertaken to date. The second proposal is likely to cost less and perhaps more accurately reflect how spillover occurs. (Staff Ex. 2.0, 4.)

The Companies' proposal may lead to calculating gross savings. This is because spillover is difficult and costly to quantify, particularly non-participant spillover. Evaluation budgets are limited to 3% of the portfolio budget. As a result of the difficulty

and the cost involved, evaluators most likely cannot evaluate spillover for all programs and certainly cannot evaluate it for all programs within the first year of the upcoming plan while staying under the 3% cost cap. The Companies' proposal will likely guarantee that neither spillover nor free ridership would be included in the NTGR values of many or all programs at the start of the next Plan and may not be measured for many programs by the completion of the next three year Planning Period. If neither spillover nor free ridership is counted, only gross savings remain. Id. at 5-6.

However, the Companies are not permitted to calculate gross savings under Section 8-104 of the Act. See 220 ILCS 5/8-104. The current approach is to include estimates of free ridership, spillover, or both when one or both can be calculated. The Companies' proposal to include neither factor if both cannot be calculated produces a gross savings result that is likely to reflect greater overestimates of the savings attributable to the program. Applying gross savings to the determination of savings goals leads to incentives that are adverse to the interests of ratepayers. (Staff Ex. 2.0, 6.)

Moreover, achieving gross savings is not in the best interest of ratepayers because ratepayers pay for the EE programs. Ratepayers only gain benefits as a result of these payments from net savings, not from gross savings. Gross savings are much easier to achieve than net savings. By definition, programs with high rates of free ridership have a high level of savings that can be achieved even without any utility intervention. With a gross savings goal, a utility has an incentive to devote resources to programs with high levels of free ridership. First, to the extent savings are the result of free riders, utility revenues and profits are not eroded by EE. Second, it takes less effort

to encourage customers to take the rebate if most of those customers were going to do the project anyway. This is essentially the path of least resistance. Id. at 7.

Unfortunately, free ridership provides little or no benefit to ratepayers as a group. The nonparticipating ratepayers who pay for the project see their money given to other ratepayers (free riders) who are taking actions that they would take without the utility intervention. There are no incremental benefits associated with free riders, but there are costs associated with administration of EE programs. Programs designed to cater to free riders provide little benefit, redistribute wealth and take real resources away from society through program administration. The EE programs are intended to encourage ratepayers to adopt EE measures which they would not adopt without the existence of the program. Using a gross savings approach undermines the intent and purpose of the EE statutes. Id. at 7-8.

EE programs create a redistribution of wealth. That is, each rebate takes money from non-participating customers and redistributes it to participating customers. When there is an incentive to design programs with high levels of free riders, there is a high likelihood that this redistribution takes place by taking money from lower and moderate income customers and redistributing it toward higher income customers¹. The assumption made in DCEO's low income programs (Docket No. 13-0499, DCEO Ex. 1.0, 38) is that free ridership rates are very low because the customers in the low income segment do not have the income necessary to make EE investments absent the rebates. It is reasonable to assume that a customer's willingness and ability to make

¹ This is somewhat mitigated because the Statute allocates funds to DCEO which directs programs towards low-income ratepayers.

the investments absent the program increases as his/her income or wealth increases. Thus, free ridership is likely to grow with participant income. (Staff Ex. 2.0, 8.)

Alternatively, the Commission could require the Companies to conduct an evaluation of non-participant spillover across the entire portfolio, the goal being to evaluate how much non-participant spillover is actually occurring across the portfolio rather than trying to analyze spillover on a program-by-program basis. If a non-participant spillover survey is conducted, there would be no need to include a separate NTG factor for program-level non-participant spillover. Id. at 9.

A comprehensive portfolio-level evaluation may more accurately reflect how spillover occurs. It is almost impossible to identify a specific program's spillover impact on non-participants; there are too many factors that influence decisions. It is also extremely costly to try to separate the role of a specific program. Much of non-participant spillover is an aggregate effect of being bombarded with new information coming from numerous sources such as information about tax credits for EE measures (which is an influence outside of the utility Program), a friend or neighbor who installed an EE device (which may or may not be a utility influence), a bill insert, a contractor trying to sell a more expensive product, etc. To spend evaluation funds to determine how much the Home Energy Rebate Program or having pipe insulation installed as part of the Multifamily Program or any other program caused people who didn't participate in any of these programs to upgrade to EE measures seems misdirected. Id.

It may be more reasonable to conduct between one and three surveys over the three-year Plan Period in order to determine how much non-participants were influenced by the Utility program. Portfolio-level evaluation is fairly new. Staff witness

Dr. Brightwell is aware of one study that occurred in the State of Washington. In ComEd's EE Plan 3 docket, ComEd witness Michael Brandt indicated awareness of another study in Connecticut. (Docket No 13-0495, ComEd Ex. 3.0, 72.) The feasibility of a portfolio-level study may need to be developed. The Commission may wish to encourage the Companies and their evaluator to work with the SAG in determining the feasibility of a portfolio-level study.

B. MODIFIED ILLINOIS NET-TO-GROSS FRAMEWORK

The Commission should adopt Staff's Modified Illinois NTG Framework for the Companies because it provides a certain and straightforward process for deeming NTGRs and it ensures all parties are provided with sufficient opportunity to review the bases of the Evaluators' proposed NTGR values. (Staff Ex. 3.0, 3; Staff Ex. 1.1.) Staff's Modified Illinois NTG Framework proposal results in deeming consensus NTG ratios that are expected to be reflective of the likely NTG ratio that would be estimated in the program year for which it is deemed. (Staff Ex. 1.1.) Thus, Staff's Modified Illinois NTG Framework proposal provides the proper incentives for utilities to invest ratepayer funds in EE and make the appropriate program adjustments to improve NTGRs and minimize free riders. Id. Staff's Modified Illinois NTG Framework proposal also creates important incentives for the Companies to negotiate in good faith with other parties on the best estimates of NTGRs to deem. (Staff Ex. 2.0, 16.) Specifically, including the provision concerning partially retroactive application in the case of non-consensus NTGR values provides a reasonable and appropriate incentive for all parties to reach consensus on a best estimate of future NTGR values. (Staff Ex. 1.0, 34.) Further, since the NTGR values the Evaluator determines impacts whether the utilities meet statutory energy

savings goals, this could create an incentive for utilities to pressure Evaluators to provide high NTGR values. Id. at 34. To help mitigate the risk of compromising the independence of the Evaluators, the Commission should require SAG involvement in the NTG update process. (Staff Ex. 1.0, 34.) No party presented arguments for rejecting Staff's Modified Illinois NTG Framework in this proceeding. Accordingly, the Commission should adopt it in its entirety.

In rebuttal testimony, Staff agreed to compromise with the AG and ELPC by eliminating the existing requirement for the Companies to file the *Evaluator's Memo on Deemed NTGRs for PYt+1* and supporting work papers in ICC Docket No. 12-0528 as set forth in Step 10 of Staff's Modified Illinois NTG Framework (Staff Exhibit 1.1). (Staff Ex. 3.0, 9-10.) Instead of this requirement, the *Evaluator's Memo on Deemed NTGRs for PYt+1* that is distributed to the SAG on February 25 could instead be attached to the consensus Updated IL-TRM that then gets submitted by Staff to the Commission for approval around March 1. This would provide the Companies with an even greater degree of certainty than a compliance filing in ICC Docket No. 12-0528 would. Unlike the AG/ELPC NTG Framework (AG Ex. 1.2, 2; ELPC Ex. 1.2, 2), Staff Exhibit 1.1 sets forth a schedule that would allow for such NTG filings to occur in the TRM annual update docket as desired by the AG and ELPC. Further, the existing Commission-approved IL-TRM already specifies that NTGRs provided by the Evaluators should be listed in the appendices to the IL-TRM. (Staff Ex. 1.0, 44:1023-1024; ICC Docket No. 13-0437, IL-TRM Version 2.0, 15:fn 11.) Thus, the Commission could adopt this modification to the Modified Illinois NTG Framework set forth in Staff Exhibit 1.1 and this approach could be easily incorporated into the existing Commission-approved annual

IL-TRM Update Process set forth in the IL-TRM Policy Document for consensus IL-TRM Updates. (Staff Ex. 1.4, 8.)

The NTG Framework supported by the Companies requires, among other things, that “[p]rior to March 1 of each year, the EM&V contractor will present proposed NTG values to the SAG for discussion,” and “[i]f consensus on a NTG value is reached by the parties at SAG then that NTG value should apply.” (NS-PGL Ex. 3.0, 25, 26.) Adoption of this NTG Framework supported by the Companies could result in a situation where the presentation of NTGRs to the SAG occurs so close to the March 1 deadline that the ability of SAG participants to reasonably consider the Evaluators’ recommendation and reach consensus before March 1 is non-existent. Staff’s Modified Illinois NTG Framework specifies November and December deadlines for the Evaluators to submit their proposals for deeming NTGRs which are based on the dates the Evaluators themselves suggested to Staff. (Staff Ex. 1.2, 1.) Staff’s Modified Illinois NTG Framework ensures all the necessary information to assess the appropriateness of the Evaluators’ NTG proposals is available in writing in advance of the March 1 deadline. (Staff Ex. 1.1, 1-2.) Previous NTG SAG PowerPoint presentations lacked the necessary detail to properly evaluate the NTG proposals. Requiring the information specified in Staff Exhibit 1.1 will ensure a more efficient review process of the NTG proposals, resulting in a greater likelihood for reaching consensus on deeming specific NTGR values, and decreasing the amount of litigation concerning NTGRs in the Companies’ compliance with the energy savings goals proceeding. (Staff Ex. 1.1, 1-2.)

The Commission should adopt Staff’s Modified Illinois NTG framework (Staff Ex. 1.1) and make the following findings:

(1) In order to help ensure the independence of the Evaluators and to improve efficiency, consistency, transparency, and comparability in the evaluation process, consistent statewide net savings or NTG methodologies shall be used in the evaluations of comparable programs offered by different Illinois program administrators. The Companies are directed to require their Evaluators to collaborate with the other Illinois Evaluators and the SAG to reach consensus on the most defensible and well-vetted methodologies to assessing net-to-gross ratios in particular markets for both residential and non-residential energy efficiency programs in a manner consistent with the direction provided herein.

- a. ICC Staff shall file the agreed-upon consensus statewide NTG methodologies with the Commission as an appendix to the Updated IL-TRM. If consensus is not reached on a certain component of the statewide NTG methodologies, that particular non-consensus component should be submitted in a manner consistent with the approach used for non-consensus IL-TRM Updates. It is efficient, transparent, and reasonable to keep the Commission-adopted gross savings methodologies (IL-TRM) and net savings methodologies (IL-NTG Methods) together.

(Staff Ex. 1.0, 38-39.)

However, if the Commission adopts an NTG framework similar to that adopted in ICC Docket No. 13-0495, then the Commission should also order the NTGR values be filed as a compliance filing in this proceeding no later than April 1 of each year. Additionally, the Commission should find that any failure to file by that date should result in retroactive application of NTGR values as defined in Staff Exhibit 1.1. In the NTG compliance filing, the Companies should be required to summarize the steps the Companies and the Evaluators took to reach consensus on the NTGR values through the SAG as well as the reasons that the deemed NTGR values are believed to be the best estimates of the evaluated NTGRs for the program year they are deemed. This should help ensure the NTG Framework is complied with in terms of seeking stakeholder input. The Commission should also require that both the deemed NTGR values and the actual evaluated NTGR values be presented in the evaluation reports for informational purposes, which is consistent with Step 5 of the NTG Framework

contained in AG Exhibit 1.2 and ELPC Exhibit 1.2 (“AG/ELPC NTG Framework”) and Step 11 of Staff’s Modified Illinois NTG Framework. (AG Ex. 1.2, 3; ELPC Ex. 1.2, 3; Staff Ex. 1.1, 4.) The Commission should adopt the November and December deadlines for submitting the Evaluators’ NTG recommendations to the SAG in order to ensure parties have adequate time to reach consensus before March 1. (Staff Ex. 3.0, 4.) The Commission adopted these deadlines in Ameren’s recent Plan docket and should do so in this proceeding. Ameren Plan 3 Order at 131.

Second, the Commission should direct the Companies to file the revised spreadsheet for calculating adjustments to savings goals based on changes to the NTGR values and IL-TRM values in this docket no later than May 1 of each year. The Companies agreed with this approach. (NS-PGL Ex. 3.0, 23:512-514.) Because of the relationship between the two filings, filing the deemed NTGR values in this docket by April 1 will help ensure that all parties are aware of what NTGR values should be used in the May 1 savings goal adjustment filing. The Commission adopted an adjustable savings goal approach similar to that proposed by the Companies in this docket, with a number of conditions specified by Staff, in Ameren’s recent Plan docket. Ameren Plan 3 Order at 152-153. Since the Companies do not object to the additional conditions Staff recommended in direct testimony and presuming the Commission provides the Companies with the same adjustable savings goal approach it provided for Ameren, having the NTGR values filed in this proceeding in advance of the savings goal adjustment filing should help minimize disputes. (Staff Ex. 3.0, 7-8.)

C. NTG RATIO VALUES FOR PROGRAM YEAR 4

The Commission should direct the Companies to work with the SAG to reach consensus on NTGR values to deem for program year 4 (“PY4”) and include such NTGR values for PY4 in the remodeling of the Companies’ portfolio for its Revised Plan filed as a compliance filing in this docket. The PY4 NTG discussion should initiate with a memorandum from the Companies’ existing Evaluators containing their initial recommendations for deeming NTGR values for PY4. This approach is consistent with the first step in Staff’s Modified Illinois NTG Framework proposal and the Companies’ NTG Framework proposal. (Staff Ex. 1.0, 38.)

D. CONSISTENT IL-NTG METHODS

The Commission should require consistent statewide net savings or NTG methodologies (“IL-NTG Methods”) in the evaluations of comparable EE programs offered by the Illinois utilities and DCEO. (Staff Ex. 1.0, 39:911-916.) Standard IL-NTG Methods would improve efficiency, consistency, transparency and comparability in the evaluation process, address concerns regarding Evaluator independence, and help eliminate controversy. Id. at 39:911-916. The current EE program Evaluators should take the lead in compiling and formalizing standard IL-NTG Methods and collaborate with the SAG in the process. Id. at 40:928-934. These would not be “new” NTG methodologies. Rather, existing NTG methods that have been used to evaluate EE programs in Illinois would be assessed, and the Commission would consider adoption of the most defensible and well-vetted methodologies (or a combination of the components of existing approaches). Id. at 40:935-941. The best approaches would be flexible and adaptable to multiple program designs and tailored to appropriately assess the specifics

of each of the utilities' EE programs, consistent with standard NTG protocols adopted in other states. Id. at 40-41:945-949.

In the Companies' Plan 1 filing, the Commission recommended that the independent evaluator work with the SAG to ensure transparent and consistent methods for determining electricity and gas savings, emphasizing that "[i]t is critical that both gas and electric utilities are required to play by the same rules and assumptions." Plan 1 Order at 76; Id. at 41:955-957. Despite these directives to establish agreed-upon metrics, this has not occurred to a large extent for net savings methodologies and the estimation of NTGRs. (Staff Ex. 1.0, 41:958-964.) This inconsistency has led to significant controversy, and creates concerns regarding the independence of certain Evaluators. Id. at 41. Consistent statewide NTG methods would help mitigate the risk of compromising the independence of the Evaluators, reduce contention over spillover estimation approaches, provide greater consistency and certainty to utilities about likely future evaluation results, and provide a more efficient process for all interested parties and utilities to vet the reasonableness of NTG methodologies. Id. at 41-42:964-974.

There are inherent differences in the service territories of the utilities across the state as well as differences in the EE program guidelines, rebate amounts, and implementation approaches. Id. at 42:975-977. Given these differences, in the event significantly different NTG results are found across comparable programs operated by different program administrators, the use of different NTG methods across program administrators provides limited useful information to parties concerning the source of such differences. Id. at 42:977-982. Indeed, the memorandum containing the previously adopted NTG Framework expressed such concerns:

The PY1 evaluated NTG ratios for Residential lighting are significantly different for Ameren and ComEd. While there are real differences in the demographics of their service territories that may have contributed to this difference, it is important to note that the utilities used different evaluation contractors and significantly different evaluation methodologies. As a result, there is little certainty about the attribution of these differences. We propose that wherever possible, joint and consistent statewide evaluations be performed. This will eliminate these uncertainties, allow for more direct comparison between [program administrators'] performance, as well as provide economies of scale and greater consistency and certainty to PAs about likely future evaluation results. We propose that standardized approaches to measuring freeridership and spillover be adopted in Illinois that ensure consistent measurement both across territories and over time.
[fn]

Id. at 42-43:983-999; (Staff Ex. 1.6, 3-4.) The omitted footnote in the quoted text above states that “[a]n example of this exists in Massachusetts where all [program administrators] have for roughly a decade used a standardized methodology and set of survey questions that were collaboratively developed to measure freeridership and spillover every year. This approach has proven to provide relatively stable results over time, and better elucidates differences between [program administrators] that may result from different program approaches.” (Staff Ex. 1.0, 43:999-1005; Staff Ex. 1.6, 3-4.) Besides Massachusetts, other states including California have developed standard statewide NTG methods. (Staff Ex. 1.0, 43:1005-1006; Staff Ex. 1.7.) With the exception of DCEO, the NTG methodology used to evaluate Ameren, ComEd, MidAmerican Energy, Nicor Gas, North Shore Gas, and Peoples Gas during the last Plan is largely consistent with the California methodology, but the Illinois method includes additional consistency-check questions and an unlike-spillover question battery to assess participant spillover. (Staff Ex. 1.0, 43:1006-1012; Staff Ex. 1.5, 22.)

Despite the Commission direction to the SAG in the prior Plan docket described above, alternative NTG methodologies are currently being implemented for comparable

EE programs in Illinois. (Staff Ex. 1.0, 43:1013-1015.) Thus, the Commission should direct the Companies to require their Evaluators to collaborate with the other Illinois Evaluators and the SAG to reach consensus on the best approaches to assessing NTG in particular markets for both residential and non-residential EE programs. Id. at 43:1016-1020. The best approaches would be flexible and adaptable to multiple program designs and tailored to appropriately assess the specifics of each of the utilities' EE programs, consistent with standard NTG protocols adopted in other states. Id. at 40-41:945-949. Further, the Commission should direct Staff to file the agreed-upon consensus statewide IL-NTG Methods with the Commission as an appendix to the updated IL-TRM. Id. at 44:1021-1024. It should be clear that this recommendation is not to create entirely new NTG approaches, but rather assess existing methods used in Illinois and adopt the best and most defensible method, or potentially combine certain components from the existing approaches to better represent the most defensible method. Id. at 40:935-941. The Evaluators in Illinois have currently been working on understanding and reconciling differences in NTG methods for non-residential EE programs, so finalizing a consistent approach for the non-residential EE programs should be able to be completed soon. Id. at 44:1029-1033.

Accordingly, the Commission should adopt the following findings regarding consistent IL-NTG Methods:

- (1) In order to help ensure the independence of the Evaluators and to improve efficiency, consistency, transparency, and comparability in the evaluation process, consistent statewide net savings or NTG methodologies shall be used in the evaluations of comparable programs offered by different Illinois program administrators. The Companies are directed to require their Evaluators to collaborate with the other Illinois Evaluators and the SAG to reach consensus on the most defensible and well-vetted methodologies to assessing net-to-gross ratios in particular markets for both residential and

non-residential energy efficiency programs in a manner consistent with the direction provided herein.

- a. ICC Staff shall file the agreed-upon consensus statewide NTG methodologies with the Commission as an appendix to the Updated IL-TRM. If consensus is not reached on a certain component of the statewide NTG methodologies, that particular non-consensus component should be submitted in a manner consistent with the approach used for non-consensus IL-TRM Updates. It is efficient, transparent, and reasonable to keep the Commission-adopted gross savings methodologies (IL-TRM) and net savings methodologies (IL-NTG Methods) together.

Id. at 38-39:891-908. Adoption of this finding is consistent with the recent Ameren Plan 3 Order wherein the Commission found the approach to be reasonable and noted it will aid in future evaluation of the EE programs. Ameren Plan 3 Order at 167, 171. The Companies supported Staff's recommendation in response to data requests (Staff Ex. 1.3, 7-8), and clarified in rebuttal that the evaluator should take into consideration differences in programs offered by various utilities and the statutory budgetary limitations for evaluation. (NS-PGL Ex. 3.0, 26-27.) Staff's recommendation already incorporates the Companies' clarifications; therefore, the Commission should adopt Staff's proposal on consistent statewide IL-NTG Methods in its entirety. (Staff Ex. 1.0, 38-45.)

E. CREATION OF AN ILLINOIS ENERGY EFFICIENCY POLICY MANUAL

The AG requests that the Commission direct the Companies to work with the SAG on the development of 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. 1.0, 43.) Staff does not object to the creation of a consensus statewide Policy Manual limited to evaluation issues, consistent with the Commission's recent Orders in the Ameren, DCEO and ComEd Plan 3 dockets.

ComEd Plan 3 Order at 130; Ameren Plan 3 Order at 129; DCEO Plan 3 Order at 23; (Staff Ex. 3.0, 14-15:299-304.) That is, issues related to prudence and program implementation should not be addressed in the Policy Manual. (Staff Ex. 3.0, 15:304-305.) Evaluation related consistency issues to be addressed could include: cost-effectiveness analysis, treatment of interactive effects, treatment of fuel switching measures, defensible statewide NTGR methodologies, evaluation reporting and statewide code collaborative savings attribution. Id. at 15:306-310.

Accordingly, the Commission should direct the Companies to work with their Evaluators, Staff, the other Illinois utilities, DCEO and SAG to create a consensus evaluation Policy Manual that would resolve outstanding evaluation policy issues, and further direct Staff to submit the consensus evaluation Policy Manual to the Commission upon completion with a request to open a proceeding in which to consider its approval. (Staff Ex. 3.0, 15:310-317.)

VI. ALIGNMENT OF SCHEDULES FOR NTG AND IL-TRM UPDATES

The Commission should adopt the workable timelines suggested by the Evaluators for TRM and NTG updates contained in Staff Ex. 1.2. (Staff Ex. 1.0, 33:770-774; Staff Ex. 3.0, 13:267-272.) The AG requests that the Commission direct the Companies to work with the SAG to improve the evaluation, measurement and verification (“EM&V”) process to ensure reports are produced in a timely fashion to inform the IL-TRM and NTG updates. (AG Ex. 1.0, 43.) Staff agrees with the AG in concept; however, Staff’s recommendation is more efficient, would free up SAG resources, and is consistent with the Commission Order in the Ameren Plan 3 docket. Ameren Plan 3 Order at 131; (Staff Ex. 3.0, 13:269-272, 14:284-289.)

A key driver of the date the NTG results are produced is the date the Evaluators receive the final EE tracking system information from the Companies after the program year has ended. (Staff Ex. 3.0, 13:273-275.) Because final tracking system information is not needed for updating the TRM, the utilities' Evaluators suggest that the annual TRM Update Process can begin much earlier (July 1, with much of the work due from the Evaluators on August 1 and October 1) than the process for updating NTGRs (November 1 for residential and December 1 for non-residential). (Staff Ex. 3.0, 13-14:275-281; Staff Ex. 1.2, 1.)

The Evaluators' suggested timelines represent a collaborative effort by the Evaluators to produce a uniform set of timelines that could work well to update the deemed values for both the TRM and NTGRs on an annual basis. (Staff Ex. 3.0, 14:282-284.) Adoption of those timelines in the instant docket would provide an efficient solution, free up limited SAG resources and is consistent with the Commission's Order in the Ameren Plan 3 docket, in which the Commission adopted the Evaluators' suggested EM&V schedules for TRM and NTG updates. Ameren Plan 3 Order at 131; (Staff Ex. 3.0, 14:282-289.) Accordingly, the Commission should adopt the Evaluators' suggested EM&V schedules for updating deemed values for the TRM and NTGRs as set forth in Staff Ex. 1.2. (Staff Ex. 1.0, 33:770-774; Staff Ex. 1.2; Staff Ex. 3.0, 14:284-288.)

VII. ADJUSTABLE SAVINGS GOAL

The Commission should adopt a modified version of the Companies' proposal to adjust energy savings goals based on changes to the NTGR values and IL-TRM values. (Staff Ex. 1.0, 25.) The modifications Staff suggests are designed to prevent otherwise

possible disincentives to use money in the most cost-effective manner. Id. at 25-26. To be clear, the NTGR values, the IL-TRM values, the market and any new information should drive implementation adjustments even though the changes in NTGR values and the IL-TRM values would be the only factors driving savings goal adjustments. However, there should be flexibility and reporting, as discussed in Section IV of this IB: Portfolio Flexibility, Cost-Effectiveness, and Reporting, and the Companies should continue to prudently manage the portfolios and adjust funds during a program year in a manner that seeks to increase net savings beyond the modified savings goal and maximize net benefits for ratepayers. Id. at 18-19, 26.

The Commission should direct the Companies to file any revised spreadsheets containing the changes to NTGR values, IL-TRM values, and energy savings goals in this docket no later than May 1 of each program year, in advance of those values taking effect on June 1. To the extent the NTGR is unavailable by that date, the Company should file a revised version of the spreadsheet once the changed NTGR is known. These spreadsheets should clearly identify the assumptions used for each EE measure, including the IL-TRM measure codes, participation estimates, TRC ratios, net present value of benefits from the measure, program, savings, NTGR, and other relevant measure-level inputs. Id. at 28-29.

These recommendations are consistent with the Commission's Final Order approving adjustable savings goals for a comparable EE plan, and should be adopted here. See Ameren Plan 3 Order at 152-153.

VIII. MISCELLANEOUS

A. AIR SEALING PROGRAM

The Companies originally indicated that the TRC value for air sealing was 1.14 without pre and post-installation radon testing, and 0.87 with pre and post testing. (NS-PGL Ex. 23.0, 11.) Staff's analysis of the Companies' air sealing cost-benefit analysis concluded that the Companies' TRC values were overstated due to: (1) a formulaic error that overstated avoided costs by 4.28% in 2014 and each year thereafter (Staff Ex. 4.0, 2:23-25, 3:45-57); (2) an assumed cost for radon testing that was approximately \$100 too low (Id. at 2:29-31, 3-4:59-68); and (3) the Companies' analysis did not include the costs for covering dirt floors or sump pumps, or radon mitigation costs (Id. at 4-5:70-88). Taking into account the first two factors, but excluding the third factor, Staff's analysis indicated that the TRC value for air sealing in Peoples' territory is 0.95 without radon testing and 0.60 with radon testing if 100 therms of savings is assumed, and 0.71 without radon testing and 0.45 with radon testing if 75 therms of savings are assumed. Id. at 2-3:34-43. Additional costs associated with the third factor would lower these TRC values further. Id. at 4-5:74-88.

Staff's analysis maintained the general assumptions used by the Companies. In response to City DR 1.2 (City Cross Ex. 1.0), the Companies provided a revised cost benefit analysis that considered Staff's cost estimates for radon testing but also included additional benefits that were not included in the Companies' original cost-effectiveness analysis, and which appeared to increase the TRC values. Staff can neither confirm nor refute the validity of these additional savings. Given the fact that this data response was not available to Staff until the day of the evidentiary hearing,

Staff had no opportunity to engage in discovery on this document, analyze its contents or to provide testimony related to it. Therefore, Staff believes that it should be given no weight.

IX. CONCLUSION

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

Respectfully submitted,

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