STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

NORTHERN ILLINOIS GAS COMPANY d/b/a NICOR GAS COMPANY	))	
	)	Docket No. 13-0549
Application pursuant to Section 8-104 of the Public Utilities Act for Consent to and Approval of an Energy Efficiency Plan	)))	

REPLY BRIEF OF
NICOR GAS COMPANY

Dated: March 24, 2014

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Pursuant to Section 200.800 of the Illinois Commerce Commission's ("Commission" or "ICC") Rules of Practice, 83 Ill. Admin. Code § 200.800, and in accordance with the schedule established by the Administrative Law Judge ("ALJ"), Northern Illinois Gas Company d/b/a/ Nicor Gas Company ("Nicor Gas" or the "Company") hereby submits this Reply Brief.

I. INTRODUCTION

The evidence demonstrates that Nicor Gas' second three-year Energy Efficiency Plan ("Second EEP") satisfies all of the filing requirements of Section 8-104(f) of the Public Utilities Act ("Act"). 220 ILCS 5/8-104(f)(1)-(8).[1] Notably, the Second EEP, which will run from June 1, 2014 through May 31, 2017, calls for an investment of almost $135 million by Nicor Gas, the Department of Commerce and Economic Opportunity ("DCEO"), and those large industrial customers who choose to self-direct their energy efficiency spending consistent with Section 8-104(m) of the Act. The Second EEP sets forth a comprehensive portfolio of ten programs—six residential and four business programs—and is projected to help customers save 21.5 million net therms, 301 million net therms over the lifecycles of the installed equipment, and will allow more than 200,000 customers to install over 400,000 energy efficiency measures. Indeed, as recognized and supported by the AG, the Company's balanced approach to the portfolio in the Second EEP "does not simply strive to hit the highest goals possible, but rather, it seeks to spend additional funds for longer lived and more expensive resources and seeks to meet other policy objectives." AG Init. Br. at 24; Mosenthal Dir., AG Ex. 1.0, 16:5-9.

Importantly, there is very little dispute in this proceeding about whether the Second EEP satisfies each of these filing requirements. In fact, there is no dispute that the Second EEP satisfies six of the seven applicable filing requirements of Section 8-104(f) – specifically, parties

[1] The Commission should disregard the arguments of the Illinois Attorney General ("AG") insofar as they rely upon Section 8-103 of the Act, which is not applicable to Nicor Gas. *See, e.g.*, AG Init. Br. at 12-13.

do not dispute that Nicor Gas' Second EEP satisfies each of subparts (1), (2), (3), (4), (5), and (7). The lone contested issue relates to Staff's contention that under Section 8-104(f)(8) that funds from the limited evaluation budget should be spent to have the independent evaluator engage in a time-consuming and expensive process to duplicate the cost-effectiveness analysis that Nicor Gas will already have performed. On this point, the AG and Nicor Gas are in agreement that it makes no sense to spend the limited evaluation funds on such an exercise when that money could be better spent otherwise.

Moreover, there has been no suggestion that Nicor Gas' modified savings goals in this proceeding somehow do not satisfy the requirement that the Second EEP meet the savings goals defined in Section 8-104(c) as modified by the 2% budget cap of Section 8-104(d). Indeed, no party challenged the need for modified savings goals or presented evidence in favor of savings goals levels different than those proven reasonable by Nicor Gas.

As for the remainder of the disputes in this proceeding, they relate to Staff or intervenor opposition to Nicor Gas' policy recommendations regarding (1) flexibility in managing the program budgets and savings across the three years of the Second EEP and across the different programs within the Second EEP, and (2) adoption of the comprehensive risk management approach recommended by Nicor Gas, including its recommendations for a revised Net-to-Gross ("NTG") framework, adjustable savings goals that will be adjusted after the start of the Second EEP to remain current with changes in the Illinois Technical Reference Manual ("TRM") and NTG assumptions that occur after the start of the Second EEP, and, if necessary, savings goals that include a residual risk adjustment to compensate for remaining evaluation risk.

Nicor Gas has provided substantial evidence supporting its policy recommendations and demonstrating why the Commission should reject the arguments Staff and intervenors raise in opposition. To the extent that Staff and intervenors suggest that Nicor Gas' policy recommendations are inappropriate based merely on the suggestion that Nicor Gas might act improperly in managing its Second EEP portfolio, no evidence was presented in this proceeding showing that the Company has ever, or would in the future, act in the imprudent manner suggested by the witnesses. Moreover, Nicor Gas presented unopposed evidence demonstrating that the Company has made highly effective management decisions to date, which are likely to continue in the future. In particular, Nicor Gas presented evidence demonstrating that the savings Nicor Gas expects to achieve in Plan Year ("PY") 3 will exceed those achieved by all other natural gas portfolios throughout the United States for the PY3/2014 implementation year.[2] Weaver Sur., Nicor Gas Ex. 12.0, 19:418-22, 20:428. Nicor Gas will reach this milestone with programs in existence for only three years, while some of the comparison portfolios have been in existence for more than three decades.

In sum, based upon the evidence presented in this proceeding, the Commission should approve Nicor Gas' Second EEP as satisfying the statutory filing requirements of Section 8-104(f). In addition, the Commission should adopt Nicor Gas' policy-related proposals as revised in this proceeding.

II. SECTION 8-104(F) FILING REQUIREMENTS

As set forth in Section III of Nicor Gas' Initial Brief, the evidence demonstrates that the Second EEP meets all eight of the filing requirements of Section 8-104(f). Also as set forth therein and below, the Staff of the Commission ("Staff") and intervenors[3] either raise no

[2] Nicor Gas' first three-year EEP ("First EEP") encompasses PYs 1, 2, and 3 from June 1, 2011 through May 31, 2014 and was approved by the Commission in Docket No. 10-0562. *Northern Illinois Gas Co. d/b/a Nicor Gas Co.*, Docket No. 10-0562 (Final Order, May 24, 2011) ("First EEP Order").

[3] The intervenors submitting evidence in this proceeding were the AG, Citizens Utility Board ("CUB"), and the Environmental Law and Policy Center ("ELPC").

opposition whatsoever to Nicor Gas' evidence or offer insufficient support to find that the Second EEP is somehow deficient or in need of modification. Accordingly, the Commission should approve the Second EEP as revised in this proceeding.

A. Section 8-104(f)(1)

In accordance with Section 8-104(f)(1), Nicor Gas has demonstrated that the proposed energy efficiency measures in the Second EEP will achieve the savings requirements of Section 8-104(c), as modified by Section 8-104(d). 220 ILCS 5/8-104(c), (d), (f)(1).

1. The Commission Should Approve the Modified Savings Goals Set Forth in Nicor Gas' Second EEP.

Nicor Gas' Initial Brief demonstrates that the Commission should approve the modified savings goals set forth in the Second EEP. Nicor Gas Init. Br. at 11. More specifically, the Commission should require Nicor Gas to meet three-year cumulative savings goals of 21,478,000 therms (rounded) by the end of PY6, which should be measured from June 1, 2014 (the start of PY4) through May 31, 2017 (the end of PY6). Jerozal Dir., Nicor Gas Ex. 1.0, 11:241-47; Nicor Gas Ex. 1.1 at 10 (Table 2); Nicor Gas Ex. 15.1 at 1 (Table 3). As discussed in Nicor Gas' Initial Brief, Nicor Gas revised its modified therm savings goals twice in this proceeding to reflect changes in the identification of self-directing customers under Section 8-104(m). Nicor Gas Init. Br. at 7. If additional detail is required to show the finally revised modified therm savings goals broken down by Plan Year, Nicor Gas will provide that detail in its compliance filing in this proceeding.

As noted above, no party challenged the need for modified savings goals or presented evidence in favor of savings goals levels different than those proven reasonable by Nicor Gas. In fact, the AG and ELPC expressly acknowledge that Nicor Gas is unable to meet the statutory savings goals because of lower gas costs and an increase in the statutory targets. AG Init. Br. at

9; Mosenthal Dir., AG Ex. 1.0, 6:4-5; Crandall Dir., ELPC Ex. 1.0, 5:94-99. Further, the Commission has already approved modified savings goals in the proceedings relating to the energy efficiency and demand response plans of Commonwealth Edison Company ("ComEd") and Ameren Illinois Company d/b/a Ameren Illinois ("Ameren Illinois"). *Commonwealth Edison Co.*, Docket No. 13-0495 (Order Jan. 28, 2014) ("ComEd Order"), at 36 ("The Commission recognizes that ComEd has proposed this portfolio with a constricted budget and agrees that ComEd's savings goals should be lower than that required by the statute."); *Ameren Illinois Co. d/b/a Ameren Illinois*, Docket No. 13-0498 (Order Jan. 28, 2014) ("Ameren Illinois Order"), at 23-24.

Nicor Gas has demonstrated, by substantial evidence, that it is highly unlikely that the statutory savings requirements can be met without exceeding the 2% budget cap. 220 ILCS 5/8-104(c), (d). Accordingly, the Commission should approve Nicor Gas' proposed modified savings goals for the Second EEP and find that Nicor Gas' Second EEP meets the requirements of Section 8-104(f)(1).

B. Section 8-104(f)(2)

Nicor Gas' Second EEP meets the requirements of Section 8-104(f)(2). Nicor Gas Init. Br. at 11-12. This is not contested.

C. Section 8-104(f)(3)

Nicor Gas' Second EEP meets the requirements of Section 8-104(f)(3). Nicor Gas Init. Br. at 12. This is not contested.

D. Section 8-104(f)(4)

Nicor Gas' Second EEP meets the requirements of Section 8-104(f)(4). Nicor Gas Init. Br. at 12-13. This is not contested.

E. Section 8-104(f)(5)

Nicor Gas' Second EEP meets the requirements of Section 8-104(f)(5). Nicor Gas Init. Br. at 13-15. This is not contested.

F. Section 8-104(f)(6)

Section 8-104(f)(6) of the Act is not applicable to Nicor Gas. Nicor Gas Init. Br. at 18. This is not contested.

G. Section 8-104(f)(7)

1. No Changes are Proposed to or Needed for Nicor Gas' Rider 30.

No changes were proposed to the Company's Rider 30, Energy Efficiency Cost Recovery, which was approved by the Commission in Docket No. 10-0562. Nicor Gas Init. Br. at 18. Therefore, Nicor Gas' Second EEP meets the requirements of Section 8-104(f)(7). *Id*. This is not contested.

2. The Commission Should Reject ELPC's Proposal for Another Proceeding to Alter Nicor Gas' Tariff Design.

ELPC generally proposes a separate proceeding to alter Nicor Gas' tariffs. ELPC Init. Br. at 17. Staff and Nicor Gas have demonstrated that the Commission should reject ELPC's proposal for numerous reasons. Staff Init. Br. at 5-7; Nicor Gas Init. Br. at 19. First and foremost, this is not the appropriate proceeding in which to address, much less alter, Nicor Gas' tariff design. ELPC concedes as much in requesting that the Commission direct Nicor Gas to "submit an application in a separate proceeding…." ELPC Init. Br. at 17. Nevertheless, ELPC spends nearly one-quarter of its entire brief arguing about this wholly irrelevant issue. *Id*. at 14-18. To the extent that a separate proceeding addresses the Company's tariff design, Staff agrees with the Company that such a proceeding should be only conducted in the context of a full rate case proceeding when all the Company's rate design issues can be fully addressed. Staff Init. Br.

at 5-7; Brightwell Reb., Staff Ex. 4.0, 2:20-10:183; Quick Sur., Nicor Gas Ex. 14.0, 4:77-5:105. ELPC did not rebut the evidence presented by either Nicor Gas or Staff.

Moreover, given that ELPC, Staff and Nicor Gas all appear to agree that therm savings caused by changes in prices are not therms that can be counted by the Company as part of its Second EEP Plan (ELPC Init. Br. at 17-18; Staff Init. Br. at 5; Quick Reb., Nicor Gas Ex. 10.0, 14:292-99), there is simply no reason that this issue should be addressed in this proceeding, which is narrowly designed to consider whether the Second EEP complies with Section 8-104(f)(1)-(8).

Finally, ELPC fails to offer any evidence regarding Nicor Gas' current tariff design or how specifically it might be changed. In this respect, ELPC only argues generically about "retail tariffs" and, indeed, cites to the Commission's description of a tariff design offered, not by Nicor Gas, but by The Peoples Gas Light and Coke Company and North Shore Gas Company. ELPC Init. Br. at 15; ELPC Ex. 1.8 at 29-30. ELPC makes no mention of revenue stability as a goal of the tariff design that it advocates for; this is yet another reason for this issue to be addressed, if at all, in the context of a full rate case proceeding.

Put simply, ELPC's tariff design proposal is undeveloped, unsupported and wholly outside the scope of this proceeding. Accordingly, the Commission summarily should reject ELPC's request to direct Nicor Gas to change its tariff design.

H. <u>Section 8-104(f)(8)</u>

Section 8-104(f)(8) requires that the Second EEP:

> 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)(8). In Section III.H of its Initial Brief, Nicor Gas discussed the evidence that demonstrates that the Second EEP meets the requirements of Section 8-104(f)(8). Nicor Gas Init. Br. at 19.

Staff argues in favor of three policy/procedural recommendations related to the independent evaluation contract. Staff Init. Br. at 7-9. As Staff's Initial Brief recognizes, Nicor Gas agreed to Staff's first two recommendations, which relate to the contractual and day-to-day management of the independent contractor hired by the Company to perform evaluation, measurement and verification ("EM&V"). *Id*. at 8-9; Nicor Gas Init. Br. at 19-20.

Nicor Gas demonstrated that the Commission should reject Staff's third recommendation that the independent evaluator be responsible for performing the three-year cost-effectiveness analysis. Nicor Gas Init. Br. at 20-22; Staff Init. Br. at 8. To be clear, Nicor Gas proposes that it, the Company, will complete a cost-effectiveness analysis that will then be reviewed and validated by the independent evaluator. Nicor Gas Init. Br. at 19. Importantly, the AG supports the Company's approach and states that it provides sufficient assurance that the cost-effectiveness analysis will be done properly and will be transparent enough to undergo sufficient scrutiny. Mosenthal Reb., AG Ex. 2.0, 28:11-13.

Staff's concern appears to be whether the analysis will be "independent" as contemplated in the statute. Staff Init. Br. at 9. In support, Staff has argued that "[t]he Commission has repeatedly held that in order for the evaluation to be 'independent,' the utility must not have total control over the evaluator hired to conduct the independent evaluation mandated by statute ("Evaluator") and the Commission retains the right to approve the hiring and firing of the Evaluator." Hinman Dir., Staff Ex. 1.0, 7:136-39 (quoting *Commonwealth Edison Co.*, Docket

No. 07-0540 (Order on Rehearing Mar. 26, 2008), at 4; *Northern Illinois Gas Co. d/b/a Nicor Gas Co*., Docket No. 10-0562 (Order May 24, 2011), at 29). These orders actually support Nicor Gas' showing that the Second EEP satisfies the "independent" evaluation requirement of Section 8-104(f)(8). As demonstrated above and in Nicor Gas' Initial Brief, Nicor Gas will not have total control over the evaluator and the Commission will retain the right to approve the hiring and firing of the evaluator. Nicor Gas Init. Br. at 19-20.

In support of its argument, Staff also relies upon the Ameren Illinois Order's finding that "the statute requires that an independent evaluator rather than [Ameren Illinois] must perform the cost-effectiveness evaluation." Staff Init. Br. at 9; Ameren Illinois Order at 46. The Commission's finding in the Ameren Illinois proceeding is not dispositive here. First and foremost, the Commission did not make such a finding in the ComEd Order, even though ComEd has utilized the same method Nicor Gas proposes for more than five years. Jerozal Reb., Nicor Gas Ex. 7.0, 31:699-32:704.

Moreover, Nicor Gas notes that there was no evidence presented on Staff's proposal in the Ameren Illinois EEP proceeding, as Staff only belatedly raised it in briefing. *See* Docket No. 13-0498, Ameren Illinois Reply Brief at 13. Here, Nicor Gas presented substantial evidence that Staff's recommendation to impose the cost-effectiveness analysis on the evaluator is problematic because it will: (1) result in inefficiency, (2) create unneeded complexity, (3) create a certain "true-up error", (4) generate an inference that the current process somehow is not "independent", (5) reduce the capacity to conduct EM&V work, and (6) unnecessarily alter the methodology that has been successfully followed by ComEd and Ameren Illinois for several years. Jerozal Reb., Nicor Gas Ex. 7.0, 29:642-46.

Currently, the final cost-effectiveness analysis requires a significant amount of data and is performed by the Company's data management system – the program management tool ("PMT"). *Id.* at 29:650-55. All of the required inputs to perform an accurate ex-post analysis come from the PMT, including program costs, avoided costs, participation levels, and measure information. Chaudhry Reb., Nicor Gas Ex. 9.0, 2:41-3:45. Nicor Gas uses a customizable tool (the Energy and Environmental Economics, Inc. ("E3") Calculator) to build, operate, and calculate all of the widely varied factors associated with benefit-cost calculations. Jerozal Reb., Nicor Gas Ex. 7.0, 29:656-30:660. Nicor Gas has invested significant effort in modifying the basic E3 tool for use in accordance with the Act. Chaudhry Reb., Nicor Gas Ex. 9.0, 3:49-50. This cost-effectiveness analysis is then provided to the independent evaluator for review and vetting. Chaudhry Reb., Nicor Gas Ex. 9.0, 3:46-48.

Under current practices, the EM&V independent evaluator vets and analyzes all of the Company's data and the E3 model during each Plan Year. Jerozal Reb., Nicor Gas Ex. 7.0, 30:661-63. This standard practice is reliable, transparent, and is an effective method to audit such a complex program. *Id*. at 30:663-65. If the EM&V contractor was required to perform the cost-effectiveness analysis, per Staff's recommendation, it would be required to attempt to duplicate all of the Company's prior activity in a time-consuming and complicated process. *Id.* at 30:665-67. Additionally, the PMT database contains hundreds of thousands of records. *Id.* at 30:669-72. Requiring the independent evaluator to import that data and run algorithms on a separate system, whatever system it may be, will inevitably result in true-up errors due to the complexity and size of the endeavor. *Id*. at 30:674-76. Identifying and resolving such errors would be expensive and time-consuming. *Id.* at 30:676-77. The problems that would arise from synching the data would be further compounded if the independent evaluator used some tool other than the E3 tool as modified by Nicor Gas, which Staff fails to even address in its proposal. Chaudhry Reb., Nicor Gas Ex. 9.0, 3:50-52.

The Company bears the burden of ensuring that its targets are achieved and accurately reported. Jerozal Reb., Nicor Gas Ex. 7.0, 31:681-83. The independent evaluator currently has complete oversight of this process, and can investigate, examine, and test all aspects of the cost-effectiveness analysis. Chaudhry Reb., Nicor Gas Ex. 9.0, 2:31-37. The Company's proposed method provides complete transparency, and there is no compelling reason to shift responsibility for this process to a third party. Jerozal Reb., Nicor Gas Ex. 7.0, 31:685-87. Moreover, the Company has allocated 3% of its spending – or $2,793,000 – to activities associated with EM&V as prescribed by Section 8-104(f)(8). *Id*. at 31:690-91, 31:694. If the time-consuming, complex, and expensive process described above was imposed upon the independent evaluator, this would add additional hours and cost to the limited EM&V budget. *Id*. at 31:691-92. Such a strain on limited resources could limit the contractor's ability to complete other EM&V tasks. *Id*. at 31:690-98.

For all of these reasons and those stated in its Initial Brief (at 19-22), the Commission should reject Staff's proposal to shift the responsibility for performing the cost-effectiveness analysis to the independent evaluator.

III. POLICY AND OPERATING ISSUES

A. Management Flexibility

As Nicor Gas demonstrated in its Initial Brief, it seeks the very same flexibility and discretion to manage its program budgets and savings across the three Plan Years and the different programs of the Second EEP that the Commission granted the Company in Docket No. 10-0562, subject to the same conditions the Commission imposed upon the Company in granting that flexibility. Nicor Gas Init. Br. at 2-3, 22-23; *Northern Illinois Gas Co. d/b/a Nicor Gas Co.*, Docket No. 10-0562 (Final Order, May 24, 2011) ("First EEP Order"), at 43-44.

Under the Company's proposal, as long as Nicor Gas meets overall spending and savings requirements across the three-year plan period of the Second EEP and across all programs in the portfolio, the Commission will not require additional authorization to adjust spending or savings for individual years or programs. Jerozal Dir., Nicor Gas Ex. 1.0, 21:462-65, 22:476-88. In using this flexibility in managing the Second EEP, Nicor Gas must meet the following three conditions:

- Nicor Gas must fully discuss with the SAG, prior to initiating the change, any shift in the budget that results in a 20% or greater change to any program's budget, or that eliminates or adds a program.
- Nicor Gas cannot shift more than 10% of spending between residential and business sectors without Commission approval.
- Nicor Gas cannot modify its plans such that it no longer meets the statutory requirements for allocations to the low income and state and local government markets.

Id. at 21:466-22:475, 22:476-88. CUB agrees that the Commission should adopt the same conditions related to the Company's flexibility that the Commission adopted in Docket No. 10-0562. CUB Init. Br. at 11. Thus, the Commission should approve the Company's proposed management flexibility.

1. **<u>The Commission Should Reject Staff's Proposed Conditions on Flexibility as Unnecessary, Administratively Burdensome, and Contrary to Law.</u>**

Staff notes its support for Nicor Gas' request for flexibility, subject to four conditions that focus on "maximize[ing] cost-effectiveness and net economic benefits for ratepayers." Staff Init. Br. at 12-16; Hinman Dir., Staff Ex. 1.0, 16:376. Nicor Gas, the AG and CUB all oppose Staff's recommended conditions and presented substantial evidence demonstrating numerous reasons why the Commission should reject these conditions. Jerozal Reb., Nicor Gas Ex. 7.0, 21:460-23:506; Nicor Gas Init. Br. at 23-24; AG Init. Br. at 22; CUB Init. Br. at 6-11. As an initial matter, Staff's proposed conditions are wholly unnecessary as a prerequisite for maintaining the flexibility the Commission has already granted to the Company because they are not germane to management flexibility. Jerozal Reb., Nicor Gas Ex. 7.0, 21:460-23:499.

Further, these conditions would impose upon Nicor Gas a slew of new reporting requirements and would unnecessarily permit Staff's micro-management of the Company's Second EEP down to the measure level. *Id*. For example, Nicor Gas notes that Staff's second condition alone contains no fewer than ten reporting obligations, some of which are already being completed and some of which are so open ended or lacking in specificity as to be unworkable. *Id*. at 22:479-83. As articulated by the AG, Staff's proposed conditions will introduce "a number of rather burdensome and complex strategies and reporting requirements to effectively 'police' the Company…." AG Init. Br. at 22. Accordingly, the AG opposes Staff's proposed conditions because "the reporting requirements suggested by Staff are 'unrealistic, bureaucratically and administratively burdensome, and unlikely to work in practice.'" *Id*.

Finally, and perhaps most importantly, Staff's attempts to push for cost-effectiveness at the measure level and for maximizing net benefits are contrary to the plain language of Section 8-104(f)(5). The Act requires that cost-effectiveness be determined at the "overall portfolio" rather than individual measure level. 220 ILCS 5/8-14(f)(5). The Commission's final Orders in numerous dockets also reinforce that cost-effectiveness is to be determined at the portfolio level rather than the measure level. *See, e.g.*, Docket No. 10-0564 (Order May 24, 2012), at 92; Docket No. 07-0539 (Order Feb. 6, 2008), at 21; Docket No. 10-0568 (Order Dec. 21, 2012), at 30. Oddly, Staff readily acknowledges that Section 8-104(f)(5) "requires that the overall energy efficiency Plan portfolio, as opposed to the individual energy efficiency measures and programs that make up a Plan portfolio, must be cost-effective." Hinman Dir., Staff Ex. 1.0, 24:562-65.

The Act also requires Nicor Gas to demonstrate that its overall portfolio of energy measures represents a "diverse cross section of opportunities for customers of all rate classes to participate in the programs." 220 ILCS 5/8-104(f)(5). Because programs targeting some rate classes will necessarily be less cost effective than others, and because the Act limits total portfolio spending, a strict requirement to maximize net benefits for ratepayers would force Nicor Gas to forego less cost-effective programs and maximize spending on a limited number of programs and rate classes that provide the most cost-effective opportunities. Weaver Reb., Nicor Gas Ex. 8.0, 20:421-26. This approach would not allow Nicor Gas to meet the portfolio diversity requirements of Section 8-104(f)(5). This approach also would disrupt the carefully balanced portfolio presented by Nicor Gas' proposed EEP. *Id*. at 20:428-29; Jerozal Dir., Nicor Gas Ex. 1.0, 16:351-17:352. The AG similarly opposes Staff's suggestion to maximize net benefits because "the parties to the SAG have generally endorsed balancing net benefits with other important policy objectives such as pursing long lived measures, market transformation, and equity." AG Init. Br. at 22.

Finding no support in Section 8-104, which governs this proceeding, Staff turns to other irrelevant sections of the Act and to Commission orders interpreting those sections. In particular, Staff relies upon Sections 8-408 and 16-111.5 of the Act, and Commission orders addressing those sections, all of which have absolutely no application here. Hinman Dir., Staff Ex. 1.0, 15:352-16:382, 21:486-95, 25:583-90 (*citing MidAmerican Energy Co.*, Docket Nos. 13-0423/13-0424 Consol. (Order Dec. 18, 2013); *MidAmerican Energy Co.*, Docket No. 12-0132 (Order Oct. 17, 2012); *Illinois Power Agency*, Docket No. 12-0544 (Order Dec. 19, 2012)).

CUB agrees that Staff relies upon "legal theories [that] are inapplicable to the case at hand and provide no support for Staff's position." CUB Init. Br. at 8.

For this and all the other reasons addressed by the Company, the AG and CUB in their Initial Briefs (Nicor Gas Init. Br. at 23-24, 26; AG Init. Br. at 20, 22-23; CUB Init. Br. at 6-11), the Commission should reject the conditions Staff proposes to impose upon the Company's flexibility in managing the Second EEP.

2. The Commission Should Reject the AG's Proposed Conditions on Flexibility as Unsupported and Contrary to Commission Order.

Although the AG is "generally supportive of granting program administrators wide latitude to make plan and program design modifications as they see fit", the AG nevertheless argues that the Company's request for the same flexibility the Commission has already granted it should be rejected. AG Init. Br. at 20- 25. The AG's mischaracterizes the Company's requested flexibility as "unlimited" or "unfettered" based upon the unsupported assumption that this flexibility will allow the Company to "make changes to its plan as it sees fit without any stakeholder or Commission approval." *Id*. at 20-21; Mosenthal Dir., AG Ex. 1.0, 14:18-15:3.

Nicor Gas' Initial Brief summarized the evidence demonstrating that providing the continued flexibility that Nicor Gas requests will not allow the Company to "game the system" as the AG argues. Nicor Gas Init. Br. at 24-26; AG Init. Br. at 21. For example, the AG provides no examples to suggest that this has taken place during the Company's First EEP; instead, the AG makes unsupported attacks on the modifications made to the Company's Behavioral Energy Savings ("BES") program. Nicor Gas Init. Br. at 24; AG Init. Br. at 29-30. Nicor Gas has explained at length why the Company modified its BES program during the First EEP and has demonstrated that additional changes resulted in enhancements to nearly every other program in the First EEP. Jerozal Reb., Nicor Gas Ex. 7.0, 17:369-19:405.

In addition, contrary to the AG's assertions, the Company cannot unilaterally shift program funding to cheaper programs in order to meet its approved goals because the flexibility the Commission approved in Docket No. 10-0562 mandates notice to the SAG of any shifting of funds within a program sector that will result in a 20% or greater change to any program's budget. First EEP Order at 43. This condition, which Nicor Gas again seeks here, establishes a clear limit on the amount of flexibility that Nicor Gas is given with regards to shifting funding for its EEP programs. To the extent that the AG criticizes this approach because it does not require "any approval or agreement by the SAG", only notification (AG Init. Br. at 21), the Commission most recently reiterated in the ComEd EEP proceeding that notification to the SAG is appropriate. ComEd Order at 56.

Nicor Gas' Initial Brief also summarized the evidence demonstrating why the Commission should reject the AG's proposal to impose limits on the Company's flexibility in the form of a flexible savings goal adjustment that would be triggered if Nicor Gas shifted budgets that resulted in a change of 20% or more. Nicor Gas Init. Br. at 25-26; AG Init. Br. at 25-30. For example, the AG fails to acknowledge that: (1) there may be instances in which it is appropriate to shift funds between programs, and (2) there are checks and balances already in place that provide oversight and accountability. Jerozal Reb., Nicor Gas Ex. 7.0, 20:433-47. In addition, if the Company were to shift "millions of dollars or more" to a program like the BES program, as the AG is apparently concerned about (AG Init. Br. at 29), the Company's requested approach to flexibility would require it to engage in a discussion with the SAG before making such a change. Jerozal Sur., Nicor Gas Ex. 11.0, 3:56-60. If the Company were to move the money between residential and business sectors in an amount greater than 10%, the Company's requested approach to flexibility would require it to obtain Commission approval. *Id*. at 3:60-62.

Put simply, a change of this magnitude would not go unnoticed. Indeed, the Commission recognized as much in rejecting the same proposal by the AG in the ComEd EEP proceeding:

> The AG proposes that if ComEd proposes a budget shift resulting in a 20% or greater variance from planned annual program budgets, a goal adjustment would be triggered. The Commission does not find this to be necessary because the Commission will be aware of large budget shifts through reports to the Commission, but also if indeed ComEd is abusing its discretion there is nothing to stop Staff or an Intervenor from bringing this to the Commission's attention.

ComEd Order at 56. The AG argues against the Commission's conclusion in this regard by pointing to the AG witness' experience and a hypothetical example in which funds might be shifted from the "Residential Single Family" program to the "Residential Outreach and Education" program. AG Init. Br. at 23-24. However, the Commission should disregard this example, and the argument that relies upon it, as purely speculative; in fact, Nicor Gas does not have a Residential Outreach and Education Program.

For all of these reasons and those stated in the Company's Initial Brief (at 22-26), the Commission should reject the AG's recommendations to change the conditions or limitations on the flexibility the Commission grants the Company to manage its program budgets and savings across the three Plan Years and the different programs of the Second EEP. Indeed, the Commission has already rejected virtually identical proposals from the AG in the recent EEP proceedings for ComEd (ComEd Order at 56) and Ameren Illinois (Ameren Illinois Order at 140).

B. Coordination with Other Utilities and Market Actors

No party objects to Nicor Gas' identification of numerous programs that it expects to jointly implement with ComEd and municipal electric utilities, as well as the Company's identification of numerous programs where it coordinates with electric utilities in areas such as lead sharing, bundling of electric and gas prescriptive measures, and joint marketing. Jerozal Dir., Nicor Gas Ex. 1.0, 22:491-23:502; Nicor Gas Ex. 1.1 at 12.

C. Stakeholder Advisory Group

Nicor Gas will continue to participate in the combined electric and natural gas SAG during the period of the Second EEP to address those matters that the Commission has already directed the SAG to consider in response to stakeholder proposals. Jerozal Reb., Nicor Gas Ex. 7.0, 24:518-27:610; Init. Br. at 28. No party objects to Nicor Gas' request that the Commission confirm the SAG's role as a purely advisory body without any decision-making authority, in light of the fact that performance under the EEP remains the sole responsibility of the utility. Jerozal Dir., Nicor Gas Ex. 1.0, 27:587-96. Thus, just as in Docket No. 10-0562, the Commission should confirm that the SAG does not have decision-making authority.

Similarly, no party contests the Company's position that, if the Commission directs the SAG to participate in initiatives associated with the EM&V issues Staff and intervenors raised in this proceeding, such as the spillover study that Staff suggests or the development of an Energy Efficiency Policy Manual that the AG suggests, the budget for all such activity should be attributed to the 3% portion of the Second EEP budget that is set aside for EM&V activities. Jerozal Reb., Nicor Gas Ex. 7.0, 27:601-07. Therefore, to the extent that the Commission orders the SAG to engage in such initiatives, the Commission also should direct the SAG with a narrow focus and scope to control the costs of these efforts.

On the topic of SAG subcommittees, Staff and the AG oppose the Company's suggestion to promote efficiency in the SAG by taking up issues among the program administrators and then bringing them to the larger SAG. Staff Init. Br. at 37-38; AG Init. Br. at 53-54. In the first instance, it must be emphasized that Nicor Gas has not requested that the Commission order or sanction "subcommittees". Instead, Nicor Gas simply suggested that the plan administrators participate in a collaborative process that is routine, reasonable, and efficient, and despite the concerns of Staff and the AG, transparent and beneficial to the overall SAG process. Jerozal Reb., Nicor Gas Ex. 7.0, 26:577-84; Jerozal Sur., Nicor Gas Ex. 11.0, 9:192-10:205. In fact, Staff concedes that its opposition "does not pertain to informal extra-SAG discussions, but rather to the Commission sanctioned SAG subcommittees of the kind" that Nicor Gas proposes. Staff Init. Br. at 37. In light of the fact that Nicor Gas has not requested "Commission sanctioned subcommittees" and, instead, has simply suggested the continuation of a collaborative process, the Commission need not take any action with respect to this issue.

D. Evaluation Risk

As explained in its Initial Brief (at 29), Nicor Gas requests that the Commission adopt a comprehensive risk management approach to the Second EEP, including a revised NTG framework, adjustable savings goals, and, if necessary, savings goals that include a residual risk adjustment to compensate for any remaining evaluation risk.

1. Revised NTG Framework

Although a significant portion of the parties' Initial Briefs are devoted to the revised NTG framework issue, the simple fact is that the parties largely are in agreement on the goals to be achieved in modifying the NTG framework to be applied to the Second EEP. *See* Nicor Gas Init. Br. at 30-37; Staff Init. Br. at 16-32; AG Init. Br. at 30-38; ELPC Init. Br. at 5-10. The Initial Briefs of both Nicor Gas and the AG emphasize the areas of agreement in their NTG framework recommendations. *See* Nicor Gas Init. Br. at 32-33; AG Init. Br. at 36. As summarized by the AG, both Nicor Gas and the AG "support evaluators making the initial proposals for NTG values, bringing these to the SAG to attempt to reach consensus, and also acting as the final arbiter to decide any non-consensus values prior to March 1." AG Init. Br. at 36. The parties also recognize that the Commission has already considered this issue at length in the Ameren Illinois and ComEd EEP proceedings. *See* Nicor Gas Init. Br. at 30-37; Staff Init. Br. at 16-32; AG Init. Br. at 30-38; ELPC Init. Br. at 5-10.

Accordingly, Nicor Gas will not further address the issue here beyond reiterating a few points in response to the other parties. In their Initial Briefs, Staff, the AG, and ELPC continue to emphasize their concerns that the SAG be included in the assessment of NTG values. *See* Staff Init. Br. at 20-21 (citing Staff Ex. 1.1); AG Init. Br. at 31-33; ELPC Init. Br. at 8-9.[4] Importantly, Nicor Gas revised its framework in this proceeding to add the following fourth provision to specifically address recommendations by Staff, the AG, and ELPC to include SAG in the process:

> Prior to March 1 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.

Weaver Reb., Nicor Gas Ex. 8.0, 6:113-19, 7:131-34.

Nicor Gas further notes that the three sentences in Nicor Gas' proposed fourth provision are identical to language that the Commission adopted in the Ameren Illinois proceeding. Ameren Illinois Order at 123.[5] However, Nicor Gas maintains that the Commission's other conclusions regarding NTG in the Ameren Illinois proceeding are not ideal because, as a starting point, rather than adopt language similar to the Company's proposal, the Commission maintained the provisions of the NTG framework adopted in the Final Order in Ameren Illinois Docket No.

[4] ELPC fails to recognize that Nicor Gas has revised its proposal in this respect when it argues that Nicor Gas' proposal "takes the SAG out of the NTG process." ELPC Init. Br. at 8.

[5] This language is also identical to NTG framework language proposed by ComEd in its EEP proceeding. ComEd Order at 103 (citing ComEd Ex. 3.0 at 67).

10-0568. *See id*. This earlier framework includes a number of problems that all parties to the current Nicor Gas EEP proceeding agree should be rectified, including, among others, retroactive application of NTG values under certain conditions, as well as uncertainty in applying the term "undergoing significant change" in triggering retroactive NTG application. Weaver Sur., Nicor Gas Ex. 12.0, 5:103-07. While the Commission direction to Ameren Illinois will allow the independent evaluator to circumvent these problems, it adds unnecessary confusion and should not be adopted for Nicor Gas. *Id*. at 5:107-10. Finally, Nicor Gas' Initial Brief summarized the evidence demonstrating that the Commission should reject the NTG frameworks proposed by Staff, the AG and ELPC because they create unreasonable retroactive evaluation risk and impose unnecessary burdens on the SAG and the Commission introduced by, among other things, accelerated and inflexible schedules. Nicor Gas Init. Br. at 33-37.

For all of these reasons and those stated in the Company's Initial Brief (at 30-37), the Commission should adopt the Company's four point revised NTG framework as reasonable and efficient and reject the NTG frameworks submitted by Staff, the AG and ELPC as problematic in several respects.

2. <u>NTG Ratio Values for Plan Year 4</u>

Staff proposes that Nicor Gas should work with the SAG to reach consensus on NTG ratio values to deem for PY4 and to include such NTG ratio values for PY4 in the remodeling of the Company's portfolio for its compliance filing in this proceeding. Staff Init. Br. at 32-33. Staff fails to note, however, that the timeline needed to achieve their proposal simply cannot be achieved given that March 1st has come and gone.

In the Ameren Illinois and ComEd proceedings, the Commission recognized that the independent evaluator would have to present proposed NTG values to the SAG "prior to March 1" in order to provide sufficient time for (1) the SAG to provide input on those values, (2) the independent evaluator to review the SAG feedback, and (3) the independent evaluator to make the final determination of NTG values to be used for the upcoming plan year beginning on June 1. Ameren Illinois Order at 123; ComEd Order at 118-19. In this proceeding, the AG requests that the Commission clarify that the SAG should be given "a reasonable period of time to review information and attempt to reach consensus" on the NTG values, which the AG indicates would mean presentation of the proposed NTG values sufficiently in advance of March 1. AG Init. Br. at 37. Nicor Gas notes that March 1 is a date that "provides plan administrators with sufficient time to be ready to launch programs on June 1." Jerozal Reb., Nicor Gas Ex. 7.0, 25:556-58. Staff also recognizes the importance of discussing NTG values with the SAG prior to March 1: To help mitigate the risk of compromising the independence of the Evaluators, the Commission should require that SAG participants have an opportunity to be involved in the NTG Update Process by requiring the Company to hold NTG Update meetings open to interested SAG participants by specific dates in advance of March 1 and consistent with the process and commenting opportunities identified in Staff Exhibit 1.1. Hinman Dir., Staff Ex. 1.0, 44:1012-17; Staff Ex. 1.1.

Furthermore, in accordance with Section 8-104, the Company's Second EEP will commence on June 1, 2014. In order to have sufficient time to address the Commission's final Order in this proceeding, the Company requested an expedited schedule when it initiated this proceeding, asking for a final Order by March 1, 2014. Petition at ¶ 12. As the schedule now stands, the Commission is not likely to enter a final Order in this proceeding until sometime in May. Given that Nicor Gas expects to be required to make its compliance filing possibly only several days before the start of PY4, the simple fact is that "deemed" NTG values for PY4 will not be available in time to be included in that filing. Thus, as a very practical matter, the only option for Nicor Gas will be to include in its compliance filing the NTG values approved in the Commission's final Order. Further, since the March 1 deadline defined in the NTG frameworks proposed by all the parties has already come and gone for PY4, the only option available for Nicor Gas will be to deem PY4 NTG values using the values approved by the Commission's final Order.

3. <u>Adjustable Savings Goals</u>

Nicor Gas proposes that the Commission establish savings goals that will be adjusted after the start of the Second EEP in order to remain current with changes in NTG and TRM assumptions that also begin after the start of the Second EEP. Weaver Dir., Nicor Gas Ex. 2.0, 21:448-50. Specifically, in order to decrease savings goals when evaluation results are lower than planning assumptions, or to increase savings goals when evaluation results are higher than planning assumptions, Nicor Gas recommends that all NTG ratios and gross unit savings for measures covered by the TRM be modified to reflect final NTG evaluations and updated TRM algorithms available by March 1 prior to the start of each Plan Year. Jerozal Dir., Nicor Gas Ex. 1.0, 33:718-29; Weaver Dir., Nicor Gas Ex. 2.0, 21:448-54.

Importantly, the Company's adjustable savings goals proposal is similar to the adjustable savings goals most recently adopted by the Commission in Ameren Illinois' EEP proceeding. Weaver Reb., Nicor Gas Ex. 8.0, 16:349-52; Ameren Illinois Order at 153. In addition, the Company's proposal is analogous to approaches for measuring savings performance that are used by utility commissions in California and Vermont, which both rank among the top five states in the American Council for an Energy Efficiency Economy's *2012 State Energy Efficiency Scorecard*. Weaver Dir., Nicor Gas Ex. 2.0, 13:280-14:304.

Staff supports the Company's proposal in concept, but also recommends compliance with seven requirements, the first four of which overlap with its recommendations with regard to flexibility, reporting, the NTG framework, and the residual risk adjustment factor. Staff Init. Br. at 35-37; Hinman Dir., Staff Ex. 1.0, 27:618-29:660; Weaver Reb., Nicor Gas Ex. 8.0, 17:355-73. Nicor Gas opposes the first four of Staff's recommendations for the reasons stated in the Sections of the Company's Initial Brief and this Reply Brief addressing flexibility, reporting, the NTG framework, and the residual risk adjustment factor.

Nicor Gas also opposes Staff's recommendation that the Company maximize net benefits for ratepayers. Hinman Dir., Staff Ex. 1.0, 28:656-60. As discussed above, this recommendation is inconsistent with the Act's requirement that Nicor Gas must demonstrate that its overall portfolio of energy measures represents a "diverse cross section of opportunities for customers of all rate classes to participate in the programs." 220 ILCS 5/8-104(f)(5). Nicor Gas may not be able to meet the requirements of Section 8-104(f)(5) if the Company is strictly required to maximize net benefits for ratepayers, because the Company could be forced to forego less cost-effective programs that target certain rate classes in order to maximize benefits.

As noted in its Initial Brief, the Company agrees to provide information in its compliance filing that identifies the inputs and the basis of those inputs that were used in computing the unit savings estimates in Nicor Gas 1.2. Nicor Gas Init. Br. at 38; Staff Init. Br. at 36-37. Nicor Gas also agrees to file revised spreadsheets in the future, once changes to NTG ratios and Illinois TRM values are known with the caveat that the Commission need not adopt Staff's proposed language establishing alternative deadlines if the Commission adopts Nicor Gas' revised NTG framework. Nicor Gas Init. Br. at 38-39.

The AG opposes the Company's proposed adjustable savings goals, arguing that it would eliminate utility performance risk, that it presents practical problems in administration, and that it is contrary to Section 8-104. AG Init. Br. at 38-48. CUB similarly argues that the Company's proposal provides the Company with "unfettered ability to lower savings goals." CUB Init. Br. at 2-5. The Commission should reject each of the AG and CUB arguments for the reasons set forth below.

Notably, the AG and CUB raised identical arguments against Ameren Illinois' proposed adjustable savings goals, which the Commission rejected in approving Ameren Illinois' proposal. Ameren Illinois Order at 151-53. In rejecting those arguments, the Commission recognized that "the TRM and NTG values upon which adjustments to savings goals would be made are not set by Ameren, but rather are values that were either provided by independent evaluators and the SAG/[Technical Advisory Committee ("TAC")], agreed-to by the parties or derived from a Commission approved process." *Id*. at 152. The Commission should reach the same conclusion based upon the same reasoning here.

Further, Nicor Gas has presented substantial evidence demonstrating why their arguments about performance risk and practical administration of adjustable savings goals are without merit. Nicor Gas Init. Br. at 39-41; Weaver Reb., Nicor Gas Ex. 8.0, 21:447-22:480; Weaver Sur., Nicor Gas Ex. 12.0, 12:248-20:428. Among other things, the evidence shows that the Company is responsible under its proposal for all of the delivery risk associated with achieving the participation targets in the Second EEP while remaining within the budgets set in Section 8-104(d) and that the Company faces a portion of evaluation risks, retroactive gross savings risk for all measures not covered by the TRM (which represent over 40% of projected savings), and realization rate risk. Weaver Reb., Nicor Gas Ex. 8.0, 21:448-58.

Additionally, the evidence shows that the AG and CUB arguments about negative incentives only examine one side of the possible outcomes—those resulting in lower savings goals. Weaver Sur., Nicor Gas Ex. 12.0, 17:375-76. Instead, while the Company's proposal can decrease savings goals under some circumstances (when changes to TRM or NTG values decrease compared to those assumed in calculating savings goals), it also will increase savings goals in other cases (when TRM or NTG values increase). *Id*. at 17:377-80. Thus, to the extent that negative incentives exist with the Company's proposal, they would also exist with the AG and CUB recommendations to reject adjustable savings goals. *Id*. at 18:404-08. In other words, the AG and CUB arguments in this regard should have no bearing on the Commission's decision.

Contrary to the AG's concerns that the Company's proposal would be "administratively burdensome and impractical" (AG Init. Br. at 42), the evidence demonstrates that this is not the case. For instance, in any given year, only a handful of TRM measures are updated—only a subset of which apply to natural gas programs—which will result in a manageable list of measures to capture in the adjustable savings goal calculation. Weaver Sur., Nicor Gas Ex. 12.0, 12:258-67. The NTG portion of the adjustable savings goal calculation also is a simple calculation that involves, at most, only 15 numbers for the entire portfolio. *Id*. at 14:297-305. In sum, Nicor Gas' proposal establishes straightforward calculations for the adjustment of savings goals for various measures. *Id*. at 12:268-14:306.

Finally, there is no merit to the AG's argument that the Company's adjustable savings goal proposal is contrary to the penalty provision in Section 8-104(i). AG Init. Br. at 2, 39-40, 47-48. The AG erroneously argues that the inclusion of this penalty provision demonstrates the General Assembly's intent that the Company must achieve "maximum" natural gas savings goals. *Id*. at 2, 39. The plain language of Section 8-104 contains no such requirement to achieve "maximum" savings goals. 220 ILCS 5/8-104. Moreover, the language of Section 8-104(d), to which the AG only makes passing reference (Init. Br. at 39), grants the Commission unqualified discretion to determine when the savings requirements set forth in Section 8-104(c) may be reduced. A court or agency must ascribe to words used in an unambiguous statute their ordinary and commonly accepted meaning, and is not at liberty to restrict or enlarge that plain meaning. *Henrich v. Libertyville High School*, 186 Ill. 2d 381, 391 (1998). It may not read into the language exceptions, limitations, or conditions not expressed by the legislature. *Lawrence v. Regent Realty Group*, 197 Ill. 2d 1, 10-12 (2001). The Commission should reject the AG's legally incorrect interpretation of Section 8-104.[6]

For all of these reasons and those stated in the Company's Initial Brief (at 37-41), the Commission should approve the Company's adjustable savings goal proposal, reject the majority of Staff's recommendations, and reject the entirety of the arguments made by the AG and CUB.

4. Residual Risk Adjustment

If the Commission adopts the Company's revised NTG framework and adjustable savings goals, Nicor Gas agrees that it would be fair to set the residual risk adjustment to zero. Jerozal Dir., Nicor Gas Ex. 1.0, 34:755-35:768; Weaver Dir., Nicor Gas Ex. 2.0, 22:481-23:494. This would increase Nicor Gas' three-year savings goals from 21.5 to 23.9 million therms, and savings for individual programs as well as savings for each Plan Year would increase by the same proportion. Jerozal Dir., Nicor Gas Ex. 1.0, 35:762-65; Weaver Dir., Nicor Gas Ex. 2.0, 22:481-23:494. If, on the other hand, the Commission should reject the Company's revised NTG framework and adjustable savings goals, the Commission should allow Nicor Gas to calculate its savings goals using a downward residual risk adjustment in order to manage remaining evaluation risk. Jerozal Dir., Nicor Gas Ex. 1.0, 32:695-98; Weaver Dir., Nicor Gas Ex. 2.0, 22:472-74.

[6] This argument applies with the same force to the AG's reliance upon its incorrect legal interpretation of Section 8-104 to oppose the Company's residual risk adjustment proposal.

In opposing the Company's request for a downward residual risk adjustment, Staff and intervenors either confuse or entirely ignore the context for the Company's proposal. Staff Init. Br. at 37; AG Init. Br. at 2, 12-20; CUB Init. Br. at 5; ELPC Init. Br. at 3-5. As noted above, the Commission need only consider the Company's proposal if it has refused to adopt the Company's revised NTG framework and adjustable savings goals. Should the Commission undertake that consideration, it should be careful not to conflate the Company's residual risk adjustment proposal with the Company's other proposals that the Commission will have already considered and rejected.

Again, if the Commission undertakes consideration of the Company's residual risk adjustment, Nicor Gas presented substantial evidence demonstrating that the adjustment is appropriate and should be approved. Nicor Gas Init. Br. at 41-44. The Company's proposal—to reduce its savings estimates by lowering forecast NTG ratios by 10% in order to calculate its final program and portfolio savings goals—is intended to mitigate the risks of future adjustments to the TRM algorithms or NTG ratios, which may impact the savings that are available from forecasted and budgeted savings targets. Jerozal Dir., Nicor Gas Ex. 1.0, 18:406-19:409. Notably, even with such an adjustment, Nicor Gas will continue to bear all delivery risks, as well as evaluation risks from measures not covered in the TRM, which represent over 40% of the savings projected for the Second EEP. *Id*. at 29:633-35.

The Company does not suggest, as the AG argues (AG Init. Br. at 14), that the statutory penalties only apply if the Company fails to meet 90% of the Commission-approved savings goals. Instead, the Company recommends that the Commission approve goals that are reasonable and fair; thus, absent adopting its recommendations for the NTG policy and adjustable savings goals, those goals should include the 10% residual risk adjustment. Weaver

Sur., Nicor Gas Ex. 12.0, 23:480-87. Once established, Nicor Gas should be held accountable for achieving 100% of those Commission-approved goals, even in cases where TRM and NTG changes beyond the Company's control end up lowering the savings that are achievable under participation targets and budget limits outlined in Nicor Gas Exhibit 1.1. *Id.* at 23:487-90.

While acknowledging that evaluations do carry some uncertainty associated with their results, the AG argues that there is no evidence to indicate that evaluations are systematically biased to underestimate savings. AG Init. Br. at 16. On the contrary, Nicor Gas presented evidence showing that its experience to date indicates that, at least in PY1, TRM and NTG evaluations have indeed been biased downward. Specifically, the PY1 NTG evaluation resulted in savings reductions of 34% for the largest program in the First EEP portfolio – the Business Custom program. Jerozal Dir., Nicor Gas Ex. 1.0, 30:659-70. Moreover, even if evaluation adjustments are, on balance, symmetrical, the outcomes faced by Nicor Gas are not. That is because if Nicor Gas fails to meet the savings goals, it is subject to a $600,000 penalty, yet if Nicor Gas exceeds the goals it receives no compensating reward. Weaver Dir., Nicor Gas Ex. 2.0, 10:193-98. Additionally, the Company's proposed residual risk adjustment is analogous to approaches for measuring savings performance that are used by utility commissions in eight states, including Arkansas, California, Colorado, Connecticut, Georgia, Massachusetts, New Hampshire, and Rhode Island. Weaver Reb., Nicor Gas Ex. 8.0, 23:495-24:513. With a risk adjustment of only 10%, the value proposed by Nicor Gas is also more conservative than those defined in all eight of these comparison states where shareholders receive financial awards at performance levels between 50% and 85% of planned savings goals. *Id.*

The AG also argues that the Company's residual risk adjustment would shift risks from Nicor Gas to ratepayers and somehow "waste" ratepayer money. AG Init. Br. at 17-18. Nicor

Gas presented evidence showing that neither proposition is true. Specifically, Nicor Gas demonstrated that customers will continue to receive substantial financial benefits from the Second EEP even with the adoption of this adjustment, and that evaluation results would have to lower savings by 25% before customers failed to reap direct financial benefits. Weaver Sur., Nicor Gas Ex. 12.0, 24:512-25:532. On the other hand, if Nicor Gas misses its savings goal by a single therm, it is subject to a $600,000 penalty. *Id*. at 25:533-34. Furthermore, no money will be "wasted" in an example where the Company delivers the portfolio exactly as described in Nicor Gas Exhibit 1.1 (or exactly as described the Commission's Final Order), but evaluation-related assumptions decline. *Id*. at 26:549-50. The Company will deliver all of the incentives, technical assistance, outreach, evaluation and other activities described in the EEP, as supported by every party in this case (or at least as required by the Commission's Final Order). *Id*. at 26:550-53.

For all of these reasons and those stated in the Company's Initial Brief (at 41-44), the Commission should approve the Company's proposal to adopt savings goals that include a 10% residual risk adjustment in the event that the Commission decides to reject the Company's revised NTG framework and adjustable savings goals.

E. Energy Efficiency Policy Manual

The AG argues in favor of the creation of an Energy Efficiency Policy Manual ("Policy Manual"), pointing to the Commission's conclusions in the ComEd and Ameren Orders. AG Init. Br. at 54-55. The AG similarly points to the ComEd and Ameren Orders to argue that the Policy Manual should not be limited to evaluation-related issues. *Id*. at 55, ComEd Order at 130; Ameren Order at 129. However, the language the AG quotes from the ComEd Order demonstrates that the Commission intends for the Policy Manual to be focused on evaluation-related issues: "the Commission directs the SAG to complete an Illinois Energy Efficiency

Policy Manual to ensure that programs across the state and as delivered by various program administrators ***can be meaningfully and consistently evaluated***." ComEd Order at 130 (emphasis added). Importantly, Nicor Gas and Staff are in agreement that any Policy Manual should be limited to evaluation-related issues. Nicor Gas Init. Br. at 44; Staff Init. Br. at 33-34. Therefore, if the Commission determines in this proceeding to direct the SAG to address the Policy Manual, it should be limited to evaluation-related topics and such topics should be presented and developed through the SAG process. Jerozal Sur., Nicor Gas Ex. 11.0, 9:187-91; Hinman Reb., Staff Ex. 3.0, 8:166-9:172. Further, the SAG should take into consideration a similar national effort that is currently being coordinated by the Department of Energy ("DOE"). Jerozal Reb., Nicor Gas Ex. 7.0, 26:585-27:600.

IV. OTHER ISSUES

A. Program Design

Staff, the AG and ELPC have proposed various program design recommendations. As discussed in Section V.A of Nicor Gas' Initial Brief and below, none of these proposals should be adopted in this proceeding as they are not supported by substantial evidence. In addition, the AG's proposed program modifications must be rejected as contrary to law to the extent they are intended "to ensure maximum savings goal achievement." AG Init. Br. at 9. As noted above, the plain language of Section 8-104 contains no requirement to achieve "maximum" savings goals. 220 ILCS 5/8-104.

1. Behavioral Energy Savings Program

Nicor Gas' Behavioral Energy Savings ("BES") program is a critical aspect of the Company's balanced portfolio, which offers opportunities for all customers who pay into the program to participate in accordance with Section 8-104(f)(5). Nicor Gas Init. Br. at 16. Equally as important, the BES program is intended to reach markets underserved by energy efficiency efforts, and elimination of this program will eliminate a significant participation opportunity. *Id.*; Nicor Gas Ex. 1.1 at 25.; Jerozal Sur., Nicor Gas Ex. 11.0, 7:135-42. Moreover, the BES program provides substantial sources of therm savings (possibly as many as 693,000 gross therms) and opportunities for 20,000 customers to participate in each of the three years of the Second EEP. Jerozal Reb., Nicor Gas Ex. 7.0, 2:38-39, 3:46-47.

Staff argues that the Commission should order Nicor Gas to eliminate the BES program in favor of joint EEP programs with ComEd, specifically the Multi-family Comprehensive Energy Efficiency Program ("MCEEP") and the Elementary Energy Education ("EEE") Program. Staff Init. Br. at 10-12. To counter Nicor Gas' position that the BES program should not be eliminated because it reaches underserved markets such as the rental market, Staff misrepresents that the Second EEP does not reflect this fact. *Id.* at 11. On the contrary, the Second EEP states that "Nicor Gas is exploring approaches to tailor this [BES] program to rental and low-income markets." Nicor Gas Ex. 1.1 at 25. In addition, the Company's direct testimony reiterated this fact. Jerozal Dir., Nicor Gas Ex. 1.0, 14:308-10. The Commission should reject Staff's proposal to eliminate the BES program from the Second EEP because, contrary to Staff's contentions, elimination of this program will deny a significant participation opportunity to the rental and low-income markets.

Staff also argues that its proposal here is supported by the Commission's determination in the ComEd EEP proceeding to increase the funding allotted for joint programs in the ComEd plan. Staff Init. Br. at 11. The Commission should reject any attempt to balance the difference in the size of programs between Nicor Gas and ComEd on the backs of the rental and low-income customer groups, which plainly is inconsistent with both the approach the Company has taken to provide all customers opportunities to participate in the EEP and the statutory requirement that Nicor Gas offer a "diverse cross section of opportunities for customers of all rate classes to participate in the programs." 220 ILCS 5/8-104(f)(5).

Finally, the Commission should reject as a legal matter Staff's argument that it is appropriate to move funding from the Company's BES program to joint programs with ComEd because that will increase "net benefits" to customers. Staff Init. Br. at 10-11. Staff's argument is inconsistent with Section 8-104(f)(5), which defines cost effectiveness (and related net benefits) at the portfolio level and also requires utilities to balance cost effectiveness considerations by providing a "diverse cross section of opportunities for customers of all rate classes". 220 ILCS 5/8-104(f)(5).

In sum, Staff's proposal to eliminate the BES program and to move funding to joint programs with ComEd is inconsistent with the evidence presented by Nicor Gas that demonstrates that elimination of the BES program will deny a significant participation opportunity to the rental and low-income markets and, moreover, is inconsistent with the law. Therefore, the Commission should reject Staff's proposal.

Although the AG rehashes its concerns regarding the Company's BES program, this is much ado about nothing given that the AG ultimately supports the Company's proposed request for proposal ("RFP") to solicit ideas for a new BES offering on the condition that the new offering should be cost effective. AG Init. Br. at 10-12.[7] *See also* Mosenthal Reb., AG Ex. 2.0, 29:7-30:23. Although the AG asserts that Nicor Gas only provided information about the nature of its proposal in rebuttal (AG Init. Br. at 10), the Company's initial filing of the Second EEP

[7] To the extent the AG argues that the cost-effectiveness of the BES program would significantly improve if it were offered jointly with ComEd (AG Init. Br. at 12), the Company demonstrated that it has already explored the possibility of offering a combined behavioral program, but determined such an undertaking to be unworkable due to the difficulty of synchronizing data from two separate utility information technology billing platforms. Jerozal Reb., Nicor Gas Ex. 7.0, 4:82-5:93; Jerozal Sur., Nicor Gas Ex. 11.0, 8:163-67.

plainly described that Nicor Gas would be using an RFP process to implement the BES program. Nicor Gas Ex. 1.1 at 45. In particular, Nicor Gas plans to explore options for the BES program through an RFP process, and to seek new ideas on how to further modify the BES program to target apartment dwellers and other non-traditional customers that may be underserved by the Second EEP. Jerozal Reb., Nicor Gas Ex. 7.0, 3:56-61. Nicor Gas also will use the RFP to solicit ideas for the program's design, which the Company intends to use to tailor the BES program to non-traditional customers and, thereby, to meet the requirements of Section 8-104(f)(5) to provide a diverse cross section of opportunities for customers. Jerozal Reb., Nicor Gas Ex. 7.0, 4:69-73. In response to the AG's arguments (AG Init. Br. at 12), Nicor Gas has already agreed to allocate the funds into other residential offerings if it is determined that it is not possible to offer a cost-effective BES program. Jerozal Sur., Nicor Gas Ex. 11.0, 6:123-31.

For all of these reasons and those stated in the Company's Initial Brief (at 15-16, 45-46), the Commission should approve Nicor Gas' BES program as proposed.

2. <u>Business Energy Efficiency Rebate Program</u>

ELPC argues that the Commission should order Nicor Gas to double the amount of customer incentives and to correspondingly cut administrative costs for its Business Energy Efficiency Rebates ("BEER") program. ELPC Init. Br. at 11. ELPC provides no factual substantiation for this adjustment and, instead, argues that Nicor Gas somehow has not demonstrated that there are "unusual or extraordinary circumstances" that warrant spending half of the budget on administrative costs. *Id*. at 12. ELPC's argument on this point is not supported by any evidentiary citations because ELPC did not rebut Nicor Gas' evidence responding to the proposal. *Id*. at 12. Moreover, ELPC's argument blatantly ignores the substantial evidence Nicor Gas provided demonstrating the multiple reasons for the budget to be allocated as Nicor Gas proposes.

For example, Nicor Gas demonstrated in this proceeding that its BEER program applies to a wide range of business customers, including many small businesses, across a wide geographic territory. Jerozal Reb., Nicor Gas Ex. 7.0, 7:145-47. Accordingly, Nicor Gas invests in a significant effort of coordination and support in order to make sure the program serves a diverse cross section of customers, as required by Section 8-104(f)(5). *Id*. at 7:147-49. Nicor Gas also demonstrated that ELPC's proposal ignores current awareness levels and customer acquisition challenges that exist for a new program like the BEER program. *Id*. at 6:118-20. Worse still, if Nicor Gas were to reallocate its BEER program budget as ELPC proposes, there would be real-world impacts to marketing, trade ally engagement, administrative tracking, controls, education and outreach, and EM&V. Jerozal Reb., Nicor Gas Ex. 7.0, 6:115-18. All of these facts demonstrate that there are circumstances warranting Nicor Gas' proposed spend on the administrative costs for the BEER program.

Moreover, Nicor Gas presented evidence showing the arbitrariness of ELPC's recommendation by demonstrating that its BEER program is consistent with similar prescriptive gas programs in Illinois. In particular, Ameren Illinois has a program (Business Standard Incentive – gas and electric) similar to the Nicor Gas BEER program. Based upon the filings in the Ameren Illinois EEP proceeding, the customer incentive percentage is similar to what ELPC calculated for the BEER program in Nicor Gas' Second EEP. ELPC Init. Br. at 11; Docket No. 13-0498, Ameren Ex. 1.1, at 110. Using the same basic calculation ELPC used as to Nicor Gas, the Ameren Illinois program percentage associated with customer incentives is 30%, which compares reasonably to the percentage in the Nicor Gas filing for a like program, in a similar climate zone and customer base. Jerozal Reb., Nicor Gas Ex. 7.0, 6:128-7:142. Although the Ameren Illinois program is more mature than that of the Nicor Gas program, the Nicor Gas program serves a larger customer base. *Id.* At 7:133-34, 150-52. Nicor Gas' incentive percentage is reasonably lower than that of the Ameren Illinois Program, given that the Nicor Gas BEER program requires a substantial outreach and education effort to ensure that the program is accessed by a wide range of business customers, including many small businesses, across a wide geographic territory in accordance with Section 8-104(f)(5).

For all of these reasons and those stated in the Company's Initial Brief (at 46-47), the Commission should approve Nicor Gas' BEER program as proposed.

3. <u>Wasted Energy</u>

ELPC argues that the Commission should require Nicor Gas to conduct a wasted energy study in order to alter the design of its EEP. ELPC Init. Br. at 13. The Commission should reject ELPC's proposal for several reasons. ELPC has never conducted such a study, and was unable to identify any wasted energy study besides the study conducted by ComEd. Jerozal Reb., Nicor Gas Ex. 7.0, 13:262-63. Further, ELPC has conceded that it is unaware of the costs required to conduct such a study, and an examination of the ComEd study indicates that it took at least one year to complete. *Id.* at 13:278-84.

Importantly, Nicor Gas has already accounted for potential therm savings associated with behavior change in its Second EEP and, in light of the spending limits imposed by the Act, conducting a costly and lengthy study that has no quantifiable benefits would be detrimental to the Company's Second EEP. *Id*. at 14:285-96. Therefore, the Commission should decline to order Nicor Gas to conduct a wasted energy study as the replication of such a study is wholly unsupported by the evidence.

Finally, the Commission summarily should reject ELPC's alternative proposal that Nicor Gas develop "an action plan" based on ComEd's study because ELPC raises this argument for the first time in its Initial Brief and provides no evidentiary support whatsoever in support of this proposal. ELPC Init. Br. at 14.

B. Energy Efficiency Financing

Although not a required showing in this Section 8-104 proceeding, Nicor Gas presented evidence showing that the Company's On-Bill Financing ("OBF") Program under Section 19-140 of the Act has been approved by the Commission in the form of Rider 31, has been implemented by the Company, and will continue as long as funding for OBF is available. Quick Reb., Nicor Gas Ex. 10.0, 5:101-6:126; 7:140-42; Nicor Gas Ex. 10.1. Nicor Gas also demonstrated that the Company's OBF Program is well underway, with receipt of about 40 loan applications in the first month of operations since the Company's revised Rider 31 became effective on December 31, 2013. Quick Reb., Nicor Gas Ex. 10.0, 7:144-46. Further, Nicor Gas demonstrated that OBF options are available to customers and are part of the Company's efforts to provide information and education to customers about financing opportunities available to them. Quick Reb., Nicor Gas Ex. 10.0, 3:47- 5:92.

Blatantly ignoring the irrelevance of the OBF Program to this proceeding—and the evidence showing Nicor Gas' efforts to make its OBF Program available and known to customers—CUB criticizes the Second EEP because it does not mention the OBF Program. CUB Init. Br. at 12. CUB also argues that the Commission should order Nicor Gas to discuss the OBF Program with the SAG "to ensure that the Company is coordinating the implementation of the OBF" with the Second EEP programs. CUB Init. Br. at 13. The Commission should reject both arguments because there is absolutely no requirement in Section 8-104 that Nicor Gas mention its OBF Program in the Second EEP and CUB fails to articulate any specific concern that it has with the Company's coordination between its EEP and OBF Program.

Moreover, Nicor Gas demonstrated that there is already a Commission-approved process underway in which each of the utility's OBF Programs will be subject to an independent effectiveness evaluation. Specifically, the Commission's Final Order in Docket No. 11-0689, which established the ground rules for an independent effectiveness evaluation of each utility's OBF program, recognized that the evaluation should address how to increase participation in OBF programs. *Commonwealth Edison Co., et al.*, Docket No. 11-0689 (Order May 15, 2013) , at 5, 7. CUB, the utilities and other interested parties participated in the proceeding. *Id*. at 1-2. The Final Order also provides that the evaluation will be filed in a new docket where "parties will have the opportunity to comment." *Id*. at 7.

Thus, Commission-approved actions are already taking place to address the topics CUB suggests for discussion at the SAG, *i.e.*, how vendors and contractors implementing the EEP are making customers aware of the OBF Program and vice versa. CUB Init. Br. at 13. The Final Order in Docket No. 11-0689 shows that the Commission is aware of issues relating to the OBF programs and has established a process to analyze these issues and receive feedback from interested parties on the effectiveness of the OBF programs. Accordingly, there simply is no need to order SAG discussions on the OBF programs, which are being addressed through the evaluation process approved in Docket No. 11-0689 and will be discussed in the future docket contemplated in the Final Order in that proceeding.

C. <u>Savings Goal Compliance Proceeding</u>

Staff recommends that the Commission order a savings goal compliance proceeding to be initiated by a Nicor Gas petition filing. Staff Init. Br. at 10. Nicor Gas does not oppose Staff's recommendation for a savings goal compliance proceeding with respect to its Second EEP, which would initiate after the independent evaluation documents and cost-effectiveness analyses are available. Nicor Gas Init. Br. at 52; Jerozal Reb., Nicor Gas Ex. 7.0, 23:511-13.

V. **CONCLUSION**

For all the reasons set forth above, appearing of record, or stated in Nicor Gas' Initial Brief or its draft proposed order to be filed on March 25, 2014, Nicor Gas respectfully requests that the Commission enter an Order in accordance with Section 8-104 of the Act approving Nicor Gas' proposed Second EEP and policy recommendations, as revised in this proceeding. The Commission also should reject Staff and intervenor proposals for the reasons described herein and in Nicor Gas' Initial Brief.

Dated: March 24, 2014

Respectfully submitted,

NORTHERN ILLINOIS GAS COMPANY
D/B/A NICOR GAS COMPANY

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