

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

The People of the State of Illinois, ex rel. Lisa Madigan, Attorney General of the State of Illinois	: : : : : :	Docket No. 15-0487
Petition to Approve an Illinois Energy Efficiency Policy Manual	: : : : : :	

**STAFF OF THE ILLINOIS COMMERCE COMMISSION
INITIAL COMMENTS AND OBJECTIONS TO
THE ILLINOIS ENERGY EFFICIENCY POLICY MANUAL VERSION 1.0**

KELLY A. TURNER
MEGAN C. McNEILL
Office of General Counsel
Illinois Commerce Commission
160 North LaSalle Street, Suite C-800
Chicago, IL 60601
Phone: (312) 793-3305
Fax: (312) 793-1556
kturner@icc.illinois.gov
mmcneill@icc.illinois.gov

September 30, 2015

*Counsel for the Staff of the
Illinois Commerce Commission*

Table of Contents

1. Section 1: Glossary	4
2. Section 2: Overview and Guiding Principles	8
2.1 Background	8
2.2 Goals	14
2.3 Effective Date	14
2.4 Updates to this Policy Manual	14
2.5 Roles and Responsibilities	18
3. Section 3: Illinois Energy Efficiency Stakeholder Advisory Group	18
3.1 Disclaimer	18
3.2 Background	18
3.3 Advisory Role	18
3.4 Facilitation	18
3.5 Annual Planning	19
3.6 Participation.....	19
3.7 SAG Review	19
3.8 Proposal Support.....	20
3.9 Consensus Decision-Making	20
4. Section 4: Program and Portfolio Planning	20
4.1 Goals	20
4.2 Budget Allocation.....	20
5. Section 5: Cost Categories	20
5.1 Purpose	20
5.2 Portfolio Cost Categories.....	20
5.3 Program Cost Categories for Section 8-103 and 8-104 Programs	20
5.4 Inducements.....	20
6. Section 6: Program Administration and Reporting	21
6.1 Program Flexibility and Budgetary Shift Rules.....	21
6.2 Adjustable Savings Goals.....	22
6.3 Energy Efficiency Program Reports and Documents.....	30
6.4 Reporting Purpose.....	30
6.5 Program Administrator Quarterly Reports	30
6.6 Program Administrator Annual Summary of Activities (Annual Report)	30
7. Section 7: Evaluation Policies	30

7.1	Technical Reference Manual	30
7.2	Net-to-Gross Policy	30
7.3	Free Ridership and Spillover	34
8.	Section 8: Total Resource Cost Test	34
8.1	Statutory Definitions	34
8.2	Measuring Cost-Effectiveness	34
8.3	Calculating TRC	34
8.4	TRC Costs	34
9.	Section 9: Uniform Methods Project and Evaluation Consistency.....	43
9.1	Uniform Methods Project	43
10.	Section 10: Evaluation Measurement & Verification Work Plans and Reports ...	43
10.1	EM&V Work Plans	43
10.2	Draft EM&V Reports	43
	Conclusion	44

Attachments

Staff Exhibit A: Policy Manual dated September 30, 2015

Staff Exhibit B: Comparison of Policy Manual dated July 14, 2015 and September 30, 2015 (Legislative Format for Changes between AG Exhibit A and Staff Exhibit A)

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

The People of the State of Illinois, ex rel. Lisa Madigan, Attorney General of the State of Illinois	: : : : : : : : : :	Docket No. 15-0487
Petition to Approve an Illinois Energy Efficiency Policy Manual		

**STAFF OF THE ILLINOIS COMMERCE COMMISSION
INITIAL COMMENTS AND OBJECTIONS TO
THE ILLINOIS ENERGY EFFICIENCY POLICY MANUAL VERSION 1.0**

Staff of the Illinois Commerce Commission (“Staff”), by and through its counsel, respectfully submits these Initial Comments and Objections (“Initial Comments”) to the Illinois Energy Efficiency Policy Manual Version 1.0 (“Policy Manual” or “AG Ex. A”) and The People of the State of Illinois, *ex rel.* Lisa Madigan, Attorney General of the State of Illinois’ (“AG”) Petition for Approval of an Illinois Energy Efficiency Policy Manual (“Petition”) filed on August 26, 2015 pursuant to Section 10-101 of the Illinois Public Utilities Act (“Act”), 220 ILCS 5/10-101. Staff also submits the Verification of Jennifer H. Morris in support of facts contained herein.

As an initial matter, Staff commends participating parties for their efforts and success in reaching consensus on numerous issues set forth in the Policy Manual. Nevertheless, as explained below Staff recommends that the Illinois Commerce Commission (“ICC” or “Commission”) clarify and/or modify the Policy Manual submitted by the Petitioner and its supporters (parties in support of the Petition that submitted Verifications included as Exhibit C attached to the Petition), namely Ameren Illinois

Company d/b/a Ameren Illinois (“Ameren”), Commonwealth Edison Company (“ComEd”), Northern Illinois Gas Company d/b/a Nicor Gas Company (“Nicor”), North Shore Gas Company and The Peoples Gas Light and Coke Company (“NSG-PG”), the Illinois Department of Commerce and Economic Opportunity (“DCEO”), the Citizens Utility Board (“CUB”), the Environmental Law and Policy Center (“ELPC”), and the Natural Resources Defense Council (“NRDC”) (collectively referred to herein as “Petition Supporters”).

Staff notes that the Petition indicates that the Petition Supporters urge the Commission to making findings in this proceeding resolving issues pertaining to five sections of the Policy Manual, namely: (1) Section 1, Glossary; (2) Section 2, Overview and Guiding Principles; (3) Section 5, Cost Categories; (4) Section 6, Program Administration and Reporting; and (5) Section 8, Total Resource Cost Test. (Petition, ¶ 15.) While Staff respects the Petition Supporters’ desire to streamline this proceeding, given the importance of the policies set forth in the Policy Manual and their applicability to ratepayer-funded energy efficiency investments over the next energy efficiency plan cycle for all Program Administrators, Staff made no attempt to limit these Initial Comments and Objections to the five sections requested in the Petition. Staff believes it will best serve all parties to have the Commission clarify in this proceeding any areas of the Policy Manual that are confusing. Staff also believes a record in this case with explanations for policy deviations from past Commission practice is needed.

After careful review of the version of the Policy Manual filed in this proceeding, Staff determined that there are a number of components of the Policy Manual that require further clarification from the Commission in order to increase clarity and certainty for all parties and reduce litigation before the Commission in future proceedings, which are key

goals identified on page 8 of the Policy Manual. Furthermore, there are policies addressed in the Policy Manual which Staff believes deviate substantially from past Commission Orders and that Staff is concerned that there is no justification for the departure from recently-approved Commission Orders. Finally, Staff believes some corrections are necessary in order to ensure key policies described support the Commission's stated goal of the Policy Manual, which is "to ensure that programs across the state and as delivered by various program administrators can be meaningfully and consistently evaluated." Northern Ill. Gas Co. d/b/a Nicor Gas Co., ICC Order Docket No. 13-0549, 57-58 (May 20, 2014) ("Nicor Gas Plan 2 Order").

Staff notes that the Commission's articulated goal "to ensure that programs across the state and as delivered by various program administrators can be meaningfully and consistently evaluated" for the Policy Manual does not appear in the list of goals set forth within the Policy Manual. Despite the fact that the Policy Manual appears to cover material that goes beyond the scope of what was directed by the Commission initially, Staff sees value in having the Commission adopt some consistent minimum policy guidance in this proceeding with all the Illinois Program Administrators, in order to avoid having to litigate a whole host of policy issues in the next plan filing dockets. Staff believes that adoption of these minimum consistent policies, along with the revisions and/or modifications explained below, will reduce litigation and streamline the process for the next plan filings. Staff's proposed modifications and revisions are shown in legislative format within these comments, and all proposed Staff revisions are shown in legislative format in the attached Staff Exhibit B. Staff Exhibit A attached hereto contains a clean revised version of the Policy Manual that incorporates Staff's recommendations set forth

herein. For the reasons set forth herein, Staff recommends the Commission approve and adopt the Policy Manual set forth in Staff Exhibit A.

1. Section 1: Glossary

The phrase “breakthrough equipment and devices” appears in the Policy Manual in several sections, namely Sections 1, 3.7, 4.2iii, 5.2i, 6.5iii, and 6.5vi of the Policy Manual. (AG Ex. A, 5, 11, 14, 15, 18, 19.) Staff requests the Commission clarify and/or modify the Policy Manual concerning the definition of “breakthrough equipment and devices,” which appears on page 5 of the Policy Manual. The Policy Manual states:

Breakthrough Equipment and Devices means energy-efficient technologies, Measures, projects, Programs, and/or services that *the Program Administrator determines* are generally nascent in Illinois or nationally, for which energy savings have not been validated through robust evaluation, measurement and verification (EM&V) efforts, in the Program Administrator service territory, or for which there is substantial uncertainty about their Cost-Effectiveness, performance, and/or Customer acceptance. Demonstration of Breakthrough Equipment and Devices is intended to support research and development activities.

(AG Ex. A, 5 (emphasis added).)

The phrase “the Program Administrator determines” should be removed from the definition of “breakthrough equipment and devices” in Section 1 Glossary and/or the Commission should clarify that it should not be interpreted to give Program Administrators¹ the unilateral and unalterable right to make final determinations as to which technologies, measures, projects, programs, and/or services are encompassed by

¹ The Policy Manual identifies the Program Administrators as Ameren, ComEd, DCEO, Nicor Gas, and NSG-PG. (AG Ex. A, 7.)

the definition. Staff's concern is that the word "determines" is inflexible. Program Administrators should not exclusively determine which technologies, measures, projects, programs, and/or services should be included within the definition of "breakthrough equipment and devices." In cases when such inclusions or exclusions are otherwise inconsistent with the definition of "breakthrough equipment and devices," Staff and other interested parties should not be foreclosed from challenging the Program Administrators determinations.

Staff notes that the phrase "breakthrough equipment and devices" appears in Sections 8-103(g) and 8-104(g) of the Illinois Public Utilities Act ("Act"), and a 3% spending limit is established for demonstration of "breakthrough equipment and devices." Section 8-103(g) of the Act states:

(g) No more than 3% of energy efficiency and demand-response program revenue may be allocated for demonstration of breakthrough equipment and devices.

220 ILCS 5/8-103(g). Section 8-104(g) of the Act states:

(g) 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). The Commission's Orders in ICC Docket Nos. 13-0495, 13-0498, 13-0499, and 13-0550 directed Staff, the utilities, and DCEO to conduct a workshop with other SAG participants to develop a clear definition of "breakthrough equipment and devices" that could be applied statewide. Ameren Ill. Co., ICC Order Docket No. 13-0498, 33 (January 28, 2014) ("Ameren Plan 3 Order"); Commonwealth Edison Co., ICC Order Docket No. 13-0495, 136 (January 28, 2014) ("ComEd Plan 3 Order"); Ill. Department of Commerce and Economic Opportunity, ICC Order Docket No. 13-0499, 46-47 (January

28, 2014) (“DCEO Plan 3 Order”); North Shore Gas Co. and The Peoples Gas Light and Coke Co., ICC Order Docket No. 13-0550, 35-36 (May 20, 2014) (“Peoples/North Shore Gas Plan 2 Order”). These recent Plan Orders require development of a clear, consistent definition of “breakthrough equipment and devices” for statewide application, with a few examples of the energy efficiency measures and programs that would fall under such definition.

The Commission clearly and succinctly explained the need for a definition of “breakthrough equipment and devices” stating:

The Utilities’ statutory savings goals have been substantially modified downward in this Plan as a result of the spending limitation set forth in Section 8-104(d) of Act. Therefore, every dollar spent on “breakthrough equipment and devices” means a dollar that is not spent on efficiency measures that provide for more certain savings benefits. By imposing such limitation on a specific cost category within the statute, the General Assembly intended that such costs be constrained so as to help achieve the policy objectives of the statute, i.e., the reduction of direct and indirect costs to consumers. For these reasons, it is more important than ever that the Utilities comply with the Section 8-104(g) statutory spending limitation. To ensure such compliance, the Commission sees that a definition for “breakthrough equipment and devices” is needed, and believes this question is best addressed by the SAG. There a clear definition with a few examples of the energy efficiency measures and programs that would fall under such definition can be developed and presented to the Commission for approval. Accordingly, the Commission directs the Utilities and Staff to conduct a workshop with other SAG participants on a clear definition of breakthrough equipment and devices that could be applied during Plan 2. Additionally, the Utilities should include within their reports to the Commission any definition adopted, the measures that fall under the definition, and, if necessary, any modifications to the Plan that the Utilities make to bring the Plan into compliance with Section 8-104(g) of the Act.

Peoples/North Shore Gas Plan 2 Order at 35-36.

Staff agrees that the Program Administrators have discretion to choose what measures and programs to propose for inclusion in their portfolios for each 3-year plan

filing, but stakeholders should be able to protest the inclusion of such measures and programs as “breakthrough equipment and devices” when they believe they do not meet the definition of “breakthrough equipment and devices.” Furthermore, whether or not any measures and programs are determined to be “breakthrough equipment and devices” is ultimately subject to Commission approval. If retained, the Commission should make clear that by including the phrase “the Program Administrator determines,” the definition of “breakthrough equipment and devices” does not prevent the Commission from directing Program Administrators to include or exclude technologies, measures, projects, programs, and/or services within the plan as “breakthrough equipment and devices” subject to the 3% cap.

If the phrase “Program Administrator determines” is meant to refer to the general process by which Program Administrators propose “breakthrough equipment and devices,” Staff does not object to the intent of the definition. Program Administrators should a) have opportunity propose new “breakthrough equipment and device” programs, and b) have primary responsibility to oversee how those programs are structured, designed, and managed. If the purpose of this language is only to convey this intent, then the Commission should provide clarification in its Order in this proceeding so as to avoid litigation in the future. If, however, it is meant as a determining role – only Program Administrators can decide what are “breakthrough equipment and devices” – Staff objects to the definition.

For the above reasons, the Commission should approve the following modifications to page 5 of the Policy Manual:

Breakthrough Equipment and Devices means energy-efficient technologies, Measures, projects, Programs, and/or services that ~~the~~

~~Program Administrator determines~~ are generally nascent in Illinois or nationally, for which energy savings have not been validated through robust evaluation, measurement and verification (EM&V) efforts, in the Program Administrator service territory, or for which there is substantial uncertainty about their Cost-Effectiveness, performance, and/or Customer acceptance. Demonstration of Breakthrough Equipment and Devices is intended to support research and development activities.

Alternatively, the Commission should clarify that by including the phrase “the Program Administrator determines,” the definition of “breakthrough equipment and devices” is not intended to prevent interested parties from recommending and the Commission from directing Program Administrators to include or exclude technologies, measures, projects, programs, and/or services that do not otherwise meet the definition of “breakthrough equipment and devices” within the plan as “breakthrough equipment and devices” subject to the 3% cap.

2. Section 2: Overview and Guiding Principles

2.1 Background

As currently drafted, it is not clear from the Policy Manual itself, what authority the Policy Manual represents. Accordingly, Staff proposes the following edits to page 8 of the Policy Manual:

This Illinois Energy Efficiency Policy Manual (Policy Manual) provides guiding principles for procurement, oversight, evaluation and operation of the electric and gas Energy Efficiency Programs authorized under Sections 8-103 and 8-104 of the Illinois Public Utilities Act (Act), and Section 16-111.5B, as applicable. The principles and policies articulated in the Policy Manual were derived from Commission orders, policies and procedures developed by the SAG, as well as Best Practices from state Energy Efficiency Programs delivered throughout the nation. It is recognized that, notwithstanding the principles and policies articulated herein, the Commission retains the discretion to authorize deviations from the Policy Manual in future proceedings before the Commission. The Policy Manual

does not supersede any Commission Order and Program Administrators are required to comply with the directives of previous Commission Orders regardless of whether or not they are included in this Policy Manual. If there is any conflict between this Policy Manual and a Commission Order, the Commission's Order controls.

This clarification is necessary for several reasons. First, it is necessary to clearly indicate that the Policy Manual itself does not supersede any Commission order currently in effect. Second, the addition of this language will clarify that the Commission has final authority on matters related to the Policy Manual and, accordingly, may authorize deviations from the Policy Manual. Third, this clarification is necessary to prevent any party from arguing in the future that inclusion of a matter within the Policy Manual precludes litigation on such matters in Commission proceedings. Finally, the addition of this language will bring to the Illinois Policy Manual best practices in line with those currently in effect in other states.

Staff understands that the Policy Manual is not meant to supersede any currently effective Commission Order. In order to minimize any potential for confusion on this point, Staff urges the Commission to explicitly state this point by adopting the language proposed above. The provisions set forth in the Policy Manual are minimal requirements intended to help increase statewide consistency in energy efficiency policies across various Program Administrators, and the Commission should note in its Final Order that nothing set forth therein is intended to supersede existing ICC directives or ICC reporting policies that may be more comprehensive than the language in the Policy Manual. If there is any conflict between the Policy Manual and a Commission Order, the Commission's Order controls.

As an example of how ambiguity with respect to the authority of the Policy Manual might create confusion, consider Section 6.1 Program Flexibility and Budgetary Shift Rules. The Policy Manual does not specify whether this section is applicable with respect to Section 8-103, 8-104, and/or 16-111.5B energy efficiency programs. While its application may be appropriate with respect to Section 8-103 and 8-104 energy efficiency programs, this section should not be applied to Section 16-111.5B energy efficiency programs. The flexibility provisions set forth in Section 6.1 of the Policy Manual are inconsistent with provisions adopted by the Commission in ICC Docket No. 14-0588 concerning the Section 16-111.5B energy efficiency programs and flexibility.² The Policy Manual should not reverse the Commission's prior determinations and should clearly reflect that it, in the event of conflicts, it does not do so.

Second, as reflected by Staff's proposed edits set forth above, as well as below in Section 2.3, the Commission should specify that it retains the discretion to authorize deviations from the Policy Manual in future proceedings. The Commission's review and approval of the Policy Manual in this proceeding will not restrict the Commission's future ability to deviate from the guidance provided in the Policy Manual in future proceedings on a case-by-case basis. While the Policy Manual will provide policy guidance to the Program Administrators and stakeholders, the Commission must retain the discretion to adapt its energy efficiency policies on a case-by-case basis to reflect the facts surrounding each case.

² In 2014, all interested stakeholders participated in Commission-ordered workshops to reach consensus on Section 16-111.5B energy efficiency issues, which are summarized in the following Staff report: <http://www.icc.illinois.gov/downloads/public/Staff%20Report%20Summary%20of%202014%20Section%2016-111%205B%20EE%20Workshops%20with%20Attachments%202014-07-09.pdf>

Third, the proposed language above is needed because the Policy Manual is not a full and complete set of guidelines covering all aspects of energy efficiency programs in Illinois. Thus, this language will assist to minimize arguments that debate on or litigation of a particular energy efficiency policy issue is precluded by the fact that the Policy Manual, by its omission of an aspect of energy efficiency, has already addressed such aspects.

Finally, Staff recognizes that Energy Efficiency Policy Manuals adopted in other states contain disclaimers such as these in order to increase clarity and certainty to Program Administrators and other parties. The absence of such language within the Illinois Policy Manual itself or within the Commission Order adopting the Policy Manual may result in misinterpretation by certain parties to mean that the previous Commission Orders are no longer applicable after the Commission approves the Policy Manual. For example, the Wisconsin Focus on Energy Policy Manual³ contains a footnote on each page stating: “[t]hese policies are applicable to all Focus on Energy representatives, except where superseded or modified by the Public Service Commission.” In addition, the California Energy Efficiency Policy Manual Version 5 (July 2013) contains the following clarifications:

1. Energy Efficiency Policy Manual Disclaimer. This Policy Manual is a summary of Commission directives for energy efficiency. It does not supersede any Commission Decision. IOUs, RENs and CCAs are required to meet the orders of previous Commission decisions regardless of whether or not they are included in this policy manual. If there is any conflict between

³ The Wisconsin Focus on Energy Policy Manual is publicly available at: <https://focusonenergy.com/sites/default/files/2015%20Focus%20on%20Energy%20Policy%20Manual%20-%20FINAL.pdf>

this Policy Manual and a Commission decision, the Commission's decision controls.

2. Modifications to Policy Manual and Related Rules. The assigned ALJ or Commissioner may issue a ruling directing Commission staff revisions to the Policy Manual when necessary.

(California Energy Efficiency Policy Manual Version 5,⁴ 42.) Given the Policy Manual filed in this docket is not a comprehensive summary of all the Commission directives for energy efficiency, it is critical to make disclaimers in the Policy Manual to clarify that previous Commission directives concerning energy efficiency that are not explicitly identified in the Policy Manual remain in full effect. The Commission should specify that the provisions set forth in the Policy Manual are minimal requirements and nothing set forth therein is intended to supersede existing Commission directives or reporting policies that may be more comprehensive than is provided for by the language in the Policy Manual.

Staff is concerned that a party may argue in the future that absence of addressing a specific illustrative energy efficiency policy issue in the Policy Manual means that policies previously adopted by the Commission no longer apply. Staff provides examples below of issues not addressed in the Policy Manual that Staff believes should remain in effect despite their absence in the Policy Manual.

For example, the independence of the energy efficiency Evaluator is a provision addressed in numerous ICC Orders, 07-0539, 07-0540, 10-0562, 10-0564, 10-0568, 10-0570, 13-0498, 13-0549, 13-0550, yet there is no language concerning the contract provisions to help ensure the independence of the Evaluator contained in the Policy

⁴⁴ The California Energy Efficiency Policy Manual is publicly available at: <http://www.cpuc.ca.gov/NR/rdonlyres/7E3A4773-6D35-4D21-A7A2-9895C1E04A01/0/EEPPolicyManualV5forPDF.pdf>

Manual. Similarly, the safeguard provisions concerning the independence of the IL-TRM Administrator adopted in ICC Docket No. 13-0077 are absent from the Policy Manual. The Policy Manual should be amended so that it is clear that despite omitting these requirements, it does not supersede them.

Another example concerns the Illinois Statewide Technical Reference Manual for Energy Efficiency (“IL-TRM”) Research. Staff notes that the SAG review provisions concerning Technical Reference Manual Research, which is addressed in Section 3.7 SAG Review in the Policy Manual, should not be interpreted to override/undo the Commission’s current policy related to the IL-TRM research being posted by Program Administrators in ICC Docket No. 12-0528, consistent with IL-TRM Policy Document directives adopted in ICC Docket No. 13-0077.

Section 6.5 Program Administrator Quarterly Reports provides a further example of a contradiction between Commission policies currently in effect and the Policy Manual. The establishment of SAG quarterly report guidelines in the Policy Manual should not replace or circumvent existing ICC directives concerning reports that should be filed with the Commission, many of which are set forth in the utilities’ energy efficiency tariffs.

The specific examples of issues not addressed in the Policy Manual listed above are items that Staff believes should remain in effect despite their absence in the Policy Manual. These examples do not constitute an exhaustive list, and demonstrate that the Policy Manual’s authority should be clearly demarcated in order to avoid conflict with existing Commission Orders.

2.2 Goals

2.3 Effective Date

For the reasons described above in Section 2.1, Staff proposes the following edits to page 8 of the Policy Manual:

The effective date for this Policy Manual is June 1, 2017 or the beginning of the next Portfolio Plan. It is recognized that, notwithstanding the principles and policies articulated herein, the Commission retains the discretion to authorize deviations from the Policy Manual in future proceedings before the Commission. The Policy Manual does not supersede any Commission Order and Program Administrators are required to comply with the directives of previous Commission Orders regardless of whether or not they are included in this Policy Manual. If there is any conflict between this Policy Manual and a Commission Order, the Commission's Order controls.

2.4 Updates to this Policy Manual

Section 2.4 Updates to this Policy Manual states: “[t]his Policy Manual will be reviewed annually and updated as needed.” (AG Ex. A, 8.) The Petition expands slightly on the update process when it states:

12. The proposed effective date of the Policy Manual is June 1, 2017 or the beginning of the next energy efficiency portfolio plans. The Policy Manual is intended to be a work in progress, with annual reviews and the development of additional detail and updates as needed. To the extent the Policy Manual is modified annually, Commission approval will be sought by March 1st of each year.

(Petition, 7-8.)

It is not clear from the Policy Manual itself nor the Petition (1) “who” is tasked with seeking Commission approval of any updated Policy Manual; (2) “how” the determination for whether any updates are “needed” to the Policy is made, the criteria that should be considered in making such a determination, and the process and criteria that should be

used for determining “what” policies will be included in those updates; (3) “who” is responsible for making the determination for whether any updates are “needed” to the Policy Manual, when such a determination would be made, and what policies will be included in such updates; and (4) “why” the March 1 date specified in the Petition is appropriate.

Staff believes that of utmost importance in this proceeding is specification of a clear process for updating to Policy Manual Version 2.0 in advance of next year’s energy efficiency plan filings in order to assure that several of the key goals of the Policy Manual are achieved. As recognized in part by the numerous references to a Policy Manual Version 2.0 contained in AG Exhibit B attached to the Petition, the Policy Manual Version 1.0 is incomplete with respect to a number of key policy issues. Staff is concerned that if key policy issues are not addressed in Version 2.0 of the Policy Manual in advance of the Section 8-103 and Section 8-104 energy efficiency plan filings and Section 16-111.5B energy efficiency assessment submittals that all occur next year, then the Policy Manual’s effectiveness will be greatly diminished. Without timely resolution of the outstanding policy issues, such an approach could end up resulting in significant differences in energy efficiency policies across Program Administrators. Therefore, it is essential that a clear update process for the Policy Manual is laid out in this Version 1.0.

Staff additionally questions why the March 1 date specified in the Petition is the appropriate date by which any updates to the Policy Manual should be submitted to the Commission for approval. Staff is very concerned that a March 1 deadline does not provide adequate time for the Commission to carefully consider complex and potentially

litigious policy issues and have those resolved prior to the commencement of a new program year, annually on June 1.

The Petition states:

14. Given the fact that the next three year plan development process is underway, consistent with the Policy Manual, the People, the Program Administrators and stakeholders identified in paragraph 9 of this Petition respectfully request that the Commission, after notice of this filing has been issued and a hearing held to determine next steps, *approve the Policy Manual version 1.0 on an expedited basis within ninety (90) days of the date of this filing.*

(Petition, 8 (internal reference omitted) (emphasis added).) Staff notes that the requested approval timeframe for the Policy Manual Version 1.0 is even shorter than the current statutory Section 8-103 and 8-104 plan filing timeframes for Commission approval. Staff notes that the Commission has expressed concern with limited timelines, such as the 90-day statutory timeframe for Commission approval of the Illinois Power Agency (“IPA”) electricity procurement plan, to address complex energy efficiency issues. See, Illinois Power Agency, ICC Final Order Docket No. 14-0588, 224 (December 17, 2014). Furthermore, the 90-day statutory timeframe for the IPA procurement plan does not include the time prior to the filing for public comment. Staff would add that unlike the written commenting opportunities, including the ability to propose substantive replacement language, provided to the public in advance of the IPA procurement plan filings with the Commission, which is also provided for in advance of the annual IL-TRM Update filing with the Commission as part of the annual IL-TRM Update Process approved by the Commission, no such comparable substantive written public commenting opportunities were offered or allowed for during the Policy Manual development or in

advance of the filing of Policy Manual Version 1.0 with the Commission, despite Staff's request for such an opportunity early in the process.

While the Petition recognizes that Commission approval of policies as part of the Policy Manual is important to help minimize potential litigation in future proceedings (Petition, ¶ 13), the Petition fails to recognize that such minimization of potential policy litigation in future energy efficiency proceedings is largely contingent on outstanding policy issues being adequately addressed within the Policy Manual.

Staff respectfully requests the Commission clarify where outstanding energy efficiency policy issues applicable to all Program Administrators should be addressed. Staff believes that there are several core options available for having the Commission resolve such outstanding energy efficiency policy issues: (1) through Policy Manual Version 2.0 completed in advance of the Section 8-103, 8-104, and 16-111.5B energy efficiency submissions next year; (2) through a separate docket initiated by a Staff Report with participation by all Program Administrators opened specifically to address and resolve outstanding energy efficiency policy issues; (3) within each Program Administrator's energy efficiency filings next year, which historically have involved numerous complex issues and subject to limited statutory timelines; or (4) through other means as the Commission sees fit.⁵ Staff respectfully requests Commission guidance on this point in order to provide greater clarity to all parties concerning the appropriate venue for such policy resolution to occur. If the Commission chooses option (1), Staff respectfully requests the Commission clarify the party that shall be responsible for the

⁵ Staff does not specifically endorse any of these options and understands that some options may not allow for a final determination on outstanding issues prior to the next plan filing deadline.

creation and submission of Policy Manual Version 2.0 as well as the date by which such submission should occur.

2.5 Roles and Responsibilities

3. Section 3: Illinois Energy Efficiency Stakeholder Advisory Group

3.1 Disclaimer

3.2 Background

3.3 Advisory Role

3.4 Facilitation

Staff is concerned that the SAG provisions contained in the Policy Manual may not actually take place, due to the fact that SAG is not an entity regulated by the Commission. This has happened in the past. In ICC Docket No. 10-0568, the Commission directed the SAG to “file the reports related to its responsibilities articulated in this Order, via the Commission's e-Docket system in Docket No. 10-0568.” Central Ill. Light Company d/b/a AmerenCILCO, et. al., ICC Order Docket No. 10-0568, 87 (December 21, 2010) (“Ameren Plan 2 Order”). Despite this clear Commission directive, the SAG did not comply, and the reports were not filed on the Commission’s e-Docket system.

To ensure that requirements set forth in the Policy Manual are met, the Commission should direct the utilities to incorporate provisions in their contracts with the SAG Facilitator to require compliance with the Policy Manual directives. This approach is consistent with language contained in the Policy Manual to help ensure compliance with other provisions. For example, in Section 5.4 Inducements, the Policy Manual states: “Program Administrators shall explicitly incorporate such prohibitions in all vendor contracts (including contracts for vendor subcontractors) that involve costs recovered

through the Energy Efficiency cost recovery tariff mechanisms.” (AG Ex. A, 16.) In Section 7 Evaluation Policies, the Policy Manual states: “Program Administrators shall include requirements in contracts, for provisions in this Policy Manual that describe Evaluator obligations.” (AG Ex. A, 21.) Additionally, in Section 10 Evaluation Measurement & Verification Work Plans and Reports, the Policy Manual states: “Program Administrators shall include requirements in contracts, for provisions in this Policy Manual that describe Evaluator obligations.” (AG Ex. A, 29.) Staff firmly believes that in order to ensure specific items are accomplished, integration of these items into the utilities contracts will assist in the accomplishment of these items.

Accordingly, in order to help ensure compliance with the Policy Manual provisions in relation to the SAG Facilitator duties articulated in the Policy Manual, Staff recommends the Commission direct that the Policy Manual be revised to include the following provision in Section 3.4 as follows:

The SAG Facilitator serves as the central point of organization for meeting coordination, including timelines, agendas, issue research, action items and meeting notes. The SAG Facilitator is also responsible for regular updates to the SAG distribution list and website. The SAG Facilitator will provide subject matter expertise to inform discussion, to identify and disseminate Best Practices and tools to continue strengthening the Portfolio of Programs. Program Administrators shall include requirements in contracts for provisions in this Policy Manual that describe SAG Facilitator obligations.

3.5 Annual Planning

3.6 Participation

3.7 SAG Review

As addressed above in Section 2.1, the SAG review provisions concerning TRM research should not be interpreted to override/undo the Commission’s current policy

related to the IL-TRM research being filed by Program Administrators in ICC Docket No. 12-0528, consistent with IL-TRM Policy Document directives adopted in ICC Docket No. 13-0077. Staff believes that adoption of the Policy Manual provides for both policies to exist.

3.8 *Proposal Support*

On page 12 of the Policy Manual, a footnote 23 references an Appendix A with templates, but no such appendix exists. Accordingly, Staff recommends that footnote 23 on page 12 of the Policy Manual should be deleted.

3.9 *Consensus Decision-Making*

4. Section 4: Program and Portfolio Planning

4.1 *Goals*

4.2 *Budget Allocation*

5. Section 5: Cost Categories

5.1 *Purpose*

5.2 *Portfolio Cost Categories*

5.3 *Program Cost Categories for Section 8-103 and 8-104 Programs*

5.4 *Inducements.*

Staff recommends the language set forth in Section 5.4 be refined to specify that absence of such item from the list does not mean that such item is allowed; in other words, to clarify the list is not comprehensive. Staff believes specification that the list in Section

5.4 is not comprehensive is necessary, due to the fact that one of the stated goals⁶ is to reduce Program Administrator risk for disallowance. (See, AG Ex. A, 8.) Staff's proposed modifications to Section 5.4 are also necessary to better reflect the intent of the provision. For these reasons and those explained in Section 2.1, Staff recommends page 16 of the Policy Manual be modified as follows:

5.4 Inducements-Specific Unallowable Costs

~~Inducements means financial payments or non financial items provided to market actors (such as Program Implementation Contractors, Customers, Trade Allies, etc.) to encourage participation in Programs or to encourage involvement in market research, EM&V, or other Portfolio activities. Inducements shall not~~Unallowable costs include but shall not be limited to direct payment for alcoholic beverages or tickets to sports events. Program Administrators shall explicitly incorporate such prohibitions in all vendor contracts (including contracts for vendor subcontractors) that involve costs recovered through the Energy Efficiency cost recovery tariff mechanisms. Nothing in this provision shall preclude a party from recommending that other expenses be disallowed as recoverable costs in Commission proceedings.

6. Section 6: Program Administration and Reporting

6.1 *Program Flexibility and Budgetary Shift Rules*

Staff recommends modifications to the Policy Manual to clearly indicate that the flexibility provisions outlined in Section 6.1 are not applicable for Section 16-111.5B energy efficiency programs. As noted above in Section 2.1, the flexibility provisions set forth in Section 6.1 of the Policy Manual are inconsistent with the flexibility provisions

⁶ Staff does not support this stated goal of the Policy Manual to reduce Program Administrator risk for disallowance, but for the sake of minimizing contested issues in this case, Staff has not officially objected to its inclusion herein. Nevertheless, should the clarifications recommended in Section 2.1 and Section 5.4 be rejected, Staff would recommend deletion of this goal from the Policy Manual.

adopted by the Commission in ICC Docket No. 14-0588 concerning the Section 16-111.5B energy efficiency programs. The Policy Manual should not reverse the Commission's prior determinations and should clearly reflect that, in the event of conflicts, it does not do so. Accordingly, Staff proposes the following modifications to page 17 of the Policy Manual:

Any Program Administrator-initiated proposed budget shift of twenty percent (20%) or larger shall be brought to the SAG as well as reported to the Commission, in the quarterly reports. To the extent practicable to Program Administrators, these Program changes and/or budget shifts shall be presented to SAG before implementation. Such changes and/or budget shifts could include reallocation of funds within existing Programs and discontinuing or adding new Programs. Program Administrators are encouraged to bring Program design or budget shift proposals to SAG prior to implementation, notwithstanding the twenty percent (20%) baseline threshold. The flexibility provisions of Section 6.1 are not applicable for Section 16-111.5B Energy Efficiency Programs. The flexibility provisions of Section 6.1 are applicable, though not comprehensive, for Sections 8-103 and 8-104 Energy Efficiency Program Portfolio Plans.

6.2 Adjustable Savings Goals

Staff has several concerns with Section 6.2 Adjustable Savings Goals. First the Policy Manual deviates substantially from prior Commission directives on adjustable savings goals with no explanation provided for such deviations. Second, the proposal, by providing for only a single net-to-gross ("NTG") based savings goal update, based on NTG recommendations after Commission approval of a plan, may adversely affect bidder and administrator behavior. Third, it is unclear to Staff how the adjustable savings goals process contained in the Policy Manual would work. Finally, based on current experience with the adjustable savings goal process for Ameren, additional requirements are

warranted should the Commission choose to expand the adjustable savings goal process to all Program Administrators.

The Commission has established a practice for dealing with adjustable savings goals, and the Policy Manual would deviate from that practice. See, Peoples/North Shore Gas Plan 2 Order at 62; Nicor Gas Plan 2 Order at 68-69; Ameren Plan 3 Order at 151-153. The Commission, when it approved adjustable goals for Ameren, approved accompanying safeguards.⁷ There is no reason to drop these safeguards as the proposed Policy Manual does. The Commission explicitly rejected adjustable savings goals for Nicor and Peoples/North Shore Gas. Peoples/North Shore Gas Plan 2 Order at 62; Nicor Gas Plan 2 Order at 68-69. While there has, to Staff's knowledge, been no change in the circumstances from the time the gas utilities Plan 2 Orders were entered that would require a change in Commission practice, Staff does not oppose adopting consistent flexibility for all Program Administrators, provided that lessons learned from the existing adjustable goals process are adequately addressed through the Policy Manual provisions. Nevertheless, if the Commission adopts such flexibility for all Program Administrators, it should also impose the existing companion safeguards as it has done in the past. Ameren Plan 3 Order at 151-153.

Timeliness and transparency in adjusting goals is necessary in order to increase clarity and certainty for all parties. Staff recommends the Commission order the utilities

⁷ The Commission directed Ameren to: (1) prudently respond to market changes in the implementation of its programs; (2) spend all funding to the extent practicable on cost-effective energy efficiency measures in order to exceed the modified savings goals; (3) avoid over-promotion of cost-ineffective measures to avoid excessive participation in cost-ineffective measures; (4) provide cost-effectiveness screening results in quarterly ICC activity reports for new measures added to its Plan during implementation; and (5) explain how it responds to TRM, NTG, and other changes in its quarterly ICC activity reports. Ameren Plan 3 Order at 151-153.

to, in advance of their next plan filings, create, in conjunction with Staff and any other interested stakeholder, a consistent statewide adjustable goals template. This would make Program Administrator calculations more transparent and should also provide for more timely dissemination of such calculations. With respect to ComEd's PY6 adjusted savings goal, Staff pointed out errors in the calculation which created a conflict between correctly computed adjusted savings goals and those ComEd had been working for all program year. Timelier and more transparent adjustable goal calculations would eliminate such problems.

Next, Staff has concerns regarding how the adjustable goals process set forth in the Policy Manual would function on a practical level. It is not clear how the calculation is supposed to be performed given there is no standard set forth in the Policy Manual upon which to reference. The lack of clarity in the adjustable goals process increases potential for gaming and future litigation. Absent a clear standard for calculating adjustable goals increases the potential for variances across utilities in how each performs the adjusted savings goal calculation, again increasing potential for substantial litigation in future proceedings.

Historically, for Ameren the adjustable savings goal process was intended to work by holding energy efficiency measure participation levels assumed in the plan filing fixed in calculating adjusted energy savings goals each program year for the Section 8-103 and 8-104 portfolio. Despite assuming fixed participation levels in the adjusted savings goal calculation, of utmost importance was that Ameren was still required to actively manage the portfolio and respond to IL-TRM and NTG changes, among other things, and not by any means, aim for the fixed participation levels used in the calculation of adjusted

goals. To help monitor and ensure such active portfolio management continued to occur even with the adoption of adjustable savings goals, the Commission directed, among other things, that Ameren should prudently respond to market changes in the implementation of its energy efficiency programs, avoid over-promotion of cost-ineffective measures to avoid excessive participation in cost-ineffective measures, and to report back to the Commission on how exactly Ameren responds to IL-TRM, NTG, and other changes in its quarterly ICC activity reports filed with the Commission. For the Section 16-111.5B energy efficiency adjustable goals calculation, greater flexibility is provided to Program Administrators in how they choose to renegotiate their contracts with the third party vendors, as set forth in the consensus language adopted by the Commission in ICC Docket No. 14-0588.

In relation to NTG, historically, Ameren's goals were allowed to adjust each program year based on NTG updates, whereas the Policy Manual provides for adjustment to savings goals only once based on NTG updates and such adjustment occurs for all program years of the plan. Staff finds this single NTG adjustment provision to the savings goals to be bad policy and Staff advises the Commission to reject it. Staff recommends the Commission continue with its current sound policy pertaining to NTG updates in relation to savings goals, either (1) allow for no adjustment to savings goals as a result of all NTG updates, or (2) allow for adjustment to savings goals annually as a result of annual NTG updates.

Staff is concerned that adjusting goals based on NTG updates only once prior to the first program year of a Section 16-111.5B energy efficiency program may result in distorted incentives to Section 16-111.5B bidders that could result in a premium being

added on multi-year bids to account for the fact that goals cannot be adjusted in out-years based on NTG changes, or even choosing to opt for proposing a program for a single year, since that would provide for greater certainty in terms of the NTG savings calculations they would be held accountable for. This is problematic because this can result in increased cost to ratepayers for the Section 16-111.5B energy efficiency program. Such actions can be prevented by removing the restriction that only allows for savings goal adjustments in response to NTG changes once and only once.

The adjustable savings goal language in the Policy Manual does not allow for adjusting goals annually based on annual NTG updates; this creates an incentive for implementers under a pay-for-performance structure to oppose NTG updates that would make it more difficult to achieve the level of savings forecasted at the same cost. The IL-TRM process adopted by the Commission in ICC Docket No. 13-0077 provides that Commission resolution concerning non-consensus IL-TRM Updates will not go into effect until a later program year after Commission resolution. If the Policy Manual limits NTG adjustments to one adjustment following plan approval, then additional safeguards are necessary. Ensuring the Program Administrators provide adequate safeguards in their contracts to prevent any of their subcontractors from obstructing the consensus-seeking NTG and IL-TRM Update process, which includes IL-NTG Methods as well, especially in cases where it is advantageous for them to do so, is critical to preserving the integrity of the achieved savings estimates in Illinois that rely on the updates to the IL-TRM and NTG values. Given the Policy Manual proposes that adjustments to goals will be based on IL-TRM and first year NTG updates, Staff recommends the Commission direct Program Administrators to include provisions in their contracts that would prohibit obstruction of

the consensus-seeking process for IL-TRM and NTG updates. Staff notes that a comparable safeguard was adopted by the Commission in the Nicor Plan 2 Order, and Staff contends it should be reflected in the Policy Manual language in this proceeding applicable to all Program Administrators. Nicor Plan 2 Order at 78.

Staff is concerned that if the Commission does not provide for clarification in this proceeding in regard to how the adjustable savings goal calculation is to be performed, then litigation concerning how this calculation should be performed will inevitably result in each Program Administrator's energy efficiency plan filing docket next year. Furthermore, Staff notes that litigating this computational issue in each of the Program Administrator's plan filing docket increases the likelihood of adopting different adjustable savings goal calculation methodologies and policies across the different Program Administrators. Adopting inconsistent evaluation policies across the various Program Administrators is something Staff believed the Policy Manual was trying to avoid, where appropriate. Thus, Staff urges the Commission to clarify in this proceeding how the adjustable savings goal calculations are to be performed.

In order to provide greater clarity and certainty to all parties and address the problems experienced with adjustable savings goals to date, Staff recommends the Commission adopt the following modifications to page 17 of the Policy Manual:

~~Program Administrator and/or IPA annual energy savings goals will be adjusted to align them with changes to IL TRM values.~~

~~In addition, Program Administrator and/or IPA annual energy savings goals will be adjusted to align them with the Evaluator's recommended Net to Gross values for the entire Plan period prior to the start of the first Plan Year of an approved Plan or Section 16-111.5B Program.~~

~~Within sixty (60) days after Commission approval of the annual IL TRM values, each Program Administrator will file adjusted energy savings goals reflecting updated IL-TRM values applicable to the Program Year commencing June 1.~~

Energy savings goals for Section 16-111.5B Energy Efficiency Programs shall be adjusted in a manner consistent with the Section 16-111.5B Consensus Language adopted by the Commission in ICC Docket No. 14-0588.

Program Administrators shall include provisions in their contracts that would prohibit obstruction of the consensus-seeking process for IL-TRM and NTG updates. This requirement is applicable to Program Administrators managing Section 8-103, 8-104, and 16-111.5B Energy Efficiency Programs.

Energy savings goals for Section 8-103 and 8-104 Plans shall be adjusted in the following manner:

i. Annual IL-TRM Adjustments. Program Administrator annual energy savings Plan goals will be adjusted on an annual basis to reflect Commission-approved IL-TRM Measure changes in cases where the approved Plan explicitly estimated a specific amount of energy savings attributable to a specific Measure in the IL-TRM, and the IL-TRM change is directly and unambiguously linked to this calculation. Adjusted energy savings goals shall be calculated by multiplying the Measure participation levels in the approved Plan by the updated IL-TRM unit savings values, and then multiplying by the relevant Net-to-Gross Ratio value.

ii. Annual Net-to-Gross Adjustments. Each Program Administrator's annual energy savings goal will be adjusted to align with the deemed Net-to-Gross Ratio values for the applicable Plan Year. The adjusted energy savings goal for the applicable Plan Year shall be calculated by multiplying the Measure participation levels in the approved Plan by the updated unit savings values incorporating any IL-TRM changes and multiplying by the deemed Net-to-Gross Ratio values for the applicable Plan Year.

iii. Within sixty (60) days after initiation of the updated IL-TRM proceeding, each Program Administrator shall file adjusted energy savings goals with the Commission for the Plan Year beginning June 1 and the basis for the adjustments using a consistent template. Program Administrators shall include in such filing a summary of how the Program Administrator responded to key independent Evaluators' recommendations, changes in the IL-TRM, NTG Ratios, market research findings, and other relevant

information the Program Administrator relies upon in making decisions and that help demonstrate that adjustable savings goals has not resulted in passive Program administration. At least fifteen (15) Business Days before filing the adjusted energy savings goals with the Commission, each Program Administrator shall provide their adjusted energy savings goals and supporting work papers using a consistent template to the SAG and the Evaluators for review to help ensure the adjusted energy savings goal calculations were performed correctly. Finally, the five safeguards recommended by ICC Staff and approved by the Commission in ICC Order Docket No. 13-0498 in relation to adopting adjustable savings goals shall be made applicable to all Program Administrators subject to this section.

Staff notes that while the language set forth above provides that savings goals shall be adjusted for all Program Administrators, Staff would also support allowing each Program Administrator an opportunity to request in their Plan filings that Section 6.2 Adjustable Savings Goals of the Policy Manual not be applicable to them, given such inapplicability would likely reduce administrative costs associated with performing, reviewing, and verifying the accuracy of such calculations. Allowing for such a deviation in a key evaluation policy that is generally advantageous to Program Administrators seems consistent with the flexibility provided for DCEO in relation to the NTG Policy set forth in Section 7.2 of the Policy Manual, and as adopted by the Commission in the DCEO Plan 3 Order.

6.3 Energy Efficiency Program Reports and Documents

6.4 Reporting Purpose

6.5 Program Administrator Quarterly Reports

6.6 Program Administrator Annual Summary of Activities (Annual Report)

7. Section 7: Evaluation Policies

7.1 Technical Reference Manual

In order to correct a typographical error, Staff recommends replacing the word “Manal” with “Manual” on page 21 of the Policy Manual. Accordingly, Staff proposes the following edits to page 21 of the Policy Manual:

The Illinois Statewide Technical Reference Manual (IL-TRM) shall be applied consistent with Commission orders and the IL-TRM Policy document approved by the Commission in Docket 13-0077.

7.2 Net-to-Gross Policy

Although the revised NTG Framework is not Staff’s first preference for application of NTG ratios through the evaluations, for the sake of minimizing contested issues in this proceeding, Staff has no objection to Commission approval of the revised NTG Framework outlined in Section 7.2 of the Policy Manual for the Section 8-103, 8-104, and 16-111.5B energy efficiency programs, subject to modification, as described later in this section. While Staff remains concerned that the Evaluators may be put in the undesirable position of making the final NTG decision in cases where their client, the Program Administrator, disagrees with other stakeholders concerning what the final deemed NTG recommendation should be, Staff believes that at least the establishment of consistent statewide NTG methodologies through the IL-TRM process may help alleviate that

pressure over time as the Evaluators can fall back on recommending NTG values established from Commission-approved NTG methodologies, to the extent such methodologies are detailed enough to reduce ambiguity as to which NTG value should be used. Furthermore, refinement of the NTG Framework appears consistent with the Commission's direction provided in the Ameren Plan 3 Order, wherein the Commission encouraged the parties to continue discussions regarding a modified NTG Framework, stating:

The Commission is somewhat frustrated that the parties expect the Commission to resolve in the relatively short time-frame of this proceeding, the complex disputes that the parties could not resolve over an extended time frame of negotiations. As a result, for purposes of Ameren's Plan 3 the Commission declines to modify the NTG Framework and concludes that the NTG Framework adopted from Plan 2 should be utilized with minor modification. The Commission would encourage the parties to continue discussions regarding a modified framework, taking into account the comments made in this case, that would address the critical challenges resulting from the continued use of the current NTG Framework, while avoiding making the process excessively complicated or burdensome.

In order to provide additional certainty, which all parties advocate, 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. In all other respects, the NTG Framework adopted in Plan 2 should be utilized.

Ameren Plan 3 Order at 121-123 (emphasis added). The NTG Framework outlined in the Policy Manual is largely consistent with the NTG Framework adopted in the ComEd Plan 3 Order on Rehearing and the Peoples/North Shore Gas Plan 2 Order, while still providing for flexibility for DCEO to use retroactive NTG application as allowed for in the DCEO

Plan 3 Order. Commonwealth Edison Co., ICC Order on Rehearing Docket No. 13-0495, 2-3 (May 7, 2014) (“ComEd Plan 3 Order on Rehearing”); Ill. Department of Commerce and Economic Opportunity, ICC Order Docket No. 13-0499, 19-20 (January 28, 2014) (“DCEO Plan 3 Order”); Peoples/North Shore Gas Plan 2 Order at 50-51. The Commission should be aware that there are a few minor differences in the NTG Framework that are intended to address issues that have arose since the adoption of the previous NTG Framework, such as how to handle cases where a new pilot program, sub-program, measure group, and/or special project arises after the March 1 deadline. (See, AG Ex. A, 21-22.) Staff believes the new provisions for how to handle such exceptional situations will provide the certainty to Program Administrators that they desire during the course of the year. As long as such situations remain uncommon, Staff believes the approach to handle such rare situations is reasonable and an efficient approach to handle this issue mid-year. While stakeholders are not required to be involved in providing input to the deemed NTG ratio for these exceptional situations, Staff intends to alert the Commission in the event it appears that the policy is being abused.

Furthermore, Staff notes that if a stakeholder expresses an interest in being notified to the exceptional situations such that they can provide input into the deemed NTG ratio, either in this docket or through the SAG process, Staff would have no objection to allowing for stakeholders to be included in the mid-year quick review process. At this time, Staff is unaware of any stakeholder expressing an interest in providing input mid-year on a NTG ratio to deem for a new pilot program, sub-program, measure group, and/or special project arises after the March 1 deadline.

While Staff believes that the language in Section 7.2 is intended to provide for flexibility for DCEO to use retrospective NTG application as allowed for in the DCEO Plan 3 Order (DCEO Plan 3 Order at 19-20) if it so chooses, in reviewing the actual language of the Policy Manual concerning DCEO and NTG, Staff is concerned there could be potential for misinterpretation later, in the event it is not clarified in this docket. In particular, the statement of concern to Staff is as follows: “Should DCEO choose to use a retrospective NTG approach in the Energy Efficiency Plan whose implementation commences June 1, 2017, Section 7.2 will not apply to it, and low income residential and *Public Sector NTG estimates do not need to be developed.*” (AG Ex. A, 21 (emphasis added).) Staff is concerned that the phrase, “Public Sector NTG estimates do not need to be developed,” could be interpreted to mean that NTG does not need to be estimated for DCEO’s Public Sector programs, which if interpreted in that way would clearly contradict the Commission’s conclusion in the DCEO Plan 3 Order, which states: “DCEO is also required to incorporate the same NTG evaluation principles that apply to all utility efficiency programs for its public sector offerings, and thereby retain the calculation of net energy savings.” DCEO Plan 3 Order at 19-20. Staff requests clarification from the Commission that the phrase identified above simply means that “deemed” NTG estimates do not need to be developed for DCEO in advance of the March 1 deadline, if it chooses to have the NTG ratios estimated through evaluation applied retrospectively, consistent with the approach approved for DCEO for Plan 3. Accordingly, Staff recommends the Commission adopt the following edits to page 21 of the Policy Manual for the sake of clarification:

Should DCEO choose to use a retrospective NTG approach in the Energy Efficiency Plan whose implementation commences June 1, 2017, Section

7.2 will not apply to it, and low income residential and Public Sector deemed NTG estimates do not need to be developed.

Finally, in order to ensure clarity in the final deemed NTG ratio values and minimize potential for future litigation, Staff recommends the Commission direct the utilities to file in their respective energy efficiency plan dockets (or procurement plan docket for the Section 16-111.5B energy efficiency programs) the final deemed NTG ratios for the program year within fourteen (14) days of receipt of the final deemed NTG ratio values from the Evaluators. Furthermore, for the mid-year exceptional cases where a new pilot program, sub-program, measure group, and/or special project arises after the March 1 deadline, the Program Administrators should also file the final deemed NTG ratio values for these additional cases within fourteen (14) days of receipt of the deemed NTG values from the Evaluators.

7.3 Free Ridership and Spillover

8. Section 8: Total Resource Cost Test

8.1 Statutory Definitions

8.2 Measuring Cost-Effectiveness

8.3 Calculating TRC

8.4 TRC Costs

Incremental Cost Clarifications

Primary Proposal:

Staff recommends modification to the definition of “incremental costs” on page 25. This modified definition includes a system for classification of common types of energy

efficiency costs by particular program types for purposes of performing accurate cost-effectiveness calculations.

Staff sees no reason for excluding incremental cost clarifications for particular program types within the Policy Manual itself, as this can significantly reduce the burden on interested parties seeking high-level clarity on incremental cost classifications by various program types in Illinois. Currently, the definition refers to the IL-TRM for classification of particular costs as incremental costs for a number of measures and program types. Staff notes that the IL-TRM consists of over 800 pages, while the Policy Manual is only 30 pages. A sensible definition would provide the classifications for program types within the Policy Manual itself. This provides for a more complete policy discussion of incremental costs and total resource cost (“TRC”) test cost classifications within the Policy Manual and reduces burden on interested parties, including out-of-state parties, to find the incremental cost policy applicable to Illinois energy efficiency programs. There are also customized measures and programs not covered by the IL-TRM, for which the IL-TRM would not provide incremental cost classifications. Staff’s proposal to include classification guidelines in the definition in the Policy Manual would assist in these situations.

Staff’s proposal further helps ensure that energy efficiency programs delivered across the state by various Program Administrators will be meaningfully and consistently evaluated, which was a key goal of the Commission in establishing a Policy Manual. Staff’s proposal also helps further the Policy Manual’s goals of reducing litigation and providing clarity to parties.

Furthermore, Staff did not develop the incremental cost language proposed below in isolation. Rather, Staff requested stakeholder feedback on several occasions in the development of the incremental cost examples and sought to incorporate the feedback received from all interested parties in refining the language.

Accordingly, Staff recommends the following modifications to page 25 of the Policy Manual in order to provide for greater certainty and clarity to all parties, reduce future litigation, and to help ensure statewide consistency in cost-effectiveness calculations to enable meaningful evaluations of various Program Administrator energy efficiency programs:

i. **Incremental Costs** means the difference between the cost of the efficient Measure and the cost of the most relevant baseline measure that would have been installed (if any) in the absence of the efficiency Program. Installation costs (material and labor) and Operations and Maintenance (O&M) costs shall be included if there is a difference between the efficient Measure and the baseline measure. In cases where the efficient Measure has a significantly shorter or longer life than the relevant baseline measure (e.g., LEDs versus halogens), the avoided baseline replacement measure costs should be accounted for in the TRC analysis. The Customer's value of service lost, the Customer's value of their lost amenity, and the Customer's transaction costs shall be included in the TRC analysis where a reasonable estimate or proxy of such costs can be easily obtained (e.g., Program Administrator payment to a Customer to reduce load during a demand response event, Program Administrator payment to a Customer as an inducement to give up duplicative functioning equipment). This Incremental Cost input in the TRC analysis is not reduced by the amount of any Incentives (any Financial Incentives Paid to Customers or Incentives Paid to Third Parties by a Program Administrator that is intended to reduce the price of the efficient Measure to the Customer). Incremental Cost calculations will vary depending on the type of efficient Measure being implemented, as outlined in the examples provided below and as set forth in the IL-TRM.

Examples of Incremental Cost calculations include:

a. The Incremental Cost for an efficient Measure that is installed in new construction or is being purchased at the time of natural installation,

investment, or replacement is the additional cost incurred to purchase an efficient Measure over and above the cost of the baseline/standard (i.e., less efficient) measure (including any incremental installation, replacement, or O&M costs if there is a difference between the efficient Measure and baseline measure).

b. For a retrofit Measure where the efficiency Program caused the Customer to update their existing equipment, facility, or processes (e.g., air sealing, insulation, tank wrap, controls), where the Customer would not have otherwise made a purchase, the appropriate baseline is zero expenditure, and the Incremental Cost is the full cost of the new retrofit Measure (including installation costs).

c. For the early replacement of a functioning measure with a new efficient Measure, where the Customer would not have otherwise made a purchase for a number of years, the appropriate baseline is a dual baseline that begins as the existing measure and shifts to the new standard measure after the expected remaining useful life of the existing measure ends. Thus, the Incremental Cost is the full cost of the new efficient Measure (including installation costs) being purchased to replace a still-functioning measure less the present value of the assumed deferred replacement cost of replacing the existing measure with a new baseline measure at the end of the existing measure's life. This deferred credit may not be necessary when the lifetime of the measure is short, the costs are very low, or for other reasons (e.g., certain Direct Install Measures, Measures provided in Kits to Customers).

d. For study-based services (e.g., facility energy audits, energy surveys, energy assessments, retro-commissioning) that are truly necessary for a Customer to implement efficient Measures, as opposed to being principally intended to be a form of marketing, the Incremental Cost is the full cost of the study-based service. Even if the study-based service is performed entirely by a Program Administrator's implementation contractor, the full cost of the study-based service charged by the implementation contractor is the Incremental Cost, because this is assumed to be the cost of the study-based service that would have been incurred by the Customer if the Customer were to have the study-based service performed in the absence of the efficiency Program. If the Customer implements efficient Measures as a result of the study-based service provided by the efficiency Program, the Incremental Cost for those efficient Measures should also be classified as Incremental Costs in the TRC analysis.

e. For the early retirement of duplicative functioning equipment before its expected life is over (e.g., appliance recycling Programs), the Incremental Costs are composed of the Customer's value placed on their lost amenity,

any Customer transaction costs, and the pickup and recycling cost. The Incremental Costs include the actual cost of the pickup and recycling of the equipment (often paid for by a Program Administrator to an implementation contractor) because this is assumed to be the cost of recycling the equipment that would have been incurred by the Customer if the Customer were to recycle the equipment on their own in the absence of the efficiency Program. The payment a Program Administrator makes to the Customer serves as a proxy for the value the Customer places on their lost amenity and any Customer transaction costs.

Alternative Proposal:

In the event the Commission declines to adopt the modification to the incremental costs definition above, Staff recommends the Commission approve the following alternative modifications to page 25 of the Policy Manual:

i. **Incremental Costs** means the difference between the cost of the efficient Measure and the cost of the most relevant baseline measure that would have been installed (if any) in the absence of the efficiency Program. Installation costs (material and labor) and Operations and Maintenance (O&M) costs shall be included if there is a difference between the efficient Measure and the baseline measure. In cases where the efficient Measure has a significantly shorter or longer life than the relevant baseline measure (e.g., LEDs versus halogens), the avoided baseline replacement measure costs should be accounted for in the TRC analysis. The Customer's value of service lost, the Customer's value of their lost amenity, and the Customer's transaction costs shall be included in the TRC analysis where a reasonable estimate or proxy of such costs can be easily obtained (e.g., Program Administrator payment to a Customer to reduce load during a demand response event, Program Administrator payment to a Customer as an inducement to give up duplicative functioning equipment). This Incremental Cost input in the TRC analysis is not reduced by the amount of any Incentives (any Financial Incentives Paid to Customers or Incentives Paid to Third Parties by a Program Administrator that is intended to reduce the price of the efficient Measure to the Customer). Incremental Cost calculations will vary depending on the type of efficient Measure being implemented, as outlined in the example provided below and as set forth in the IL-TRM.

For example, for study-based services (e.g., facility energy audits, energy surveys, energy assessments, retro-commissioning) that are truly

necessary for a Customer to implement efficient Measures, as opposed to being principally intended to be a form of marketing, the Incremental Cost is the full cost of the study-based service. Even if the study-based service is performed entirely by a Program Administrator's implementation contractor, the full cost of the study-based service charged by the implementation contractor is the Incremental Cost, because this is assumed to be the cost of the study-based service that would have been incurred by the Customer if the Customer were to have the study-based service performed in the absence of the efficiency Program. If the Customer implements efficient Measures as a result of the study-based service provided by the efficiency Program, the Incremental Cost for those efficient Measures should also be classified as Incremental Costs in the TRC analysis.

Staff's alternative proposal clarifies how incremental costs should be classified for some of the programs and measures not covered by the IL-TRM. As mentioned above, the IL-TRM provides clarity on classification of incremental costs for a number of measures and program types covered by the IL-TRM, which are consistent with the proposed incremental cost language set forth above. As also mentioned above, the IL-TRM does not provide the same clarity for customized measures and program types. Different Program Administrators have historically treated particular costs inconsistently in the cost-effectiveness analysis of retro-commissioning programs, resulting in inaccurate cost-effectiveness results at times. Adoption of Staff's alternative proposal would provide clarity as to how various costs in a retro-commissioning program should be classified for purposes of cost-effectiveness analysis to ensure consistency across all Program Administrators, and reduce future litigation of this issue.

Financial Incentives Paid to Customers

Primary Proposal:

Staff objects to the inclusion of the following statement in the Policy Manual, set forth in footnote 44 following the word “payment” in the definition of “Financial Incentives Paid to Customers,” which states: “Payments include non-Measure items of value that would be treated as transfer payments, e.g. gift cards.” (AG Ex. A, 26.) Staff believes the definition of “Financial Incentives Paid to Customers” is sufficiently detailed that the footnote is unnecessary. Furthermore, Staff believes that inclusion of the footnote only serves to create confusion, as it is not at all clear what all can be classified as “non-Measure items of value.” Staff also notes that Exhibit B attached to the Petition states that the majority of participants agree that footnote 44 needs further discussion in Policy Manual Version 2.0. (AG Ex. B, 2.) Thus, inclusion of footnote 44 in the Policy Manual Version 1.0 is premature, and it should be deleted.

Alternative Proposal:

While Staff prefers deleting footnote 44 in its entirety given the definition of “Financial Incentives Paid to Customers” is clear, should the Commission believe that some sort of clarification is warranted for the term “payment,” Staff offers the following language modifications to footnote 44 on page 26 of the Policy Manual that provides for clarification of the word “payment” without creating confusion to the definition, as follows:

Payments include both Incentive checks and non-Measure items of value that would be treated as transfer payments, e.g. gift cards that are not restricted to specific retailers. Any fees incurred by the Program Administrator to obtain gift cards should be classified as Non-Incentive Costs because such fees are not principally intended to reduce the net price

to the Customer of purchasing and installing the qualifying efficient Measure.

Non-Incentive Cost Exception

Primary Proposal:

To help achieve more consistent evaluation policies across the state, Staff recommends the “exception” outlined under the “non-incentive cost” definition to become the rule statewide. The Policy Manual states:

Exception: If the amount of Incentives exceeds the amount of Incremental Costs, the Program Administrator may choose to reclassify the amount of Incentives in excess of Incremental Costs as Non-Incentive Costs when performing the TRC analysis.

If $\text{Incentives} > \text{Incremental Costs}$, then $\text{Incentives} - \text{Incremental Costs} = \text{Excess Incentives}$, and these Excess Incentives would be reclassified as Non-Incentive Costs, and Incentives effectively would be set equal to the Incremental Cost amount in the TRC analysis. In this exceptional case, $\text{Non-Incentive Costs} = \text{Program Administrator Costs} - \text{Incentives} + \text{Excess Incentives}$, and for cost-effectiveness modeling purposes, set $\text{Incentives} = \text{Financial Incentives Paid to Customers} + \text{Incentives Paid to Third Parties} - \text{Excess Incentives} = \text{Incremental Costs}$.

(AG Ex. A, 27.) Staff is concerned that the exception language above will diminish the ability to meaningfully compare TRC results across programs, time, and Program Administrators. Therefore, Staff proposes the following modifications to page 27 of the Policy Manual to help ensure programs are meaningfully and consistently evaluated statewide:

Exception: If the amount of Incentives exceeds the amount of Incremental Costs, ~~the Program Administrator may choose to reclassify~~ the amount of Incentives in excess of Incremental Costs shall be reclassified as Non-Incentive Costs when performing the TRC analysis.

If Incentives > Incremental Costs, then Incentives – Incremental Costs = Excess Incentives, and these Excess Incentives would be reclassified as Non-Incentive Costs, and Incentives effectively would be set equal to the Incremental Cost amount in the TRC analysis. In this exceptional case, Non-Incentive Costs = Program Administrator Costs – Incentives + Excess Incentives, and for cost-effectiveness modeling purposes, set Incentives = Financial Incentives Paid to Customers + Incentives Paid to Third Parties – Excess Incentives = Incremental Costs.

Alternative Proposal:

In performing a review of the Ameren and ComEd cost-effectiveness screening of the Section 16-111.5B energy efficiency programs recently, Staff found that while Ameren applied the exception to its TRC analysis, ComEd provided no such exception to its TRC analysis. While requiring the application of the exception statewide across all the Section 8-103, 8-104, and 16-111.5B energy efficiency programs would provide for the most consistent evaluation of the programs statewide, Staff believes at a minimum, the exception should be applicable for all Section 16-111.5B cost-effectiveness analysis. Accordingly, as an alternative, Staff proposes the following modifications to page 27 of the Policy Manual to help ensure the Section 16-111.5B energy efficiency programs are meaningfully and consistently evaluated:

Exception: If the amount of Incentives exceeds the amount of Incremental Costs, the Program Administrator may choose to reclassify the amount of Incentives in excess of Incremental Costs as Non-Incentive Costs when performing the TRC analysis.

For Section 16-111.5B energy efficiency programs, if the amount of Incentives exceeds the amount of Incremental Costs, the amount of Incentives in excess of Incremental Costs shall be reclassified as Non-Incentive Costs when performing the TRC analysis.

If Incentives > Incremental Costs, then Incentives – Incremental Costs = Excess Incentives, and these Excess Incentives would be reclassified as

Non-Incentive Costs, and Incentives effectively would be set equal to the Incremental Cost amount in the TRC analysis. In this exceptional case, Non-Incentive Costs = Program Administrator Costs – Incentives + Excess Incentives, and for cost-effectiveness modeling purposes, set Incentives = Financial Incentives Paid to Customers + Incentives Paid to Third Parties – Excess Incentives = Incremental Costs.

9. Section 9: Uniform Methods Project and Evaluation Consistency

9.1 *Uniform Methods Project*

10. Section 10: Evaluation Measurement & Verification Work Plans and Reports

10.1 *EM&V Work Plans*

10.2 *Draft EM&V Reports*

There is an inconsistency between the draft EM&V Report review times between Section 3.7 (15 Business Days) and Section 10.2 (3 weeks) of the Policy Manual. This inconsistency should be reconciled by using the 15 business day language throughout the Policy Manual. This requirement is more appropriate, given that the draft EM&V Reports often released in late-November or mid-December. This change is reflected in the suggested edits provided in Section 10.2 herein. Accordingly, Staff recommends the following modifications to pages 29-30 of the Policy Manual:

Comments on the draft EM&V reports shall be submitted to the Program Administrators, Commission Staff and Evaluators within ~~three (3) weeks~~ fifteen (15) Business Days of receipt of the draft EM&V reports, or within a timeline mutually agreed to by the parties.

Conclusion

Staff respectfully requests that the Illinois Commerce Commission make note of Staff's Initial Comments and Objections to the Policy Manual and approve Staff's recommendations and revisions to the Policy Manual in this docket consistent with Staff's Comments herein. Staff recommends the Commission approve and adopt the Policy Manual dated September 30, 2015 attached to these Initial Comments and Objections as Staff Exhibit A, which incorporates Staff's recommended revisions set forth herein.

Respectfully submitted,

KELLY A. TURNER
MEGAN C. McNEILL
Office of General Counsel
Illinois Commerce Commission
160 North LaSalle Street, Suite C-800
Chicago, IL 60601
Phone: (312) 793-3305
Fax: (312) 793-1556
kturner@icc.illinois.gov
mmcneill@icc.illinois.gov

September 30, 2015

*Counsel for the Staff of the
Illinois Commerce Commission*

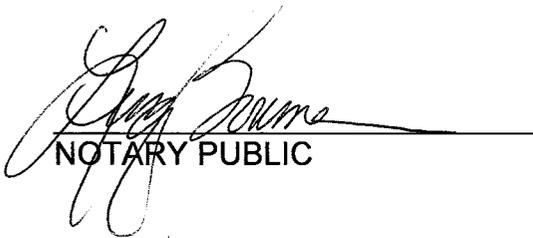
State of Illinois)
)
County of Sangamon)

Docket No. 15-0487

Jennifer H. Morris, on oath, states that she is employed by the Illinois Commerce Commission as an Economist in the Policy Division; that she is authorized to make this Verification on behalf of the Staff of the Illinois Commerce Commission; that she has read the foregoing Staff Initial Comments and Objections to the Illinois Energy Efficiency Policy Manual Version 1.0 and is familiar with the contents thereof; and that the matters set forth in the attached Staff Initial Comments and Objections to the Illinois Energy Efficiency Policy Manual Version 1.0 are true and correct to the best of her knowledge, information and belief.


Jennifer H. Morris

Subscribed and sworn to before me
This 30th day of September 2015.


NOTARY PUBLIC

