

**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
REPLY TO RESPONSES TO 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

October 22, 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	7
2.1 <i>Background</i>	7
2.2 <i>Goals</i>	8
2.3 <i>Effective Date</i>	8
2.4 <i>Updates to this Policy Manual</i>	8
2.5 <i>Roles and Responsibilities</i>	12
3. Section 3: Illinois Energy Efficiency Stakeholder Advisory Group	12
4. Section 4: Program and Portfolio Planning	12
5. Section 5: Cost Categories	12
5.1 <i>Purpose</i>	12
5.2 <i>Portfolio Cost Categories</i>	12
5.3 <i>Program Cost Categories for Section 8-103 and 8-104 Programs</i>	12
5.4 <i>Inducements</i>	12
6. Section 6: Program Administration and Reporting	16
7. Section 7: Evaluation Policies	16
7.1 <i>Technical Reference Manual</i>	16
7.2 <i>Net-to-Gross Policy</i>	16
7.3 <i>Free Ridership and Spillover</i>	18
8. Section 8: Total Resource Cost Test	18
8.1 <i>Statutory Definitions</i>	18
8.2 <i>Measuring Cost-Effectiveness</i>	18
8.3 <i>Calculating TRC</i>	18
8.4 <i>TRC Costs</i>	18
8.4.1 <i>Incremental Cost Clarifications</i>	21
8.4.2 <i>Financial Incentives Paid to Customers</i>	22
8.4.3 <i>Non-Incentive Cost Exception</i>	23
9. Section 9: Uniform Methods Project and Evaluation Consistency	24
10. Section 10: Evaluation Measurement & Verification Work Plans and Reports ...	24
Section 2.2 (Goals); Section 6.5 (Quarterly Reporting Directives; Section 6.8 (Annual Reporting Directives)	24
Commission Options	26
Conclusion	27

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
REPLY TO RESPONSES TO 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 this Reply to Responses to Objections (“Reply”) to the Illinois Energy Efficiency Policy Manual (“Policy Manual”) Version 1.0 (“AG Ex. A”). Staff also submits the Verification of Jennifer H. Morris and James Zolnierrek in support of facts contained herein.

On August 26, 2015, the People of the State of Illinois, *ex rel.* Lisa Madigan, Attorney General of the State of Illinois’ (“AG”) filed a Petition for Approval of an Illinois Energy Efficiency Policy Manual (“Petition”) with the Illinois Commerce Commission (“Commission” or “ICC”) thereby initiating this docket.

On September 30, 2015, Staff filed Initial Comments and Objections (“Staff Initial Comments”) to the Policy Manual dated July 14, 2015, AG Exhibit A, along with two attachments, namely, Staff Exhibit A: Policy Manual dated September 30, 2015, consisting of revised Policy Manual that incorporates Staff’s recommended language

changes set forth in Staff Comments, and 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).

On October 14, 2015, the following parties submitted Responses:

Joint Response of the Illinois Program Administrators (“Program Administrators Response”), consisting of Ameren Illinois Company d/b/a Ameren Illinois (“Ameren”), Commonwealth Edison Company (“ComEd”), Northern Illinois Gas Company d/b/a Nicor Gas Company (“Nicor”), The Peoples Gas Light and Coke Company and North Shore Gas Company (“Peoples Gas/North Shore Gas”), and the Illinois Department of Commerce and Economic Opportunity (“DCEO”) (collectively, “Program Administrators”)

Joint Response of the Consumer and Environmental Stakeholders (“Consumer and Environmental Stakeholders Response”), consisting of the AG, the Citizens Utility Board (“CUB”), and the Environmental Law and Policy Center (“ELPC”) (collectively, “Consumer and Environmental Stakeholders”).

In this Reply, Staff addresses certain statements and recommendations made by the parties. Given the compressed timeframe in this docket, Staff’s silence with respect to other statements or recommendations by the parties should not be interpreted as agreement with those other statements or recommendations.

In response to the Petition, Staff identified several concerns with specific language included in the Policy Manual and with the omission of language specifying the authority represented by the Policy Manual. These issues should be resolved in order for both the

Staff and the Commission to understand what exactly it is adopting if and when it adopts the Policy Manual.

In response to Staff's concerns and requests for clarification, the Program Administrators and the Consumer and Environmental Stakeholders discuss at length the considerable amounts of time, effort, and resources expounded by various participants in the Illinois Energy Efficiency Stakeholder Advisory Group ("SAG") to collaborate on the development of the Policy Manual. Staff agrees with the Program Administrators and the Consumer and Environmental Stakeholders that this process was arduous, and appreciates the hard work of all SAG participants and the facilitator in attempting to create a manual through a consensus process. Throughout the Policy Manual discussions, Staff voiced specific concerns some of which were not included in the non-consensus items identified in the Petition, and sought to allow for substantive written public commenting opportunities with the full SAG group. In doing so, Staff's intention was to work openly and collaboratively with the other participants to craft a complete and useful Policy Manual. Nonetheless, Staff believes the issues and potential policy changes it has identified should be addressed by the Commission.

After reviewing the Responses submitted by the Program Administrators and Consumer and Environmental Stakeholders, Staff has revised some of the recommendations presented in Staff's Initial Verified Comments. Staff's reply to the parties' responses and any adjusted proposals are set forth below.

1. Section 1: Glossary

In its Initial Verified Comments, Staff recommended the phrase "the Program Administrator determines" be deleted from the definition of "breakthrough equipment and

devices” or in the alternative, that the Commission clarify that the phrase is not intended to prevent stakeholders 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.” (Staff Initial Comments, 4.) Staff’s concern was that the phrase appears to grant the Program Administrator the exclusive right to determine what constitutes “breakthrough equipment and devices” without allowing SAG participants an opportunity to challenge such designations.

After reviewing the Responses of the Consumer and Environmental Stakeholders and the Program Administrators, it appears that the intent of this language is not to prevent stakeholders from objecting to designations before the Commission. (Consumer and Environmental Stakeholders Response, 11, 13-14; Programs Administrators Response, 8.) If Staff’s understanding is correct, then Staff withdraws its recommendation and recommends the Commission memorialize this understanding in its order in this proceeding. If Staff’s understanding is incorrect, then Staff respectfully requests parties explain in their next round of comments why the Program Administrators should have the final determination as to the designation of breakthrough equipment and devices.

If the Program Administrators and the Consumer and Environmental Stakeholders confirm in their final comments that this language, in fact, forecloses interested parties from challenging the Program Administrators’ determinations, Staff maintains that the Commission should remove the phrase “the Program Administrator determines” from the

definition of breakthrough equipment and devices consistent with the reasons set forth in Staff's Initial Verified Comments.

Staff's recommendation is not an attempt to limit the Program Administrators' existing flexibility to identify "breakthrough equipment and devices" when implementing their energy efficiency plans. Nor does Staff believe that this recommendation is necessary due to some insufficiency of the current oversight of the Program Administrators' decisions concerning breakthrough equipment and devices. Staff fully supports giving the Program Administrators the flexibility to prudently manage their energy efficiency programs by making decisions over the course of their energy efficiency plans as technological progress and circumstances dictate. Staff also believes that the current quarterly reporting requirements to the Commission are sufficient. Additionally, Staff does not believe that deletion of the phrase "the Program Administrator determines" would limit the qualifying "breakthrough equipment and devices" to only those items identified by the Program Administrator in its three-year energy efficiency plan filing as such. (Program Administrators Response, 9.) Other sections of the Policy Manual specify that all measures that Program Administrators move from the "breakthrough equipment and devices" category to the Section 8-103 and 8-104 energy efficiency programs shall be reported to SAG, which is consistent with the notion that Program Administrators have the flexibility and can identify such technologies during program implementation. (AG Ex. A, 11; ICC Staff Ex. A, 12.) Staff does, however, believe that a definition of "breakthrough equipment and devices" that is intended to preclude stakeholders from challenging those designations before the Commission would be an unwarranted deviation from the status quo that should not be adopted.

2. Section 2: Overview and Guiding Principles

2.1 Background

Staff's proposed edits to Sections 2.1 and 2.3 to confirm in writing that: (1) the Commission retains the discretion to authorize deviations from the Policy Manual, (2) the Manual does not supersede any prior Commission order, (3) Program Administrators are required to comply with the directives of previous Commission orders that may extend beyond the current plans in place, and (4) in the case of conflict between the Manual and a Commission order, the order would control. (Staff Comments, 8-14.) After reviewing the Responses submitted by the Consumer and Environmental Stakeholders and the Program Administrators (Consumer and Environmental Stakeholders Response, 14-18; Program Administrators Response, 10-12), it appears that all parties are substantially agree as to the authority of the Policy Manual. For example, the Consumer and Environmental Stakeholders state "failure to include or reference a particular topic or issue in the Manual in no way precludes a party from raising that issue or topic in any future Commission proceeding That has been understood by the stakeholders and Program Administrators from the beginning of the Policy Manual discussions." (Consumer and Environmental Stakeholders Response, 17-18.) Additionally, neither the Consumer and Environmental Stakeholders nor the Program Administrators appear to disagree with Staff's position that the Commission retains the discretion to deviate from the Policy Manual in future proceedings. This agreement may alleviate Staff's concerns and render adoption of Staff's proposed language for Sections 2.1 and 2.3 unnecessary.

However, it is not clear to Staff whether the Manual would supersede existing Commission directives or policies. Staff understands that the Policy Manual is effective upon June 1, 2017, and does not apply to current three-year portfolio plans. Regardless, Staff believes it is necessary to specify that previous Commission orders affecting the plans after June 1, 2017 will not be superseded by the Policy Manual.

Based upon a review of the Comments filed by the parties regarding the authority of the Commission with respect to the manual, Staff believes that the Consumer and Environmental Stakeholders and Program Administrators are in agreement that Commission requirements will remain in effect with respect to future plan filings. In light of this understanding, Staff withdraws its proposed changes to Sections 2.1 and 2.3. If Staff's understanding of the parties' Response Comments is incorrect, Staff respectfully requests the parties explain in their next round of comments why the Commission's directives specific to future plan filings should no longer be followed.

Finally, if Staff's interpretation of the parties' positions on the matter of Commission authority regarding the Policy Manual is not correct, Staff recommends that the Commission clarify Sections 2.1 and 2.3 in its order in this proceeding, rather than in the Policy Manual as proposed in Staff's Initial Comments.

2.2 Goals

2.3 Effective Date

2.4 Updates to this Policy Manual

In its Initial Comments, Staff requested the Commission clarify and define the process for updating the Policy Manual. (Staff Comments, 14-18.) In response to the concerns expressed by the parties, Staff believes it is necessary to revise its

recommendations with respect to the update to the Policy Manual Version 2.0. The revised recommendations address the concerns of the Consumer and Environmental Stakeholders, while ensuring that the Commission will be presented with clear and timely results of SAG's efforts.

The Consumer and Environmental Stakeholders urge the Commission to reject Staff's proposal with respect to the updates to the Policy Manual, on the grounds that the proposal is irrelevant. (Consumer and Environmental Stakeholders Response, 19.) Staff disagrees. The Consumer and Environmental Stakeholders argue throughout their Response Comments that Staff's concerns related to Policy Manual Version 1.0 will be resolved in the development of Policy Manual Version 2.0. (See generally, Consumer and Environmental Stakeholders Response.) If Policy Manual Version 2.0 is the mechanism for resolving outstanding issues in Policy Manual Version 1.0, then the development of Policy Manual Version 2.0 is critical to the implementation of Policy Manual Version 1.0 and is therefore directly relevant to this proceeding. Furthermore, to the extent the Commission determines that Staff's concerns with other sections of the Policy Manual are premature because any changes will be addressed in Policy Manual Version 2.0, it is essential that the Commission set guidelines for the development of Version 2.0.

Timing of the Filing of Version 2.0

The Consumer and Environmental Stakeholders are correct that the SAG is an advisory body and a forum that allows parties to express different opinions and foster collaboration. (Consumer and Environmental Stakeholders Response, 20.) The Commission may look to SAG to address issues related to Policy Manual Version 2.0,

however, there is no certainty that SAG will resolve outstanding issues by consensus. The Commission can, however, require Program Administrators to file a consensus Policy Manual Version 2.0 by a date certain. Even if the SAG participants are unable to reach a consensus on the future version, the Commission will then know that the issues designated for resolution in Policy Manual Version 2.0 have not been resolved.

The Policy Manual has an effective date of June 1, 2017, which is the beginning of the next Portfolio Plan. (AG Ex. A, 8.) The planned effective date of Version 2.0 is also June 1, 2017. This would allow the Program Administrators to utilize the Policy Manual in the design and implementation of their next three-year Portfolio Plans under the Act. The next Portfolio Plans under Section 8-103 and 8-104 of the Act must be filed by September 1, 2016, and October 1, 2016, respectively. 220 ILCS 5/8-103; 220 ILCS 5/8-104. In the event that the Commission is persuaded by the Consumer and Environmental Stakeholders' suggestions to approve the Policy Manual as filed and leave each of Staff's concerns for resolution in Version 2.0, Staff recognizes that there is little time available to update the Policy Manual. While Staff remains concerned that a filing date of March 1, 2016 may leave the Commission little time to resolve outstanding issues prior to development of Section 8-103 and Section 8-104 plans for the June 1, 2017 – May 31, 2020 period, and Section 16-111.5B IPA plans for the June 1, 2017 – May 31, 2018 period, Staff withdraws its opposition to this filing date, for purposes of submitting Policy Manual Version 2.0 only.

Staff is open to other suggested deadlines for submission of Policy Manual Version 2.0. Staff believes the establishment of a date certain will serve to facilitate the update process through the SAG on Policy Manual issues. The Commission has adopted an

annual deadline for updates to the NTG Frameworks and the IL-TRM Update Processes, and this has facilitated streamlined annual updates for both processes. A set deadline will also set a reasonable limit on the amount of time and resources devoted to Policy Manual updates.

Procedure for Filing Version 2.0

Currently, no process exists by which future Policy Manual updates will be presented to the Commission.

The Consumer and Environmental Stakeholders expressed concerns about “one party tee-ing up policy development for Commission resolution... .” (Consumer and Environmental Stakeholders Response, 20.) Staff is cognizant of these concerns, and shares in them with the Consumer and Environmental Stakeholders. Regardless of who the Commission finds to be the appropriate party to file Policy Manual Version 2.0, in order to prevent the filing party from taking advantage of the opportunity to “tee-up policy development” for the Commission, Staff recommends that the Commission direct the filing party to omit contested language from their Policy Manual submissions. This proposal will help alleviate the concerns of the Consumer and Environmental Shareholders, while also working to ensure that partial agreements are not mistaken for a consensus.

2.5 Roles and Responsibilities

3. Section 3: Illinois Energy Efficiency Stakeholder Advisory Group

4. Section 4: Program and Portfolio Planning

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.

The Program Administrators argue that the Policy Manual should include a definition of the term “inducement.” (Program Administrators Response, 20.) Staff has no objection to including an appropriately revised definition in Section 1 of the Glossary. However, Staff disagrees that a definition of “inducements” needs to be included in Section 3, Cost Categories, since portfolio-level marketing and program-level incentive costs are already referenced in that section. Requiring this additional category of costs to be tracked by Program Administrators is unnecessary and will increase complexity in the Program Administrators’ tracking systems. For example, the definition of “inducements” makes clear that a cost classified as an “inducement” can additionally fall into the portfolio marketing cost category, evaluation cost category, portfolio administrative cost category, program incentive cost category, and program non-incentive cost category, all of which are required to be tracked and included in reporting by the Program Administrators. On the other hand, if the Program Administrators do not intend to track costs that fall under the purview of “inducements,” then Staff sees no value in defining the term in Section 3, Cost Categories.

In its Comments, Staff recommended that the definition of inducements be replaced with a definition of unallowable costs.¹ (Staff Initial Comments, 20-21.) Specifically, Staff sought to clarify that payments for alcoholic beverages and for sporting events are not the only types of payments that the Program Administrators should not include as inducements. In response, the Program Administrators state “[t]here were no other exclusions provided for because the majority of participants agreed that the Policy Manual was not intended to provide an exhaustive list of the excluded expenses.” (Program Administrators Response, 20.) The Consumer and Environmental Stakeholders similarly state, “[n]o party that the Consumer and Environmental Stakeholders are aware of, including the Program Administrators, is suggesting that by referencing these particular prohibitions all other inducements are *necessarily* permitted for cost recovery in annual reconciliation proceedings.” (Consumer and Environmental Stakeholders, 24 (emphasis in original).) Thus, there appears to be a consensus among the parties that payments for alcoholic beverages and sporting events are not the only types of payments that should not be included as inducements. Staff recommends that this consensus be reflected in the Policy Manual itself.

Because the subject of inducements is “one of the more contentious issues addressed in the Policy Manual Version 1.0 discussions” and the Petition’s proposal addressing the issue represents a “fragile truce” (Consumer and Environmental Stakeholders, 24), the Commission should not rely upon an informal and non-binding understanding between the parties regarding resolution of ambiguous language in the

¹ As reflected in Staff’s comments, Staff believes referring to unallowable costs better reflects the intent of Section 5.4. (Staff Comments, 21.) For ease of exposition, Staff will, however, refer here to inducements.

Policy Manual. In particular, Staff is concerned that the proposed inducement language could be interpreted more narrowly than what the parties intend.

First, the inducement language of Section 5.4 excludes only two type of payments from the definition of inducements. There is no language that implies or suggests that this list is incomplete. This contrasts with the remainder of the Policy Manual which is replete with examples of referenced lists, including cost category definitions contained within the same section as inducements, that include non-limitation language: Sections 3.7, 3.8, 5.2(i), 5.2(iii), 5.2(iv). (AG Ex. A, 11, 12, 15). Thus, if the Commission adopts a Policy Manual without limiting language in Section 5.4, the omission may be misconstrued as intentional.

Second, one of the stated goals of the Policy Manual is to “[r]educe Program Administrator risk for disallowance.” (AG Ex. A, 8.) A defined list of payments that are not to be considered inducements reduces Program Administrator risk for disallowance. The risk is not reduced further when the list is not limited to two items. Again, it could easily be misinterpreted that the omission of limiting language from inducement language of Section 5.4 was intentionally designed to meet the Policy Manual’s stated objective to reduce Program Administrator disallowance risk. In part, this concern caused Staff to address issues contained in AG Exhibit B related to Section 2.2 (Goals of the Policy Manual) within the context of Staff’s Section 5.4 Inducements concerns. (Staff Initial Comments, 21, footnote 6.)

Third, the Commission frequently is required to make determinations concerning specific costs that ratepayers should or should not be required to pay for. And, it is not uncommon for utilities and other parties to dispute what costs ratepayers should be

required to pay. That notion is exemplified here. As the Consumer and Environmental Stakeholders acknowledge, “[t]he facts are that after 12 months of negotiation on this point, these two items - alcohol and sports tickets - were the only “inducements” that the Utilities agreed should be prohibited *as part of the Policy Manual.*” (Consumer and Environmental Stakeholders Response, 24 (emphasis in original).) This experience suggests that parties are unlikely to voluntarily agree to expand the list of payments that are excluded from the definition of inducements.

For all of these reasons, the Commission should require the Policy Manual to make clear that payments for alcoholic beverages and those for sporting events are not the only possible payments that categorically are not inducements.

Staff also is concerned that the inducement language in AG Exhibit A may be misinterpreted to mean that only Program Administrator subcontractors are prohibited from providing the two inducement categories. For example, Staff received a ComEd Smart Ideas energy efficiency marketing e-mail designed to encourage customer involvement (*i.e.*, inducements) that stated that customers could win two sports tickets to the November 2015 Notre Dame game if they participate in the energy efficiency research being requested. Ironically, Staff received this email on the date the parties filed their responses in this docket in support of the Policy Manual language in AG Exhibit A. Thus, Staff is concerned that the language included in AG Exhibit A is written so narrowly that it may be misinterpreted as limiting the prohibition to inducements provided by Program Administrators’ subcontractors. This misinterpretation could occur because the language in AG Exhibit A specifies that the two inducement prohibitions shall be explicitly incorporated into Program Administrators’ contracts with vendors. The inducement

provision is silent on whether the Program Administrator itself is prohibited from providing the two types of prohibited inducements directly to utility customers or spending ratepayer funds on them. This lack of clarity in the inducement language in AG Exhibit A, as evidenced by the above referenced recent utility marketing messages, supports Staff's position that the Commission should adopt the unambiguous language in Staff Exhibit A concerning unallowable costs. Regardless of whether the alcoholic beverage expense is an "inducement" as AG Exhibit A defines inducement, or whether the alcoholic beverage is a utility company employee expense, Staff firmly believes that alcoholic beverages are an inappropriate and unnecessary use of ratepayer funds that should not be recoverable from Illinois ratepayers. The unallowable cost language recommended by Staff is broad enough to cover and prohibit utility expenditures on inducements such as sports tickets and alcohol, while also clearly delineating that the list is not comprehensive and inclusion of such list is not intended to foreclose parties from recommending other expenses be disallowed during the time period the Policy Manual is in effect or outside of that timeframe.

6. Section 6: Program Administration and Reporting

7. Section 7: Evaluation Policies

7.1 Technical Reference Manual

7.2 Net-to-Gross Policy

Section 7.2 of the Policy Manual states "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.) In its initial comments Staff requested the Commission clarify that this should not be interpreted to mean that NTG does not need to be estimated for DCEO’s Public Sector Programs. (Staff Initial Comments, 33.) Staff recommended the language be amended to state: “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” to clarify that this language implies only that DCEO does not need to develop deemed NTG estimates. Id. at 33-34.

With respect to DCEO’s current energy efficiency plan, DCEO had requested in its plan filing in ICC Docket No. 13-0499 to only count gross savings towards its energy savings goals, as opposed to net savings. (Staff Initial Comments, 33.) The Commission rejected DCEO’s request to eliminate NTG and directed DCEO to apply NTG principles to its public sector offerings. Id. A plain reading of Section 7.2 could be misinterpreted to mean that the Policy Manual reverses this Commission direction. Therefore, the Commission should clarify to avoid adopting a policy change that it does not intend to adopt.

In response to Staff’s concerns, the Consumer and Environmental Stakeholders state “[n]o suggestion was made that DCEO would abandon NTG analysis through the adoption of this language.” (Consumer and Environmental Stakeholders Response, 28.) Significantly, the Program Administrators (including DCEO) do not state that DCEO will apply NTG principles to its public sector programs. Rather, the Program Administrators

simply state that the Policy Manual applies with respect to future plans. (Program Administrators Response, 26.) This implies a significant change in policy with respect to DCEO's application of NTG to its public sector programs. To the extent the language in Section 7.2 means a change in prior Commission policy, the intent should be made explicit so the Commission can determine whether it wishes to depart from its past policy.

The Consumer and Environmental Stakeholders also argue that Staff should "bring the issue to Policy Manual Version 2.0 discussions." (Consumer and Environmental Stakeholders Response, 28.) Staff disagrees. If this is a change in policy that applies to DCEO's next plan filing, the Commission should not adopt this policy on the assumption that the parties may address it in future Policy Manual discussions.

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

In its Initial Comments, Staff made three recommendations with respect to the Policy Manual's treatment of costs in the Total Resource Costs ("TRC") test. First, Staff recommended that additional detail be added to the Policy Manual to further define incremental costs. (Staff Initial Comments, 34-39.) Second, Staff recommended that an ambiguous footnote regarding the definition of Financial Incentives Paid to Customers be deleted from the Policy Manual. Id. at 40-41. Finally, Staff recommended the

Commission direct all parties to classify incentives exceeding incremental costs as excessive incentives and reclassify those costs for purposes of performing a TRC analysis, rather than allowing parties to electively make such determinations. Id. at 41-43. The Consumer and Environmental Stakeholders and the Program Administrators suggested that these proposals could be addressed in future policy discussions such as in the recurring IL-TRM meetings or SAG meetings. (Consumer and Environmental Stakeholders Response, 28-30; Program Administrators Response, 26-29.)

As an initial matter, Staff notes that properly calculating the total resource cost (“TRC”) test is a core foundational issues at the center of ratepayer funded energy efficiency. Ensuring the portfolio is actually projected to be cost-effective is a minimum requirement for Plan approval that the Commission must be able to determine. 220 ILCS 5/8-103(f); 220 ILCS 5/8-104(f). Furthermore, ensuring each program is projected to be cost-effective is a minimum requirement for approval of Section 16-111.5B energy efficiency programs through the annual electricity procurement docket. 220 ILCS 5/16-111.5B.

The Program Administrators argue the Commission should not clarify the appropriate methodology in this proceeding and instead should provide the Program Administrators “flexibility” in their TRC modeling. Staff notes that such “flexibility” in their TRC modeling has resulted in some Program Administrators using alternate cost classification approaches in the plan filing in comparison to program implementation. The resolution of this issue is important to get correct. Disputes concerning improper TRC calculations have arisen in a number of docketed proceedings. See, Illinois Power Agency, ICC Final Order Docket No. 14-0588, 223-224 (December 17, 2014); Illinois

Power Agency, ICC Final Order Docket No. 12-0544, 243-244 (December 19, 2012); Illinois Commerce Comm'n v. Commonwealth Edison Co., ICC Docket No. 10-0537, Staff Ex. 2.0, 28-30; Commonwealth Edison Co., ICC Docket No. 13-0495, Staff Ex. 1.0, 23; Illinois Power Agency, ICC Docket No. 12-0544, Staff Objections, 59-61. Staff explained these problems in response to cross examination questions from the AG in Ameren's last energy efficiency plan docket, ICC Docket No. 13-0498, noting that this does not allow for meaningful intertemporal or inter-Program Administrator comparisons in TRC results to be made. (ICC Docket No. 13-0498 Transcript (November 26, 2013), 49-50.)

Most recently, in ICC Docket No. 14-0588, the Commission directed the SAG (or Staff if SAG is unable to) to address outstanding TRC issues. Based on this directive, the SAG created a TRC subcommittee consisting of cost-effectiveness experts. As noted in the SAG Facilitator TRC subcommittee report,² the TRC subcommittee and cost-effectiveness experts reached consensus on TRC cost classifications. (SAG Facilitator TRC Subcommittee Report, 17.) As noted in the Policy Manual, it is important to make sure that costs are not being double counted or excluded from such TRC analysis. (AG Ex. A, 25.) The careful balance represented by the TRC subcommittee consensus language should not be disturbed. Accordingly, footnote 44 should be eliminated and the incremental cost clarifications³ should be added to the Policy Manual, as reflected in Staff Exhibit A.

² http://ilsagfiles.org/SAG_files/Subcommittees/IPA-TRC_Subcommittee/10-6-2015_Meeting/TRC_Subcommittee_Report_Final_Draft_9-28-15.pdf

³ The Program Administrators agree examples were included in a prior draft of the Policy Manual. (Program Administrators' Response, 26.)

The Program Administrators maintain that the Policy Manual should not be an “operations manual.” (Program Administrators Response, 26.) However, for complicated technical evaluation issues, such as performing the TRC test, it is necessary to specify such detail to ensure programs are consistently and meaningfully evaluated. The Commission should not approve Section 8.4 TRC Costs as set forth in AG Exhibit A (AG Ex. A, 25-27). Instead the Commission should adopt Section 8.4 TRC Costs as set forth in Staff Exhibit A (Staff Ex. A, 26-29). In the alternative, the Commission should transfer the entire Section 8.4 TRC Costs to the IL-TRM process and direct the parties to resolve the outstanding issues raised here concerning the section and include consensus resolution of the issues in the IL-TRM Version 5.0 that will be submitted to the Commission next year.

If the Commission rejects Staff recommendations, the Commission should limit the Program Administrators’ TRC methodology flexibility to ensure meaningful comparisons can be made over the course of a particular Program Administrators’ plan between the approach used in the initial plan filing and that used in the *ex post* TRC analysis.

8.4.1 Incremental Cost Clarifications

In their Response, the Consumer and Environmental Stakeholders state they would like to receive feedback from the IL-TRM Administrator regarding Staff’s proposed incremental cost clarifications. (Consumer and Environmental Stakeholders Response, 28.) Staff already has requested and received feedback from the IL-TRM Administrator concerning the incremental cost language. Staff submitted the incremental cost language through the IL-TRM Update Process on June 22, 2015, when all parties appeared to

agree to the language. Subsequently, the IL-TRM Administrator thoroughly reviewed and commented on the incremental cost language, stating that the language is a “great addition” and “very helpful and clearly written.” Accordingly, Staff believes the Consumer and Environmental Stakeholders’ request has been adequately addressed. Furthermore, all parties have had ample opportunity to review and comment on the language during the course of numerous meetings. (SAG Facilitator TRC Subcommittee Report, 17, 22.) And, neither the Consumer and Environmental Stakeholders nor the Program Administrators have not identified anything incorrect with the provisions.

8.4.2 Financial Incentives Paid to Customers

As noted by the September 28, 2015 SAG TRC Subcommittee Report, all parties, including Staff, spent a substantial amount of time and effort collaborating with all interested stakeholders to have the TRC cost classification issues resolved this year. (SAG Facilitator TRC Subcommittee Report, 17, 22.) Staff’s draft language pertaining to the TRC cost classification issue was circulated to SAG participants, Policy Manual Subcommittee participants, and TRC Subcommittee participants with requests for feedback and suggested language changes. (SAG TRC Subcommittee Report, 17.) Staff attempted to incorporate all written and oral feedback received concerning the draft language to make it acceptable to parties. (Staff Comments, 36.) Footnote 44 was never part of the draft language circulated to SAG participants and the TRC subcommittee. Indeed, footnote 44 was added to the Policy Manual at one of the last meetings. Staff explicitly opposed the addition at that time and was informed that input from the TRC experts from the TRC subcommittee who were not on that Policy Manual call needed to

weigh in on the footnote. As a result, Staff was left with the impression that the issue would be addressed before the Policy Manual was filed with the Commission. Accordingly, after that Policy Manual meeting Staff reached out to the TRC expert referred to on the Policy Manual call to get input on the footnote 44 issue. As a result of that collaboration, including compromise proposal raised by the SAG Facilitator, Staff believed a consensus had been reached on a revised footnote 44, which is the one Staff offered as an alternative in its Comments. The Policy Manual filed in this docket as AG Exhibit A contains the contested footnote 44. (AG Ex. A, 26.)

While the Program Administrators assert that there is no need to clarify the footnote, the evaluators are required by statute to perform TRC analysis (220 ILCS 5/8-103(f)(7); 220 ILCS 5/8-104(f)(8); 220 ILCS 5/16-115.B), and thus clarification is necessary.

8.4.3 Non-Incentive Cost Exception

Staff objects to allowing parties to electively classify incentives exceeding incremental costs as excessive incentives, and to reclassify those as non-incentive costs for the purpose of TRC analysis. Providing the Program Administrators significant flexibility in how they choose to perform the TRC analysis has resulted in significant disputes in a number of cases. See generally, Illinois Power Agency, ICC Final Order Docket No. 14-0588, 223-224 (December 17, 2014); Illinois Power Agency, ICC Final Order Docket No. 12-0544, 243-244 (December 19, 2012); Illinois Commerce Comm'n v. Commonwealth Edison Co., ICC Docket No. 10-0537, Staff Ex. 2.0, 28-30; Commonwealth Edison Co., ICC Docket No. 13-0495, Staff Ex. 1.0, 23; Illinois Power

Agency, ICC Docket No. 12-0544, Staff Objections, 59-61. The Program Administrators argue the Commission should not adopt a policy that mandates parties classify incentives exceeding incremental costs as excessive incentives. (Program Administrators Response, 29.) Staff believes that classifying incentives exceeding incremental costs as excessive incentives is proper and necessary⁴ if the goal is to ensure the programs are able to be meaningfully and consistently evaluated over time and across Program Administrators. Staff does not agree that the Commission should adopt a policy that gives Program Administrators the ability to opt out of classifying incentives exceeding incremental costs as excessive incentives and reclassifying those as non-incentive costs for TRC analysis purposes. Staff recommends against adopting such policy through the Policy Manual.

9. Section 9: Uniform Methods Project and Evaluation Consistency

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

Section 2.2 (Goals); Section 6.5 (Quarterly Reporting Directives; Section 6.8 (Annual Reporting Directives)

The Consumer and Environmental Stakeholders state that Staff did not address items related to Section 2.2 (Goals of the Policy Manual) and Sections 6.5 and 6.8 (Quarterly and Annual Reporting Directives) and, thus, that these items should be considered non-contested by the Commission. (Consumer and Environmental Stakeholders Response, 6.) As explained below, Staff did address items related to the Sections Goals of the Policy Manual and Quarterly and Annual Reporting Directives.

⁴ The necessity stems in part from the fact that AG Exhibit A does not clarify that incentives paid to third parties shall be classified as incremental costs in the TRC analysis.

First, Staff addressed the issue contained in AG Exhibit B related to Section 2.2 (Goals of the Policy Manual) in Section 5.4 Inducements. (Staff Comments, 21, footnote 6.) Staff stated that it does not support inclusion of reduction of risk of disallowance to Program Administrators as an explicit goal of the Policy Manual in Section 2.2. Staff indicated, however, that it will not object to inclusion of this goal provided the Commission accepts certain of Staff's recommendations with respect to Program Administrator inducements and the authority the Policy Manual represents. The Program Administrators did not overlook Staff's comments related to Section 2.2 and responded to Staff's concerns. (Program Administrators Response, 19-20.)

Second, Staff addressed the issue contained in AG Exhibit B related to Section 6.5 (Quarterly Reporting Directives). Staff addressed this issue in Section 6.2 (Adjustable Savings Goals) (Staff Comments, 23), because Staff considers the two issues inextricably linked. In particular, Staff recommended that the Commission include safeguards consistent with those previously adopted by the Commission in the Policy Manual, including quarterly reporting requirements, if the Commission allows Program Administrators adjustable goals.

The Consumer and Environmental Stakeholders are correct that Staff did not address whether the Program Administrators should be required to separately report the amount of "financial incentives paid to customers" and "incentives paid to third parties" as those terms are defined on page 26 of the Policy Manual. Staff's position, however, has been and continues to be that Program Administrators should separately report financial incentives that are provided to customers and incentives that are provided to third parties. For all of the reasons above, the Commission should not conclude, as the Consumer and

Environmental Stakeholders claim, that Staff never addressed items related to Section 2.2 (Goals of the Policy Manual) and Sections 6.5 and 6.8 (Quarterly and Annual Reporting Directives) and, therefore, that these items should be considered non-contested by the Commission.

Commission Options

The Commission has the following options:

Remove ambiguities and unintended policy changes from the Policy Manual by directing that the language changes recommended by Staff be included in Policy Manual Version 1.0.

Adopt Policy Manual Version 1.0 without the language changes recommended by Staff, and add clarifications in the adopting order to address unintended policy changes in the Manual. This approach would not remedy ambiguities in the Policy Manual.

Approve the Policy Manual Version 1.0 without the changes recommended by Staff, and without adding clarifying language in the adopting order.

Conclusion

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

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

*Counsel for the Staff of the
Illinois Commerce Commission*

October 22, 2015

State of Illinois)
County of Sangamon)

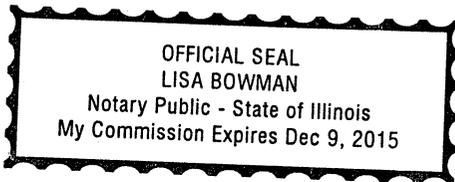
Docket No. 15-0487

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 Reply to Responses to 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 Reply to Responses to 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 22nd day of October 2015.

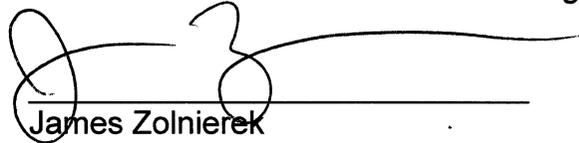

NOTARY PUBLIC



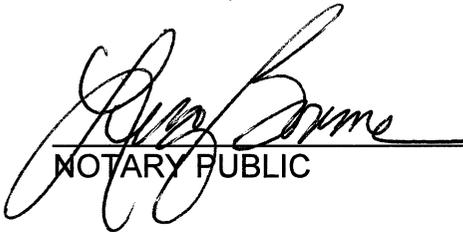
State of Illinois)
)
County of Sangamon)

Docket No. 15-0487

James Zolnierek, on oath, states that he is employed by the Illinois Commerce Commission as Director of the Policy Division; that he is authorized to make this Verification on behalf of the Staff of the Illinois Commerce Commission; that he has read the foregoing Staff Reply to Responses to 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 Reply to Responses to Objections to the Illinois Energy Efficiency Policy Manual Version 1.0 are true and correct to the best of his knowledge, information and belief.


James Zolnierek

Subscribed and sworn to before me
This 22nd day of October 2015.


NOTARY PUBLIC

