**STATE OF ILLINOIS**

**ILLINOIS COMMERCE COMMISSION**

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| **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** | **:** | |

**APPENDIX A:**
**JOINT DRAFT PROPOSED ORDER**

**Dated: November 5, 2015**

**STATE OF ILLINOIS**

**ILLINOIS COMMERCE COMMISSION**

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

**JOINT DRAFT PROPOSED ORDER**

By the Commission:

## I. Procedural History

On August 26, 2015, the People of the State of Illinois, *ex rel*. Lisa Madigan, Attorney General of the State of Illinois ("People" or "AG"), pursuant to Section 10-101 of the Illinois Public Utilities Act (the "Act"), filed a petition ("Petition") with the Illinois Commerce Commission ("Commission" or "ICC") for the approval of an Illinois Energy Efficiency Policy Manual Version 1.0 ("Policy Manual"). As explained in the Petition, the purpose of the Policy Manual is to provide 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 Act and Section 16-111.5B of the Act, as applicable. 220 ILCS 5/8-103; 220 ILCS 5/8-104; 220 ILCS 5/16-111.5B.

The following parties submitted verifications in support of the Petition: Ameren Illinois Company d/b/a Ameren Illinois ("Ameren Illinois"); Commonwealth Edison Company ("ComEd"); Northern Illinois Gas Company d/b/a Nicor Gas Company ("Nicor Gas"); The Peoples Gas Light and Coke Company and North Shore Gas Company ("Peoples Gas/North Shore Gas"); the Illinois Department of Commerce and Economic Opportunity ("DCEO"); the Citizens Utility Board ("CUB"); the Environmental Law & Policy Center ("ELPC"); and the Natural Resources Defense Council ("NRDC").

Upon initiation of this proceeding, DCEO entered an appearance. In addition, Petitions to Intervene were on filed on behalf of Ameren Illinois, ComEd, Nicor Gas, Peoples Gas/North Shore Gas, CUB, and ELPC. These Petitions all were granted by the Administrative Law Judge ("ALJ").

Pursuant to due notice as required by law and by the rules and regulations of the Commission, a status hearing was held in this matter on September 10, 2015 before a duly-authorized ALJ at the Commission's offices in Chicago, Illinois. The parties appeared through legal counsel. A schedule for Verified Comments and Objections, as well as Responses and Replies, was set by the ALJ.

Consistent with the scheduling order, on September 30, 2015, the Staff of the Commission ("Staff") filed Initial Comments and Objections to the Policy Manual. On October 14, 2015, Response Comments were filed by the AG together with CUB and ELPC (collectively, referred to herein as the "Consumer and Environmental Stakeholders"). Response Comments also were filed on the same date by the DCEO, Ameren Illinois, ComEd, Nicor Gas and Peoples Gas/North Shore Gas (collectively, referred to herein as the "Program Administrators"). Staff filed its Reply to the Response Comments on October 22, 2015. On October 29, 2015, the Program Administrators and the Consumer and Environmental Stakeholders filed their Final Comments on the Policy Manual.

## II. Statutory Authority

### A. Sections 8-103 and 8-104

Pursuant to Section 8-103 of the Act, electric utilities are required to design, oversee and implement energy efficiency measures and programs and demand response measures to reduce delivery load. 220 ILCS 5/8-103. Similarly, natural gas utilities are required under Section 8-104 of the Act to design, oversee and implement energy efficiency measures and programs with a primary purpose of reducing total energy deliveries and reducing costs of utility service to consumers. 220 ILCS 5/8-104. Under both of these provisions of the Act, DCEO is charged by the Illinois General Assembly to design and oversee energy efficiency measures and programs for public sector and low income residential customers. 220 ILCS 5/8-103(e); 220 ILCS 5/8-104(e). Electric and gas utilities, as modified by Section 8-104(m), collect revenues from all retail customers to recover all reasonable and prudent costs incurred for the operation and delivery of these programs through automatic adjustment clause tariffs filed with and approved by the Commission. 220 ILCS 5/8-103(e); 220 ILCS 5/8-104(e).

### B. Section 16-111.5B

The Commission-approved annual power procurement plans can include procurement of additional energy efficiency programs that are proposed by the Illinois Power Agency and approved by the Commission. 220 ILCS 5/16-111.5B(a)(2)-(3). Expenses incurred by the utilities as a result of these additional programs are recovered through the same tariff that authorizes the collection of revenues from electric retail customers for Section 8-103 programs. 220 ILCS 5/16-111.5B(a)(6).

## III. Factual Background

Pursuant to Sections 8-103 and 8-104 of the Act, the Program Administrators are required to file three-year energy efficiency plans with the Commission to meet the applicable energy efficiency standards specified in the statute. In the fall of 2013, the

Program Administrators filed with the Commission the three-year gas and electric energy efficiency plans proposed to be in effect from June 2014 through May 2017.[1]

In each of these dockets, the AG submitted testimony that requested that the Commission direct the Program Administrators to work with the Illinois Energy Efficiency Stakeholder Advisory Group ("SAG") on the development of “an Illinois Energy Efficiency Policy Manual, designed to streamline and encourage consistency on various program-related policies for review and approval by the Commission.”[2]

In each of the three-year plan Orders, the Commission approved the AG’s proposal, noting, for example, in the Ameren Illinois and ComEd three-year plan Orders that the AG’s clarified proposal “is specific, addresses an inconsistency between utilities in Illinois that may warrant attention, and is reasonable.”[3] In particular, the Commission directed the Program Administrators to work with the SAG to complete a Policy Manual “to ensure that programs across the state and as delivered by various program administrators can be meaningfully and consistently evaluated.”[4] Recognizing that numerous items were directed to the SAG for consideration, the Commission stated that the Policy Manual should be given priority at the SAG: “[W]e have added language that directs the SAG to complete the Policy Manual. We understand that these EE Orders put a lot on the SAG, but we feel that this is a very important item that should be given priority.”[5]

Consistent with the Commission’s directive, the SAG created a Policy Manual Subcommittee that was open to all interested SAG participants. The Policy Manual Subcommittee had representation from a wide array of parties, including representatives from the Program Administrators, Staff, independent evaluators, the AG, CUB, NRDC, and the Illinois Industrial Energy Consumers. Participant backgrounds included Program Administrator leaders, attorneys, national and international energy efficiency consultants with experience in several jurisdictions with mature energy efficiency portfolios, and evaluation, measurement and verification (“EM&V”) experts.

The Policy Manual was first discussed at the SAG on June 24, 2014, and the Policy Manual Subcommittee first met on July 15, 2014. It frequently met over the course of the following year to collaboratively discuss and develop the Policy Manual and to formulate a plan for presenting the Policy Manual to the Commission for approval. The Policy Manual Subcommittee spent more than 50 collective hours in meetings discussing the content of the Policy Manual with many more hours spent

[1] ICC Docket No. 13-0495 (ComEd), ICC Docket No. 13-0498 (Ameren Illinois), ICC Docket No. 13-0499 (DCEO), ICC Docket No. 13-0549 (Nicor Gas) and ICC Docket No. 13-0550 (Peoples Gas/North Shore Gas).

[2] *See, e.g.,* ICC Docket No. 13-0495, Direct Testimony of Philip Mosenthal at 44-45.

[3] *See* ICC Docket No. 13-0495, Final Order at 130 (Jan. 28, 2014) (ComEd), ICC Docket No. 13-0498, Final Order at 129 (Jan. 28, 2014) (Ameren Illinois); ICC Docket No. 13-0499, Final Order at 23 (Jan. 28, 2014) (DCEO); ICC Docket No. 13-0549, Final Order at 57-58 (May 20, 2014) (Nicor Gas); ICC Docket No. 13-0550, Final Order at 56 (May 20, 2014) (Peoples Gas/North Shore Gas).

[4] *See id*.

[5] Commission Special Open Meeting Minutes, Jan. 28, 2014, 22:11-15.

preparing for and following up on such meetings. The discussions were facilitated by the SAG independent facilitator.

The principles and policies articulated in the Policy Manual were derived primarily from good faith discussions by the SAG participants designed to reach consensus, Commission Orders, policies and procedures developed by the SAG, as well as best practices from state energy efficiency programs delivered throughout the nation. The definitions, description of roles and responsibilities, and all other content in the Policy Manual were also developed through a consensus decision-making process.

## IV. Policy Manual Version 1.0

The goals of the Policy Manual, as stated in Section 2.2 therein, are to:

- Achieve consistent policies for utility ratepayer funded Energy Efficiency Programs;
- Reduce litigation before the Commission;
- Reduce Program Administrator risk for disallowance;
- Provide clarity and certainty for Program Administrators and other parties; and
- Create a policy framework that supports the delivery of Cost-Effective Energy Efficiency Portfolios, pursuant to Section 8-103, 8-104 and Cost-Effective Programs pursuant to Section 16-111.5B of the Act.

The Policy Manual, among other content, includes chapters that address the roles and responsibilities of the SAG, the Program Administrators, and evaluators; goals of program and portfolio planning; budget allocation directives; cost category definitions; program administration and reporting requirements; evaluation policies; guidelines for when and how to measure cost-effectiveness; and EM&V work plan and reporting requirements. In addition to other important developments, the Policy Manual includes a provision for Program Administrators and SAG participants to work in a cooperative and iterative manner to develop the next three-year energy efficiency plan. Such cooperation includes discussion of foundational issues to plan development, including budgets, portfolio objectives, program ideas, and program design. As noted in the Policy Manual, a primary purpose of these cooperative and iterative discussions is to reduce the number of non-consensus issues and litigation associated with the applicable three-year plan dockets.

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.

The Program Administrators, including all utilities and DCEO, as well as stakeholders, including the People, NRDC, CUB, and ELPC support Commission approval of the Policy Manual. Verifications from representatives of each of these entities were attached to the AG's Petition. However, Staff, who participated in the development process and successfully negotiated changes to dozens of issues that were reflected in the Policy Manual, nonetheless disagreed with the other parties on specific language in the following five sections: (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. After the submission of comments in this proceeding, Staff withdrew its requested changes to Section 2.3. The remaining contested issues are addressed below.[6]

## V. Contested Issues

### A. Section 1—Glossary

#### 1. Position of Staff

Staff initially requested that the Commission remove the phrase "the Program Administrator determines" from the definition of "Breakthrough Equipment and Devices" to clarify that Program Administrators do not have "the unilateral right" to make final determinations as to which technologies, measures, projects, programs, and/or services are covered by the definition. Staff Initial Comments at 4-5. In its Reply, Staff further explains its concern that the inclusion of this 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." Staff Reply Comments at 5.

Staff states that its recommended deletion is not an attempt to limit the Program Administrators' existing flexibility and that Staff fully supports giving the Program Administrators sufficient flexibility. *Id*. at 6. Staff wants to maintain the status quo in which Program Administrators retain "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." *Id*. Finally, Staff states that it withdraws its recommended deletion if "the intent of this language is not to prevent stakeholders from objecting to designations before the Commission." *Id*. at 5.

#### 2. Position of Program Administrators, AG, CUB, and ELPC

Sections 8-103 and 8-104 of the Act provide that no more than 3% of energy efficiency expenditures "may be allocated for demonstration of breakthrough equipment and devices." 220 ILCS 5/8-103(g); 220 ILCS 5/8-104(g). In several of the energy

[6] The Commission notes that Staff expresses concern with a variety of Sections without proposing any edits. *See* Staff Initial Comments at 19 (expressing concern with Section 3.7). The Commission appreciates Staff's positions but notes they are merely that, litigation positions that can be raised later should a ripe issue warrant. Accordingly, the Commission will not address them in this Order.

efficiency plan approval dockets, the Commission specifically directed that a statewide definition for "breakthrough equipment and devices" should be discussed at the SAG.[7]

The Program Administrators and the Consumer and Environmental Stakeholders state that the Policy Manual Subcommittee followed the Commission's directive and the Policy Manual defines "Breakthrough Equipment and Devices" with specificity. PA Response Comments at 7; CES Response Comments at 11. In particular, Section 1—Glossary, includes the following definition:

> ***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.

Petition, Exhibit A (Policy Manual) at 5.

The Program Administrators and the Consumer and Environmental Stakeholders agree that Staff's recommended revision to the above definition is unnecessary and should be rejected. PA Response Comments at 7-10; CES Response Comments at 10-14. The Program Administrators and the Consumer and Environmental Stakeholders explain that the Policy Manual sets forth a very detailed definition of what constitutes a "Breakthrough Equipment and Device" such that Program Administrators have clear and sufficient guidance to make these decisions while at the same time providing the Program Administrators with what even Staff agrees is necessary flexibility. PA Final Comments at 6; CES Response Comments at 11. The Program Administrators point out that they need this flexibility in implementing their plans in order to accommodate the unique characteristics of each Program Administrator and differing goods and services. PA Response Comments at 8. In Reply, the Program Administrators state that there is no need to alter the above definition that memorializes that flexibility because Staff admittedly supports the Program Administrators' flexibility to determine what constitutes a "Breakthrough Equipment and Device."

The Consumer and Environmental Stakeholders point out that contrary to Staff's claim, Program Administrators have always had the discretion to interpret Breakthrough Equipment and Devices, assuming follow-up regular reporting to the SAG occurs. This fact is revealed in previous Program Administrator three-year filings, which did not necessarily identify specific technologies that would be investigated and promoted

[7] *See* ICC Docket No. 13-0495, Final Order at 136 (Jan. 28, 2014) (ComEd), ICC Docket No. 13-0498, Final Order at 33 (Jan. 28, 2014) (Ameren Illinois); ICC Docket No. 13-0499, Final Order at 46-47 (Jan. 28, 2014) (DCEO); ICC Docket No. 13-0550, Final Order at 35-35 (May 20, 2014) (Peoples Gas/North Shore Gas).

through this aspect of each their three-year plans, but rather identified planned processes for selecting break-through technologies for study.

In addition, the Consumer and Environmental Stakeholders state that Quarterly Reporting requirements set forth in Section 6.3 of the Policy Manual will require Program Administrators to keep Staff and stakeholders informed about technologies that are selected for review and technologies that are demonstrated successful. CES Response Comments at 13, citing Petition, Exhibit A (Policy Manual), Section 6.5.iii and Section 6.5.vi. Moreover, quarterly Program Administrator reporting requirements will give interested stakeholders adequate opportunities to review and comment on the Program Administrator's application of the term "Breakthrough Equipment and Devices." Section 6.5.vi. of the Policy Manual, for example, requires Program Administrators to provide portfolio-level narratives that describe "[k]ey portfolio-level changes and updates, including: a. All Measures that are demonstrated as successful through a Program Administrator Breakthrough Equipment and Devices Program…." Petition, Exhibit A (Policy Manual), Section 6.5.vi. And, contrary to Staff's objections, should any party disagree with the direction a Program Administrator is taking in researching and developing new technologies for Illinois portfolios, that party always maintains the ability to petition the Commission to provide alternative direction to Program Administrators should the reports reveal questionable decision-making. CES Response Comments at 14.

In response to Staff's concern regarding the opportunity to object to and litigate designations of "Breakthrough Equipment and Devices" before the Commission, both the Program Administrators and the Consumer and Environmental Stakeholders emphasize that the Policy Manual definition does not foreclose the litigation of such an objection at the appropriate time. PA Final Comments at 6; CES Response Comments at 14. To the extent that Staff still proposes to edit the above definition, the Program Administrators and Consumer and Environmental Stakeholders assert that the Commission should reject Staff's unnecessary attempt to provide clarification to language that speaks for itself and approve the definition of "Breakthrough Equipment and Devices" as set forth in the Policy Manual presented with the Petition.

### B. Section 2.1—Background

#### 1. Position of Staff

Staff originally proposed the inclusion of language in the Overview and Guiding Principles section of the Policy Manual to reiterate the Commission's well-established authority to decide each case before it on that case's own merits, regardless of previous Commission decisions. Staff Initial Comments at 8-9. In its Reply, Staff withdraws its position to modify Section 2.1 of the Policy Manual, recognizing that its proposed language was not needed. Staff Reply Comments at 8. Staff maintains, however, that the Commission should clarify in its Order in this proceeding that no prior Commission Order will be superseded or pre-empted by the Policy Manual. *Id*.

### 2. Position of Program Administrators, AG, CUB, and ELPC

The Program Administrators and the Consumer and Environmental Stakeholders agree that the Commission's approval of the Policy Manual in no way precludes the Commission from deciding a future case on its own merits, even if certain decisions in that case are contrary to the Policy Manual's direction. PA Response Comments at 11-12; CES Response Comments at 16-18. It is well-settled that the Commission has the authority to address each case that comes before it on that case's own merits, and that the Commission is not limited by the doctrines of *res judicata* or *stare decisis*. *See*, *e.g.*, *Commonwealth Edison Co. v. Illinois Commerce Comm'n*, 405 Ill. App. 3d 389, 407 (2d Dist. 2010). As such, Staff's recommendation attempts to fix a problem that simply does not exist.

The Program Administrators and the Consumer and Environmental Stakeholders further explain that there is no need for the Policy Manual to include a blanket statement that the Policy Manual will not supersede or otherwise pre-empt existing Commission Orders. The Policy Manual will apply to the energy efficiency portfolio plans beginning June 1, 2017. PA Response Comments at 11-12; CES Final Comments at 6. Therefore, at least as to the existing, Commission-approved plans, there is no pre-emption by the Policy Manual because those plans will have ended prior to the effective date of the Policy Manual. Moreover, the advocating parties further note that, if, hypothetically, there was "deviation" between the Policy Manual and an existing Commission Order on a particular issue (despite the fact that Staff has not identified any), the deviation would represent an evolution of policy that was formed and agreed to through the rubric of stakeholders' discussions and resolutions. PA Final Comments at 8; CES Final Comments at 6. In light of the fact that all matters in the Policy Manual have been vetted through the SAG's consensus-building process and all participants but one are in agreement, the Commission's approval of the Policy Manual directives is appropriate even if there may be a hypothetical conflict between the Policy Manual and a previous Commission Order. A Commission Order approving the Policy Manual would provide the Commission's imprimatur on the policies outlined in the Manual.

Finally, clarification or additional language insertions on this point as suggested by Staff will potentially invite future litigation – a result the Policy Manual is expressly intended to avoid – by controverting the consensus-building process that the Commission directed the Program Administrators and other stakeholders to engage in. CES Response Comments at 14-18; CES Final Comments at 5.

## C. Section 2.4—Updates to this Policy Manual

### 1. Position of Staff

The Policy Manual provides in Section 2.4 that "[t]his Policy Manual will be reviewed annually and updated as needed." Staff takes issue with the procedures set forth by the Policy Manual for updates. Staff asserts that it is not clear: (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 Initial Comments at 14-15. Staff argues that the Commission should specify, in this proceeding, the procedure for updating future policy manuals. *Id*. at 15. In Reply, Staff withdraws its opposition to a March 1, 2016 filing date for Version 2.0 of the Policy Manual, but Staff maintains that the Commission must establish a specific filing deadline. Staff Reply Comments at 10.

### 2. Position of Program Administrators, AG, CUB, and ELPC

The Program Administrators and the Consumer and Environmental Stakeholders point out that Staff's request for a clear procedure for updating the Policy Manual ignores the fact that the procedure is already in place: the Policy Manual will be updated through the SAG. PA Response Comments at 14; CES Response Comments at 19-20. Section 3 of the Policy Manual, which outlines the roles and responsibilities of the SAG, also provides that the SAG Facilitator will create annual schedules and topics for discussion, with consultation from the SAG. *See* Petition, Exhibit A (Policy Manual), Section 3.5. ("The SAG Facilitator shall create an annual plan prioritizing Commission directives to SAG and stakeholder requests, as applicable. A draft plan and schedule will be discussed with SAG at the beginning of each Program Year.") To this extent, a process is defined, contrary to Staff's protestations. CES Response Comments at 19-20. The Commission has previously ordered the Program Administrators to discuss with the SAG technical, program, and policy-related issues outside of litigated proceedings, and the SAG has been productive as evidenced by the creation of a Statewide Technical Reference Manual ("TRM"), updated each year, and now in Version 1.0 of the Policy Manual. PA Response Comments at 14.

The Program Administrators and the Consumer and Environmental Stakeholders note that the Policy Manual Volume 1.0 process has worked remarkably well in creating a foundational document for energy efficiency policy in Illinois. Apart from the initial direction provided by the Commission in the various energy efficiency portfolio planning Orders, the structure, discussion, and timing relating to the development of the Policy Manual has been left to the parties who are impacted by such requirements (e.g., Program Administrators, independent evaluators, Staff and other interested stakeholders). The Program Administrators and the Consumer and Environmental Stakeholders emphasize that, but for a single party, Staff, the Policy Manual is a consensus document. The advantage of the non-litigious, consensus-building process is the flexibility to consider an array of issues over time to more effectively employ resources and to mitigate future litigation risks. The Program Administrators and the Consumer and Environmental Stakeholders, therefore, request that the Commission continue to defer appropriate matters to the SAG for resolution, and decline Staff's invitation to address them in this docket. To the extent ripe issues require resolution, the Commission can and will address them at that time.

The Program Administrators further note that, as a substantive matter, Staff's request to impose an artificial deadline may result in less consensus and more litigation if the stakeholders: (1) are unable to freely exchange information in fear of near term litigation, and (2) are unable to thoughtfully and deliberately consider resolutions to differing positions. PA Final Comments at 9. Staff's proposal for a Version 2.0 filing deadline may throw more issues into the "non-consensus bucket" requiring litigation as the parties will be pressed for time, reducing time for collaboration and interfering with the consensus-building process that will hopefully yield agreement on sound policy. If the expectation is eventual litigation created by the compressed timeframe, parties may be more hesitant to share information and an irreconcilable impasse may result. The eventual filing timeframe of Policy Manual Version 2.0 should be left to the stakeholders to develop in light of the discussions that already are scheduled to take place in early 2016. PA Final Comments at 9; CES Final Comments at 7. The consensus-building process already underway should be allowed to continue without the imposition of artificial deadlines or unnecessary restrictions. Moreover, the Policy Manual as written represents a fair, balanced and solid pronouncement of policy.

## D. Section 3.4—Facilitation

### 1. Position of Staff

Staff states that it 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." Staff Initial Comments at 18. Staff seeks changes to the Policy Manual imposing requirements on the utilities to include requirements in their contracts with the SAG Facilitator to require compliance with the Policy Manual directives. *Id.*

### 2. Position of Program Administrators, AG, CUB, and ELPC

The Program Administrators and the Consumer and Environmental Stakeholders ask the Commission to reject Staff's proposed edits as unnecessary and unwarranted. Specifically, the Program Administrators highlight that, while they currently have contracts with the SAG Facilitator due to a funding issue, there is no guarantee that such an arrangement will continue. PA Response Comments at 16-18. The Program Administrators further note concern with the fact that Staff reviewed and proposed edits (which were accepted) to the proposed contract with the SAG Facilitator, but waited until this docket to raise Staff's current issue. *Id.* Moreover, the Program Administrators note that Staff is the only party concerned that the SAG Facilitator will not perform its duties and yet Staff has not provided any relevant evidence supporting that concern. The Consumer and Environmental Stakeholders also urge the Commission to reject Staff's proposed edits as unnecessary. CES Response Comments at 22. Should Staff have an issue with how the SAG Facilitator is performing, the Consumer and Environmental Stakeholders state that such concern should first be raised with the SAG so that it can be addressed and then, if necessary, addressed in a different docket. *Id*. The Consumer and Environmental Stakeholders state that requiring specific language in Program Administrator contracts detailing SAG obligations pursuant to Commission Order is unnecessary at this juncture. They recommend that if Staff feels strongly about this issue, it should raise it as a discussion topic in the Policy Manual Version 2.0 discussions. CES Response Comments at 22.

### E. Section 5.4—Inducements

#### 1. Position of Staff

Staff proposes to modify this definition as follows to "specific unallowable costs" in order "to clarify the list is not comprehensive." Staff Initial Comments at 20-21.

> 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.

*Id*. at 21. Staff contends that this clarification is necessary due to the fact that one of the stated goals of the Policy Manual is to reduce Program Administrator risk for disallowance. *Id*.; Staff Reply Comments at 14. In Reply, Staff reiterates that Section 5.4 should be "clarified" to make clear that payments for alcohol and sports tickets are not the only prohibited costs. Staff Reply Comments at 13-15. Staff also asserts that clarification is needed because the inducement language in Section 5.4 of the Policy Manual "may be misinterpreted to mean that only Program Administrator subcontractors are prohibited from providing the two inducement categories." *Id*. at 15.

#### 2. Position of Program Administrators, AG, CUB, and ELPC

Section 5 of the Policy Manual addresses cost categories and states that the purpose of defining costs is "to standardize reporting among Program Administrators and to improve transparency and consistency in cost categorization, as well as offer guidance on Section 8-103 and 8-104 Energy Efficiency Program costs for evaluation purposes." Petition, Exhibit A (Policy Manual) at 15. Among other cost categories, the Policy Manual includes the following definition of "inducements":

> 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 include 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.

Petition, Exhibit A (Policy Manual) at 16.

The Program Administrators and the Consumer and Environmental Stakeholders collectively urge the Commission to reject Staff's proposed modifications to Section 5.4 as unnecessary and contrary to the intent of the majority in including the consensus provision reflected in the Policy Manual. This particular provision was extensively and vigorously debated at the Policy Manual Subcommittee and any change to the definition of inducements will threaten the balance of the compromise – or "fragile truce" – reached over the course of those discussions. PA Response Comments at 20; CES Response Comments at 23-24.

The Program Administrators state that the compromise consisted of first defining "inducements" in the Policy Manual to reflect the fact that the energy efficiency programs implemented by the Program Administrators are not the same as utility monopoly services. PA Response Comments at 20. The Program Administrators further note that, in response to concerns regarding the use of ratepayer dollars on certain items, the consensus provision then specifies that the Program Administrators shall exclude from inducements any expenses for alcohol and tickets to sports events. *Id*. The Program Administrators and the Consumer and Environmental Stakeholders explain that there 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 nor preclude the possibility of other disallowances in future proceedings. PA Response Comments at 20; CES Final Comments at 8-9. The Program Administrators and the Consumer and Environmental Stakeholders also assert that there is no need to state that a list of prohibited costs is "incomplete" where parties retain the ability to challenge the prudency of expenses before the Commission at the appropriate time and there is acknowledgment that the issue will continue to be discussed during the continued consensus-building process. PA Final Comments at 12; CES Final Comments at 8-9.

In response to Staff's assertion that the prohibition embodied in Section 5.4 may be construed to only apply to Program Administrator subcontractors, the Program Administrators and the Consumer and Environmental Stakeholders emphasize that the language is not ambiguous, clearly applies to Program Administrator employees, and that this is another needless change that would upend the consensus-building process. PA Final Comments at 13; CES Final Comments at 10-11. As set forth in the Policy Manual language, the prohibition in Section 5.4 applies to both the Program Administrators and their subcontractors. *Id*.

### F. Section 6.2—Adjustable Savings Goals

#### 1. Position of Staff

Staff has "several concerns with Section 6.2 Adjustable Savings Goals." Staff Initial Comments at 22. Specifically, Staff is concerned that: the Policy Manual represents a deviation from Commission policy as approved in Ameren Illinois' last three-year plan Order; the suggestion may adversely affect bidder and administrator behavior; the process is unclear in practice; and additional requirements should be ordered. To remedy Staff's concerns, Staff provides a rewrite of Section 6.2 for consideration and adoption by the Commission.

#### 2. Position of Program Administrators, AG, CUB, and ELPC

The Program Administrators and the Consumer and Environmental Stakeholders uniformly urge the Commission to reject Staff's proposed changes. The advocating parties explain that Section 6.2 represents the result of considerable discourse by several subject matter experts who determined the policy reflects a fair balance between updating values used to determine achieved savings and adjusting goals. *See* PA Response Comments at 22-24. Additionally, the Program Administrators highlight that Staff has provided little evidence as to why the policy reflected in Section 6.2, which represents the consensus of stakeholders except Staff, must change or why further requirements are necessary, particularly in the face of overwhelming consensus on the issue. *Id.* at 25.

The Consumer and Environmental Stakeholders noted that, here again, Staff has ignored the agreement among the parties to elucidate and build on the Policy Manual language on this point in Policy Manual Version 2.0 discussions. Staff's insistence that the details of this policy be litigated in this proceeding ignores the fact that the SAG Facilitation team has already developed, for example, templates that will further hone Program Administrator expectations related to this provision. CES Response Comments at 26.

In addition, claims that the language runs contrary (or is not as robust in direction) as findings in Ameren Illinois' most recent three-year plan Docket No. 13-0498 Order are likewise flawed, according to the Consumer and Environmental Stakeholders. They point out that specific directives impacting three-year plans generally expire at the beginning of the next three-year plan period: June 1, 2017 – the same date upon which the Policy Manual would take effect. In addition, the statement betrays a misunderstanding of the Policy Manual collaborative process ordered by the Commission. CES Response Comments at 26. In approving the development of a Policy Manual through the SAG process, the Commission envisioned a collaborative, informal SAG-driven process governing the operation and evaluation of the programs, with the intent of ensuring consistency in the delivery and evaluation of energy efficiency programs, and the minimization of future litigation related to these policies, according to the Consumer and Environmental Stakeholders. *Id*.

The Program Administrators and the Consumer and Environmental Stakeholders urge the Commission to endorse the consensus-building process and the results achieved thereby.

### G. Section 7.2—Net-to-Gross Policy

#### 1. Position of Staff

With respect to the Net-to-Gross Policy ("NTG") set forth in Section 7.2 of the Policy Manual, Staff states that the revised NTG Framework is not Staff's first preference for application of NTG ratios through the evaluations, but “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 modifications, as described later in this section.” Staff Initial Comments at 30.

Staff explains that certain provisions of Section 7.2 reflect differences from past Commission-approved processes to develop NTG values. For example, Section 7.2 provides for "how to handle cases where a new pilot program, sub-program, measure group, and/or special project arises after the March 1 deadline." *Id.* at 32. However, Staff is in agreement with these changes as they "are intended to address issues that have arose [sic] since the adoption of the previous NTG frameworks." *Id.*

While Staff expresses general support for Section 7.2, Staff also proposes certain refinements that Staff states would be consistent with prior Commission direction. Specifically, Staff proposes a change to a sentence addressing the development of DCEO's NTG values. Staff requests clarification from the Commission that the phrase "Public Sector NTG estimates do not need to be developed" simply means that "'deemed’ NTG estimates do not need to be developed for DCEO in advance of the March 1 deadline." *Id.* at 33. Staff expresses concern that the phrase could be misinterpreted to mean that DCEO does not need to estimate NTG values for its Public Sector Programs. Accordingly, Staff recommends that the Commission add the word "deemed" to the phrase.

Finally, Staff further requests that the Commission direct the utilities to file the final deemed NRG ratios within 14 days of receipt of the final deemed ratios from the evaluators to "ensure clarity and minimize potential for future litigation." *Id.* at 34.

In Staff's Reply, Staff states that it disagrees with the suggestion that Staff's concerns should be brought to the Policy Manual Version 2.0 Discussion Framework because "if this is a change in policy that applies to DCEO's next plan filing, the Commission should adopt this policy on the assumption that the parties may address it in the future." Staff Reply Comments at 18.

#### 2. Position of Program Administrators, AG, CUB, and ELPC

The Program Administrators and the Consumer and Environmental Stakeholders all oppose Staff's proposed changes to Section 7.2 and urge the Commission to approve Section 7.2 unchanged. These parties assert that Section 7.2, like the remainder of the Policy Manual Version 1.0, reflects good policy borne from the consensus building process directed by the Commission. *See e.g.,* PA Final Comments at 14-15; CES Response Comments at 27. This consensus building process reflected the considered input of subject matter experts, evaluators, and others. The Program Administrators and the Consumer and Environmental Stakeholders also note that Staff did not raise its stated concern regarding Section 7.2 during the consensus building process. Further, these parties note that Staff's concerns are hypothetical in nature; its proposed change is unnecessary as there is no present dispute to resolve; and, in any event, Staff should participate and raise any proposed changes as part of the Version 2.0 Discussion Framework. *Id*. In addition, the Consumer and Environmental Stakeholders point out that when negotiating this language, DCEO representatives specifically requested the flexibility to incorporate retroactive adjustments to NTG findings, rather than the prospective adjustments favored by the utility Program Administrators. No suggestion was made that DCEO would abandon NTG analysis through the adoption of this language. CES Response Comments at 27-28.

These parties state that while Staff disagrees with addressing Staff's concerns as part of the Version 2.0 Discussion Framework, they urge the Commission not to be so quick to dismiss the consensus building process, which has resulted in an historic Policy Manual supported in its entirety by all interested stakeholders but Staff. Instead, these parties request that the Commission "promote a culture of compromise and discourse by endorsing outcomes that reflect the thoughtful consensus of interested stakeholders regarding the upcoming three-year plans." PA Final Comments at 15.

### H. Section 8.4—TRC Costs

#### 1. Position of Staff

Staff raises several concerns regarding Section 8.4, TRC Costs, and provides significant edits to this Section for Commission review and approval.

> First, Staff recommended that additional detail be added to the Policy Manual to further defines 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.

Staff Reply Comments at 18-19. Staff provides the Commission with multiple sets of proposed modifications to Section 8.4 and urges the Commission to adopt its proposed revisions to Section 8.4 to avoid future litigation and provide clarity. In its Reply, Staff requests that, in the event the Commission rejects Staff's recommendations, the Commission should limit Program Administrators' flexibility to ensure "meaningful comparisons" can be made between TRC values used during the Program Administrator's plan approval docket and that used in the *ex post* TRC analysis. *Id.* at 21.

### 2. Position of Program Administrators, AG, CUB, and ELPC

Once again, the Program Administrators and the Consumer and Environmental Stakeholders urge the Commission, in unison, to reject Staff's rewrite of sections of the Policy Manual Version 1.0 and ask that the consensus-building process be endorsed. The language at issue—Section 8.4—reflects good policy that forms a building block with respect to categorizing costs used to calculate a TRC value. The Program Administrators and the Consumer and Environmental Stakeholders also note that two of Staff's proposed changes—the rewrite of the definition of "incremental costs" and the classification of incentives—were never raised "over the many months of Policy Manual consensus discussions." CES Final Comments at 13. Moreover, these parties each assert that Staff's proposed changes are either unwarranted or unnecessary. With respect to Staff's suggested level of detail on the definition of Incremental Costs, the Program Administrators state that such level of detail would turn the policy manual into an "operations manual," which is counter to the intent of the Policy Manual. PA Response Comments at 26. Moreover, these parties assert that footnote 44 to the Policy Manual should not be deleted or modified because the footnote does what it is intended to do—provide guidance on the intent. The Consumer and Environmental Stakeholders point out that Staff can pursue these points in either the TRM meetings that occur regularly as part of the SAG or in future Policy Manual discussions. Again, Staff has plenty of opportunities in the SAG and TRM informal, collaborative settings to propose clarifications on these issues. Commission intervention on this point in a litigated proceeding simply is not necessary or required in this docket. CES Response Comments at 28. The Consumer and Environmental Stakeholders further urge against overlooking the attempt at "collaboration and consensus-building through Policy Manual discussions…in favor of litigating an idea that has not been fully vetted by stakeholders and Program Administrators as new statewide policy." CES Final Comments at 15. All parties urge Staff to participate in the Version 2.0 Discussion Framework with respect to its concerns and suggestions to Section 8.4.

Finally, the Program Administrators and Consumer and Environmental Stakeholders uniformly request that the Commission reject Staff's attempt to undermine the consensus reached on Section 8.4 and decline to adopt any of the changes proposed by Staff.

## VI. Commission Analysis and Conclusion

The Commission has broad legal authority under Sections 8-103, 8-104 and 16-111.5B of the Act to review and approve the Policy Manual filed in this docket. The Commission acknowledges and appreciates the hard work and collaborative efforts of the SAG participants in producing the Policy Manual. This collaboration further demonstrates the utility and efficiency of referring technical, program, and policy-related issues to the SAG for discussion outside of contested proceedings. The SAG clearly has been productive in this regard, both in the past, in its creation of the Technical Reference Manual and a Net-to-Gross energy savings calculation policy, and here with the creation of the Policy Manual. The Commission applauds the efforts of all involved.

The Commission notes that all parties but Staff are in agreement that the Policy Manual as filed with the Petition reflects good policy, including with respect to the contested issues described above. While Staff has raised certain concerns regarding how the Policy Manual could be clarified or further improved upon and raises issues not listed in the Non-Consensus Exhibit attached as Exhibit B to the AG's Petition, the Commission is not convinced that any changes are needed at this time. Importantly, the Commission notes that many of these issues are set to be addressed as part of the Version 2.0 Discussion Framework and Staff will have the opportunity to raise all of its recommendations regarding any proposed edits in that context on these and other issues Staff chooses to raise. Staff and all parties also retain the ability to suggest any proposed edits in any future docket in which those concerns may be at issue. The Program Administrators and the Consumer and Environmental Stakeholders have demonstrated that adoption of the Policy Manual derived from the year-long collaborative process described herein will further the best interests of ratepayers and the continued evolution of energy efficiency policy in the State of Illinois. Moreover, it is consistent with previous Commission Orders that have encouraged Program Administrators and stakeholders to resolve issues related to the delivery and evaluation of the ratepayer-funded programs through this informal process, and then bring them to the Commission for approval. As such, the Commission concludes that no changes to the Policy Manual as filed with the AG's Petition are warranted at this time.

The Commission agrees with the Program Administrators and the Consumer and Environmental Stakeholders that the Policy Manual filed with the Petition complies with the directive to "ensure that programs across the state and as delivered by various program administrators can be meaningfully and consistently evaluated." The Policy Manual as filed reflects the considerable efforts and input of various subject matter experts, including Program Administrators, the Consumer and Environmental Stakeholders and Staff. Accordingly, the Commission approves and adopts the Illinois Energy Efficiency Policy Manual Version 1.0 filed as Exhibit A to the AG's Petition in this docket without change.

## VII. Findings and Orderings Paragraphs

The Commission, being fully advised in the premises, is of the opinion and finds that:

(1) The Commission has jurisdiction over the subject matter hereof and the parties hereto;

(2) The recitals of fact set forth in the prefatory portion of this Order are supported by the record and are hereby adopted as findings of fact; and

(3) the Illinois Energy Efficiency Policy Manual Version 1.0 filed as Exhibit A to the Petition in this docket is approved and adopted, and shall be effective beginning June 1, 2017.

IT IS THEREFORE ORDERED by the Illinois Commerce Commission that the Illinois Energy Efficiency Policy Manual Version 1.0 filed as Exhibit A to the Petition in this docket is approved and adopted, and shall be effective beginning June 1, 2017.

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

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

DATED: ________________, 2015
BRIEFS ON EXCEPTIONS DUE: ________________, 2015
REPLY BRIEFS ON EXCEPTIONS DUE: ________________, 2015

Heather Jorgenson
Administrative Law Judge