

**STATE OF ILLINOIS  
ILLINOIS COMMERCE COMMISSION**

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

**JOINT REPLY OF ILLINOIS PROGRAM ADMINISTRATORS TO STAFF’S BRIEF  
ON EXCEPTIONS**

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, North Shore Gas Company (“Peoples Gas/North Shore Gas”), and the Illinois Department of Commerce and Economic Opportunity (“DCEO”) (collectively, the “Program Administrators”), in accordance with 83 Ill. Admin. Code Part 200.830 and the briefing schedule established by the Administrative Law Judge (“ALJ”), submit their Reply to the Brief on Exceptions filed by the Staff of the Illinois Commerce Commission (“Staff”) on December 4, 2015. Staff has set forth three exceptions, and the Program Administrators reply to each in turn.

**I. REPLIES TO EXCEPTIONS**

**A. Staff Exception 1: Staff’s Proposed Modifications Should Not be Adopted.**

Staff’s first exception includes two arguments, one general and one more specific. First, Staff takes general exception to the Administrative Law Judge’s Proposed Order (“ALJPO”) simply because it rejected Staff’s positions that ran contrary to the stakeholders’ collaborative, hard-won consensus. (Staff BOE at 2-3). Staff proposes that the Commission adopt *all* of Staff’s substantive proposals, less the three Staff has withdrawn, instead of none of them. (Staff BOE at 2). Second, Staff raises an apparent inconsistency between the approach to Net-to-Gross

(“NTG”) adjustments set forth in a purported prior-year consensus item developed in relation to the administration of Section 16-111.5B incremental energy efficiency programs for the electric utilities, which has been advocated by the Illinois Power Agency (“IPA”) (and Staff) for Commission approval in the ongoing 2016 IPA Procurement Plan Docket (No. 15-0541), and the approach to NTG adjustments set forth in the Policy Manual. Staff appears to believe the inconsistency justifies a modification to the Policy Manual in this docket. It does not. Indeed, neither of Staff’s arguments warrant any modifications to the ALJPO.

**1. Reply to Staff’s General Argument Against the Rejection of its Substantive Positions.**

Just as Staff has chosen to stand on its Initial Comments and Reply Comments filed in this proceeding (Staff BOE at 3), the Program Administrators stand on their Briefs in Response and Reply to those comments. Staff’s renewed request for adoption of its many substantive modifications to the Policy Manual borne out of stakeholder consensus should be rejected for all of the reasons previously set forth by the Program Administrators and for all of the reasons set forth in the ALJPO.

Energy efficiency issues in Illinois are complex, specialized, and often benefit from the efforts of the various stakeholders who comprise the Stakeholder Advisory Group (“SAG”). While not always possible, to date it has been preferable that complicated issues be resolved outside of the litigation context. Consistent with the foregoing, the Commission ordered the stakeholders to develop a consensus Policy Manual to “ensure that programs across the state and as delivered by various program administrators can be meaningfully and consistently evaluated,” and has made the development of that Policy Manual a “priority.” (Program Administrators’ Response at 1-2; Commission Special Open Meeting Minutes, Jan. 28, 2014, 22:11-15; Final Order, ICC Docket No. 13-0549, p. 72; ALJPO at 15). In previous filings, the Program

Administrators laid out the evidence establishing that Version 1.0 of the Policy Manual was good public policy that should be approved—and that the issues raised by Staff either should not be adopted or should be taken up by way of the Version 2.0 Policy Manual discussion. The Policy Manual approved by the ALJPO represents the collaborative, hard-won consensus of every Illinois energy efficiency stakeholder involved in this docket other than Staff, and the ALJPO was right to afford “considerable weight” to that near-total consensus. (ALJPO at 15). None of the points presented by Staff outweigh that consideration.

First, Staff continues to suggest that its differences with the rest of the stakeholders must be resolved *now* (Staff BOE at 2), but it is still not clear why, especially when the next version of the Policy Manual is already under discussion. (ALJPO at 15 (“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.”); Program Administrators’ Reply at 4 (“If Staff wanted to refine its position on any given issue, the time to do so was during the year-long collaborative process at the SAG or will be in the future during the upcoming discussions related to Version 2.0.”)). Staff has not presented sufficient evidence or arguments substantiating its request for changes in this regard.

Second, Staff argues that certain items included in the Policy Manual depart from past Commission practices, and that there is “insufficient justification or support in the record for these departures.” (Staff BOE at 2). The only example Staff has come up with, however, is the Policy Manual’s treatment of adjustable savings goals. As explained at length in the Program Administrators’ Response, the Policy Manual’s treatment of adjustable savings goals is not a departure from established practice because *there is no established practice for the next three*

*year plans*. (Program Administrators' Response at 23). The issue of adjustable goals was first raised during the *prior* three-year plan approval dockets, and the litigation that ensued did not result in an "established" practice, as suggested by Staff. (Staff Comments at 23). Instead, the Commission resolved the issue differently for different Program Administrators. (*Id.*) That is exactly the problem the Policy Manual is designed to address; it is designed to reduce inconsistencies and to "ensure that programs across the state and as delivered by various program administrators can be meaningfully and consistently evaluated." (ALJPO at 15). Staff's concerns are therefore unfounded. And contrary to Staff's positions, the Policy Manual itself, as well as the Briefs filed in support of it, establishes the evidentiary basis needed for approval. (Program Administrators' Reply at 14-15).

Third, Staff claims that corrections are necessary to ensure that certain "key policies" support the Commission's goal of increased consistency throughout the state. (Staff BOE at 2-3). Based on its record citations, it appears Staff is referring to its proposed modifications to the Policy Manual provisions concerning TRC costs. (*Id.*). Specifically, Staff wants the Policy Manual's definition of "incremental costs" to include a detailed list of incremental cost categories (Staff Comments at 25), and for the "exception" outlined under the "non-incentive cost" definition to become the rule statewide (Staff Comments at 42). Again, Staff's proposals miss the mark. The Policy Manual represents stakeholder consensus, and the language Staff is attacking was settled upon by the subject matter experts that make up the Policy Manual Subcommittee. (Program Administrators Comments at 26, 29). Staff's positions do not represent consensus, have not been vetted or accepted by the subject matter experts of the Policy Manual Subcommittee, and do not guarantee or support the Commission's stated goal. (Program Administrators' Response at 26-29; Reply at 16-18, 19-20). If additional detail on these issues becomes necessary, then the

Subcommittee can endeavor to work on appropriate language for providing that detail, and the issue can be submitted to the Commission for review in the next version of the Policy Manual. There is no evidence in the record justifying imposition of Staff's unilateral preferences over the consensus of the remaining stakeholders, and the ALJPO rightly recognized as much. (ALJPO at 15).

In summary, as the Program Administrators have previously explained, Staff's call to disregard stakeholder consensus, and to instead impose Staff's unilateral policy preferences over the rest of the state, is not supported by evidence and should be disregarded. The Commission should adopt the ALJPO in its entirety.

**2. Staff's Argument Regarding a Supposed Inconsistency Between the Policy Manual and the IPA Procurement Plan Currently Under Commission Review Should Be Rejected.**

Staff's first exception also highlights an "inconsistency" between the approach to Net-to-Gross ("NTG") adjustments set forth in a prior-year consensus item developed in relation to the administration of Section 16-111.5B incremental energy efficiency programs for the electric utilities, which has been presented by the IPA, on Staff's request, for Commission approval in the ongoing 2016 IPA Procurement Plan Docket (No. 15-0541), and the approach to NTG adjustments set forth in the Policy Manual. (Staff BOE at 3-4). Staff explains that "if the Commission approves both the IPA 2016 Procurement Plan ALJPO and the Policy Manual ALJPO, the Commission will approve both annual net-to-gross ('NTG') based adjustments to the IPA (i.e., Section 16-111.5B) savings goals as well as a one-time NTG based adjustment to Section 16-111.5B savings goals to occur prior to the start of the first Plan Year of an approved Section 16-111.5B Program." (*Id.*) The Commission should reconcile the inconsistency, Staff

says, by modifying the consensus embodied in the Policy Manual to fit the outdated consensus item incorporated into the IPA Plan. (*Id.*)

As an initial matter, the evidence and argument on which Staff rely to support this contention are new and were not discussed in the briefing prior to the issuance of the ALJPO. Thus, the Program Administrators have not had an opportunity to speak on the issue, and the argument, as a whole, should be disregarded at this stage.

Second, it is not clear that there *is* an actual conflict that could not be resolved through the Policy Manual Version 2.0 discussions, absent some finding that the Commission means to contravene the intentions of approving a Policy Manual—effective June 1, 2017, and built out of consensus—that the Program Administrators (and all stakeholders) should follow. Importantly, the ALJPO in this case says that “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” (ALJPO at 15), and the Policy Manual Version 1.0 filed as Exhibit A to the AG’s Petition in this docket states that “[t]he effective date for this Policy Manual is June 1, 2017, or the beginning of the next Portfolio Plan.” (Petition Exhibit A at 8). And the ALJPO in Docket No. 15-0541 approves the consensus items presented by Staff and the IPA only to the extent that they represent “guidelines to vendors and the utilities.” (Docket No. 15-0541, ALJPO at 81). A “guideline” developed during the 2014 IPA Procurement Plan development cycle does not trump the Policy Manual after its effective date.

Finally, it is notable that the purported conflict is something that was created entirely by Staff (and the IPA). On August 14, 2015, the IPA published its draft 2016 Procurement Plan and noted that the Commission approved certain consensus positions developed by the stakeholders to the IPA Incremental Energy Efficiency procurement process in conjunction with its approval

of past IPA Procurement Plans. See <http://www.illinois.gov/ipa/Documents/2016-IPA-Draft-Procurement-Plan.pdf> at 87-88. And then the IPA requested approval of several more. Ameren Illinois submitted comments asking the IPA to remove any discussion of “prior year consensus items” from the Plan. See <http://www.illinois.gov/ipa/Documents/Ameren-Illinois-2016-Plan-Comments.pdf> at 2, 5. Staff, on the other hand, filed a comment asking the IPA to move in the opposite direction. Staff requested the submission of several pages’ worth of “consensus items” for Commission approval, some developed in workshops taking place more than two years ago. See <http://www.illinois.gov/ipa/Documents/ICC-Staff-2016-Plan-Comments.pdf> at 3-4, 13-20. Among other things, Staff suggested that the IPA add to its plan the very consensus item it now argues creates a conflict requiring the modification of the Policy Manual. *Id.* at 17-18.

The IPA adopted Staff’s approach wholesale, without any critical analysis, despite Ameren Illinois’ insistence that the policy items proposed by Staff and the IPA for inclusion in the Plan were stale and could cause issues with the Policy Manual up for approval in this docket. (See Docket No. 15-0541: AIC Objections, 10/5/2015, at 3 (arguing that the stale consensus items should not be adopted in light of the “significant changes and discussions occurring between parties with respect to the future development, planning, implementation and evaluation of energy efficiency in Illinois”); AIC Reply, 10/30/2015, at 3-7 (highlighting “the need to be cautious about the approval of a select list of prior years’ ‘consensus’ positions for use over the next two years” in light of the pending Policy Manual docket)). In Response to Ameren Illinois’ concerns about prior year consensus items being stale in light of ongoing policy developments, Staff responded that “Staff is aware of none” that could fit that description. (Docket No. 15-0541, Staff Response, 10/20/2015 at 7).

Now, after obtaining favorable treatment in the ALJPO issued in Docket No. 15-0541, Staff relies on a self-created conflict to its advantage in this docket, despite the fact that Staff never objected to the portion of the Policy Manual that supposedly creates the conflict. (See Exhibit B to the AG Petition (chart of non-consensus issues, which does not include this item)). In short, Staff should not be allowed to use the ALJPO's findings in ICC Docket No. 15-0541 to block the consensus reached by the stakeholders, as reflected in Version 1.0 of the Policy Manual.

For the reasons set forth above, the Commission should not adopt Staff's proposed changes to the ALJPO on this issue.

**B. Staff Exception 2: Clarification of Staff Positions**

Staff asserts that the ALJPO does not provide “an accurate and detailed summary of Staff's positions with respect to all issues.” (Staff BOE at 6). Staff therefore proposes extensive additions to the language of the ALJPO, as reflected in Staff's Attachment A to its Brief on Exceptions. As an initial matter, the Program Administrators note that Staff did not file a summary of positions or a draft order as provided for by the schedule established in this proceeding. Moreover, the ALJPO already presents an efficient and balanced summary of the respective parties' positions on the issues addressed in this proceeding. Staff's proposed modifications to the ALJPO are therefore unnecessary. Aside from that, Staff's proposed modifications are not a mere “summary of Staff's positions.” They are positional advocacy, and Staff is attempting to inject support for its legal positions—some of it seemingly new and undeveloped in prior briefing—into the factual portion of the ALJPO.

For the foregoing reasons, the Commission should decline to adopt Staff's proposed modifications. However, if Staff's proposed modifications are adopted, then the Final Order should also include the additions to the summaries of the positions of the Program

Administrators and the Consumer and Environmental Stakeholders (“CES”) as reflected in Attachment A to this Reply Brief on Exceptions.

**C. Staff Exception 3: Revision to Policy Manual Date Completed**

Staff has proposed modifying the Policy Manual’s completion date, indicated on the front cover, to December 4, 2015. This change would apparently reflect the Commission’s adoptions of Staff’s proposed modifications, as December 4, 2015, is the date Staff submitted them. Because the Commission should reject Staff’s proposed modifications, there is no need to change the date on which the Policy Manual was completed.<sup>1</sup> This proposed change, too, should be rejected.

**II. CONCLUSION**

Version 1.0 of the Policy Manual represents a balanced compromise that cannot be amended or altered piecemeal without losing the integrity of the agreement. The Program Administrators request that the Commission reject the modifications proposed by Staff and adopt the ALJPO in its entirety.

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<sup>1</sup> The Program Administrators acknowledge that the ALJPO has corrected certain typographical errors in the Policy Manual, but respectfully submits that there is no need to update the “date completed” to account for those changes, as they were non-substantive. If the Commission wishes to account for its own changes to the Policy Manual, it could add a line to the cover displaying the date of final approval, below the date the Policy Manual was completed.

Dated: December 9, 2015

Respectfully submitted,

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A handwritten signature in black ink, appearing to read 'S. Hufnagel', written over a horizontal line.

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**Summary of Positions of the Program Administrators  
and the Consumer and Environmental Stakeholders  
in Response to New Staff Positions**

C. Section 2.2 – Goals

2. Position of the Program Administrators and CES

The Program Administrators point out that Staff's position with respect to Section 5.4, addressed below, depends upon the fact that one of the stated goals in Section 2.2 of the Policy Manual is to reduce Program Administrator risk for disallowance. PA Response Comments at 19. The Program Administrators further point out that, while Staff states it does not support this goal, Staff nevertheless is not objecting to its inclusion in the Policy Manual. *Id.* Finally, the Program Administrators note Staff's contradictory request that, if its proposed clarification to Section 5.4 is rejected, this goal be deleted from the Policy Manual. *Id.* at 20. The Commission should reject Staff's proposed modifications to both Sections 2.2 and 5.4 as contrary to the intent of the majority in including the consensus provision reflected in the Policy Manual. *Id.*

CES state that Staff's objections to Section 2.2 should be rejected so that the Policy Manual consensus-building process can play out. CES Final Comments at 15-16. CES note that the accomplishments to date in memorializing statewide policy to ensure that the energy efficiency programs are operated and evaluated consistently have been impressive, as evidenced by Exhibit A to the AG Petition. *Id.* at 15. CES further note that a process has been created to ensure that all parties' aspirations for the Policy Manual are discussed, analyzed and in many instances, resolved through the facilitated SAG. *Id.* Therefore, there is time ahead to address Staff's concerns before the Policy Manual officially takes effect. *Id.* at 16.

\* \* \* \* \*

F. Section 3.7 – SAG Review

2. Position of the Program Administrators and CES

Regarding Technical Reference Manual Research, Section 3.7(v) of the Policy Manual states as follows:

If evaluation research is likely to inform the IL-TRM, then Evaluators and Program Administrators shall ensure that evaluation research plans and draft evaluation research results are provided to the SAG Facilitator to be posted to the SAG website for review and comment. Comments are due within a timeline mutually agreed to by SAG participants.

Policy Manual at 11-12.

The Program Administrators state that Staff's opinion on this issue requires no action from the Commission. PA Response Comments at 18. The parties supporting the Policy Manual have not asked the Commission to interpret what each of the provisions contained therein mean, nor does such a determination need to be made at this time. *Id.* This is a docket intended to obtain Commission approval of the language for what it is, not for what Staff believes it may or may not be in some hypothetical future context where it may conflict with policies stated elsewhere. The Program Administrators explain that if there does turn out to be some dispute between Section 3.7(v) and other Commission policies in the future, then that dispute can be resolved when it occurs, through the collaborative process or, if that is no longer a viable option, in an appropriate docket. *Id.* at 18-19. Therefore, the Program Administrators ask the Commission to refrain from taking any interpretive action with respect to Staff's opinion at this time as it has nothing to do with any ripe dispute. *Id.* at 19.

CES note that Staff expresses concern, but no identified revisions to the Policy Manual on this point. CES Response Comments at 22. CES further note that the SAG review provisions related to the provision of comment on TRM research findings simply memorializes current practice related to TRM development and SAG comment opportunities and that no change to existing Program Administrator filing obligations is referenced in this provision. *Id.* at 23 (citing Exhibit A (Policy Manual), Section 3.7). CES state that no revisions on this point are appropriate or justified. *Id.* at 23.

\* \* \* \* \*

I. Section 6.1 – Program Flexibility and Budgetary Shift Rules

2. Position of the Program Administrators and CES

The Policy Manual provides as follows regarding flexibility and budgetary shifts:

Any Program Administrator-initiated proposed budget shift of twenty percent (20%) or larger shall be brought to the SAG as well as reported to the Commission, in the quarterly reports. To the extent practicable to Program Administrators, these Program changes and/or budget shifts shall be presented to SAG before implementation. Such changes and/or budget shifts could include reallocation of funds within existing Programs and discontinuing or adding new Programs. Program Administrators are encouraged to bring Program design or budget shift proposals to SAG prior to implementation, notwithstanding the twenty percent (20%) baseline threshold.

Policy Manual at 17.

The Program Administrators state that the Commission should reject Staff's suggested edits as unnecessary at this time. PA Response Comments at 21. It is clear from Section 2.1 of the Policy Manual that it provides "guiding principles for procurement, oversight, evaluation and

operation of the electric and gas Energy Efficiency Programs authorized under Sections 8-103 and 8-104 of the Illinois Public Utilities Act (Act), and Section 16-111.5B, as applicable.” There are guiding principles set forth in the Policy Manual that expressly apply to programs implemented under Section 16-111.5B, see e.g., Section 2.2, Section 3.6, Section 6.2, but Section 6.1 is not among them. Moreover, the Program Administrators explain that the Policy Manual is being approved to apply to the upcoming three-year plan year period and that Staff’s concern that an Order here would somehow supplant existing Commission rulings that apply to the current planning period is misplaced. PA Response Comments at 22. Staff’s proposed edits, therefore, are not necessary and the Commission should adopt the Policy Manual without this recommended change. *Id.*

CES explain that Staff’s requested clarification to Section 6.1 is unnecessary at this time because it has been identified in Policy Manual discussions as ripe for further discussion in the development of Policy Manual Version 2.0. CES Response Comments at 25. CES also state that the Policy Manual itself specifically notes that references to IPA programs are included as applicable. *Id.* (citing Exhibit A (Policy Manual), Section 2.1). Staff’s attempt to create problems that do not exist in fact or law should be rejected by the Commission – particularly when the consensus-building process that was established through Commission orders remains active. *Id.*

\* \* \* \* \*

K. Section 7.1 – Technical Reference Manual

2. Position of the Program Administrators

The Program Administrators did not address the typographical correction set forth by Staff with respect to Section 7.1 because this issue does not require Commission attention. Instead, the Program Administrators maintain that they are confident such issues can be addressed through the collaborative process contemplated for Version 2.0 of the Policy Manual. PA Response Comments at 6, fn. 6.

**CERTIFICATE OF SERVICE**

I, Mark W. DeMonte, an attorney, certify that a copy of the foregoing Joint Reply of Illinois Program Administrators to Staff's Brief on Exceptions was filed on the Illinois Commerce Commission's e-docket and was served electronically to all parties of record in this docket on this 9th day of December, 2015.

/s/ Mark W. DeMonte

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