

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

Illinois Commerce Commission :
On Its Own Motion :
-vs- :
Ameren Illinois Company d/b/a Ameren :
Illinois Commonwealth Edison Company, : **13-0077**
The Peoples Gas Light and Coke Company, :
North Shore Gas Company, and Northern :
Illinois Gas Company d/b/a Nicor Gas :
Company :
: :
Adoption of Policies Concerning the Illinois :
Statewide Technical Reference Manual for :
Energy Efficiency. :

ORDER ON REHEARING

October 2, 2013

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By the Commission:

I. Procedural History

Pursuant to Sections 8-103 and 8-104 of the Illinois Public Utilities Act (“Act” or “PUA”), certain Illinois electric and gas utilities, in coordination with the Department of Commerce and Economic Opportunity (“DCEO”), are required to file three-year Energy Efficiency (“EE”) Plans with the Illinois Commerce Commission (“Commission”) to meet applicable EE standards specified in the statute. 220 ILCS 5/8-103, 8-104. Between September 29, 2010 and October 1, 2010, Ameren Illinois Company d/b/a Ameren Illinois (“Ameren”), Commonwealth Edison Company (“ComEd”), The Peoples Gas Light and Coke Company and North Shore Gas Company (“PG/NSG”), and Northern Illinois Gas Company d/b/a Nicor Gas Company (“Nicor Gas”) (collectively referred to herein as the “Utilities”) filed petitions in separate proceedings for approval of EE plans subject to Sections 8-103 and 8-104 of the Act, which would be implemented by the Utilities in coordination with DCEO.

On December 21, 2010, the Commission entered Orders in Docket Nos. 10-0568 (Ameren) and 10-0570 (ComEd). The Commission entered Orders in Docket Nos. 10-0562 (Nicor), 10-0564 (PG/NSG), and an Order on Rehearing in Docket 10-0568 (Ameren) on May 24, 2011. In these Orders, the Commission directed stakeholders to collaborate through the Illinois Energy Efficiency Stakeholder Advisory Group (“SAG”) to develop a statewide Technical Reference Manual for Energy Efficiency (“TRM”). The first edition of the Illinois Statewide Technical Reference Manual (“IL-TRM”) for EE

dated September 14, 2012 was developed to comply with the Commission's Orders and was approved by the Commission in Docket No. 12-0528.

Subsequently, Commission Staff ("Staff") submitted a report dated December 18, 2012 ("Policy Division Staff Report") recommending that the Commission initiate a proceeding to consider adoption of policies concerning the IL-TRM and to make the policies applicable to Illinois Program Administrators, including the Utilities. Staff's report stated that the policies pertain to (1) the applicability of the IL-TRM in planning, implementing and evaluating EE measures; and (2) the process for annually updating the IL-TRM, including: (i) identification of roles and responsibilities for stakeholders in the TRM Update Process; (ii) requirements surrounding the TRM Administrator; and (iii) a timeline for updating the IL-TRM. On January 24, 2013, the Commission entered an order initiating the instant proceeding.

On January 30, 2013, the Citizens Utility Board ("CUB") filed a Petition to Intervene which was granted, and on February 4, 2013, the Illinois Attorney General's Office ("AG") filed a Notice of Appearance. Staff filed testimony on March 8, 2013. There were no contested issues. On March 27, 2013, the Commission issued a Final Order in this docket approving the IL-TRM Policy Document (Attachment A to the Policy Division Staff Report).

On April 29, 2013, the Utilities and the AG and CUB (jointly, "AG/CUB") filed Applications for Rehearing ("Applications"). The Applications sought clarification of key TRM Policies approved by the Commission in the Final Order. The Commission granted Rehearing on May 15, 2013.

The Utilities, Staff and AG/CUB filed Verified Initial Comments on Rehearing on June 27, 2013 and Verified Reply Comments on July 23, 2013. The parties submitted draft proposed orders on remand on August 6, 2013. On August 15, 2013, the record on rehearing was marked "heard and taken".

The Proposed Order was issued on September 4, 2013. On September 11, 2013, Staff and the Utilities filed Briefs on Exceptions. Staff, the Utilities and AG/CUB filed Reply Briefs on Exceptions on September 18, 2013.

II. Background

In the Commission Orders relating to the Utilities' petitions for approval of their EE plans, the Commission directed the Utilities to collaborate with SAG and DCEO to develop an Illinois TRM. The purpose of the IL-TRM is to provide a transparent and consistent basis for calculating energy (electric kilowatt-hours ("kWh") or natural gas therms) and capacity (electric kilowatts ("kW")) savings generated by the State of Illinois' EE programs, which are administered by the Utilities, otherwise known as the Program Administrators. During the development of the IL-TRM, the SAG participants concluded that a consistent set of TRM policies should also be adopted by the Commission in order to ensure that the recorded TRM values and calculation of energy savings are applied and calculated consistently across the state. The TRM policies

would also provide transparency of and consistency in the applicability of TRM values so that all stakeholders would have a common reference document for measure, program and portfolio savings. This resulted in two separate filings – the “technical” TRM was filed and approved in Docket No. 12-0528, while the instant docket was initiated on January 24, 2013 to consider the TRM Policy Document.

The Commission’s March 27, 2013 Order in this docket directs that the independent evaluators evaluating programs delivered under Sections 8-103 and 8-104 of the Act perform savings verification based on the Commission-approved TRM and present these savings verification values within the appropriate annual independent evaluation reports of the Program Administrators’ energy efficiency portfolios completed pursuant to 220 ILCS 5/8-103(f)(7) and 220 ILCS 5/8-104(f)(8). Order of March 27, 2013 at 5 (“March 27, 2013 Order”). The Commission further directed that these TRM savings verification values be used where applicable for the purpose of measuring savings toward compliance with Program Administrators’ energy savings goals set forth in Sections 8-103 and 8-104 of the Illinois Public Utilities Act.

This docket is specifically designed to consider and approve TRM Policies that are intended to eliminate the inefficiencies of litigating these policies in each of the Utilities’ separate three-year EE plan dockets and to provide certainty regarding the use and application of the TRM on an on-going basis. There were no contested issues in this docket, and therefore at the time of the Final Order, the parties to this proceeding believed that a consensus view had been reached regarding the TRM Policies. Subsequent to the issuance of the Final Order, however, SAG participants discovered that fundamental disagreements exist among them regarding three core questions of the TRM’s application. In response to the Applications, the Commission granted rehearing to resolve the following questions:

- (1) Does the TRM cease to be effective at the end of each Plan Year?
- (2) Should an existing measure in the TRM be removed entirely if there is disagreement over any subcomponent of the measure during the update process?
- (3) Should measure level non-consensus issues that have been properly raised and then resolved by the Commission be applied retroactively to the beginning of the current plan year or prospectively and, if prospectively applied, how?

As described more fully in Section III *infra*, the Utilities and AG/CUB are in accord that the Commission should conclude that the answer to the first two questions is “no” while Staff takes the opposite view. Concerning the third question, although the Utilities and AG/CUB agree that Commission resolutions of measure level non-consensus issues should be applied prospectively, the Utilities recommend that the measures should be applied beginning with the following Plan Year while AG/CUB posits that

prospective application should begin within 60 days of the Commission's Final Order on the issues. Staff advocates for retroactive application.

III. Contested Issues

A. Determination of Effective Period of TRM

1. AG/CUB's Position

In their Comments on Rehearing, AG/CUB noted that it has become clear since the issuance of the Commission's Order in this docket that there is a divergence of opinion on whether the TRM as a whole, and the energy savings values for program measures recorded therein, expire each year as of May 31, 2013, the last day of each annual gas and electric energy efficiency program year. In particular, disagreement has arisen as to the meaning of language included in the Commission's Final Order in Docket No. 12-0528, the docket approving the technical TRM for "GPY1(Gas Program Year 1), GPY2 (Gas Program Year 2), and EPY5 (Electric Program Year 5)", and its impact on the TRM update process approved in the instant docket.

In TRM discussions with the parties, Staff has stated that the fact that the Order approves the TRM for specific designated years means that each annual TRM expires at the end of a program year and must be re-created, as a whole, on an annual basis. Other SAG members, including the AG, CUB and the Utilities argue that the TRM is a continuous document that requires that the previously approved version of the existing TRM, and the savings values contained therein, continue to be included in the updated TRM until the ICC rules on any revised measures in a separate non-consensus filing.

AG/CUB state that as noted in the TRM Policy Document, the process of incorporating new and better information into the TRM occurs annually. Prior to the start of the program year for which the Updated TRM will be in effect, the Program Administrators will make portfolio adjustments and tracking system updates based in part on changes reflected in the updated TRM. In order to provide the Program Administrators adequate time for making these pre-program year changes, the TRM Policy Document provides that the consensus updated TRM shall be transmitted to Staff and SAG by March 1st. Staff will then submit a Report (with the consensus updated TRM attached) to the Commission, presumably in that same month, with a request for expedited review and approval. In the event that consensus is not reached on all update parameters, the TRM Administrator also submits to Staff and SAG a "Comparison Exhibit of Non-Consensus TRM Updates" on or about March 1st. The Comparison Exhibit of Non-Consensus TRM Updates that is filed with the Commission will clearly lay out the different positions on non-consensus issues, and, to the extent possible, identify the parties who support each position. After receipt of the Comparison Exhibit of Non-Consensus TRM updates, Staff submits a Report to the Commission to initiate a proceeding separate from the consensus TRM update proceeding to resolve the non-consensus TRM update issues. It is presumed that this filing will occur in March as well.

The evaluation research findings from one program year will be put into effect for the first time at the beginning of the program year following their incorporation (as determined by the TRM update Process) into the TRM. AG/CUB note that because each new program year begins on June 1st, Staff's assumption that a TRM ceases to be in existence at the end of each program year (May 31st) creates problems under either of two scenarios: (1) when the expedited proceeding for approval of the updated TRM extends beyond the May 31st end date, and (2) when a non-consensus filing is not resolved before the May 31st end-of-program-year date.

Under the first scenario, even if consensus exists among the parties on all parameters in an annual TRM update, a new program year would begin (as of June 1st) with no TRM in place. That leaves the Utilities and evaluators with no parameters to insert in evaluations for the time period between the start of the program year and the issuance of a Commission Order approving the consensus TRM update. According to AG/CUB that state of limbo is potentially exacerbated under the second scenario, when a non-consensus TRM parameter is litigated. Presumably, this docket will last longer than any consensus TRM update docket because litigation is involved, which may necessitate the filing of testimony, hearings and the filing of briefs. AG/CUB note if the prior TRM expires as of May 31st each year, the Utilities and evaluators will operate without any specific values for the period beginning June 1, 2013 and ending as of the date of the Commission order in the non-consensus docket.

AG/CUB assert that other facts justify Commission clarification of the Order in this docket to require a continuous TRM process rather than the annual termination that Staff suggests. First, ICC orders generally remain in effect until another ICC order is issued that in some way modifies the conclusions in the prior order. Second, other jurisdictions of which the AG and CUB are aware do not terminate an existing TRM each year pending re-adoption by the state regulatory body.

AG/CUB state that the Staff assumption of expiration of the TRM document each May 31st is inefficient, and would leave utilities uncertain as to whether even agreed-upon TRM parameters will be applied in a program year. They maintain that the intent of the TRM, as recognized by the Commission, is to eliminate the inefficiencies of litigating these policies in each of the utilities' separate three-year EE Plan dockets and to provide certainty regarding the use and application of the TRM on an on-going basis. Creating a potential state of limbo for consistent calculation of energy savings for various program measures hardly serves this goal. AG/CUB argue that unless the TRM operates as a continuous, updated document, calculation of the savings that a utility forecast predicts will be achieved over a program year becomes difficult, if not impossible. According to AG/CUB, ensuring consistent, transparent calculation of program measure energy savings likewise helps ensure that ratepayer-funded programs are both innovative and cost-effective. For these reasons, AG/CUB maintain that the Commission should clarify its Order of March 27, 2013 and find that an TRM remains in effect until otherwise modified by the ICC in a future order.

2. Utilities' Position

AG/CUB and the Utilities recommend that the Commission clarify that the TRM remain in effect following the end of each Plan Year until modified or updated in accordance with a Commission Final Order. The Utilities state that all parties agree that the TRM is "a living document" that must "keep pace with change." Consequently, to balance the TRM's goals of continuity and updating, the Utilities conclude that it would reflect sound policy to allow continued use of a Commission-approved TRM until a new TRM is approved. The Utilities observe that it makes little sense to require the SAG and Technical Advisory Committee ("TAC") to start from scratch each Plan Year without any consideration of past work they have undertaken and that was previously approved.

Despite the agreement among the parties about the ongoing, continuous nature of the TRM and the fact that Staff concedes that after initial TRM development there will always be a version of the TRM in effect, the Utilities note that Staff nevertheless erroneously maintains that a specific version of the TRM ceases to be effective at the end of each program year. According to the Utilities, neither of the aspects of the policy documents that Staff identifies to support its position – the TRM implementation cycles identified in Table 2.2 found in the TRM Policy Document and the reference to annual updates – demonstrate that the TRM ceases to be effective at the end of the program year.

First, the Utilities state that Table 2.2 simply summarizes the regulatory implementation cycles in place in Illinois and identifies how the TRM works within those existing cycles. The Utilities observe that Table 2.2 does not indicate that the TRM expires at any point in time or describe what would happen if the TRM were to expire. Rather, the cycles shown in Table 2.2 reflect an assumption that the TRM remains in effect continuously. According to the Utilities, the paragraph preceding Table 2.2 reiterates the nature of the TRM as a living document in stating that the ongoing TRM update process is necessary because technology and markets are so dynamic.

Second, the Utilities explain that the TRM's repeated references to annual updates underscore its continuous nature and support the position advanced by AG/CUB and the Utilities. They argue that there can be no updates to a document that is created from scratch. The Utilities further note that the "TRM Update Process" – which builds on and continues the collaborative and comprehensive development process for future Plan Years – in and of itself exhibits an intention by the parties to have the TRM remain in effect for future Plan Years.

Under the TRM, the Utilities, as Program Administrators, are responsible for tracking program participation, reporting estimates of energy savings using TRM values (where such values exist), estimating cost effectiveness, and implementing the TRM savings values, including TRM Measure Codes and other information necessary to apply the TRM, through their tracking systems. As a result, the Utilities explain that they must account for any updated values in their respective tracking systems and/or cost-effectiveness analyses and adjust their respective energy efficiency programs accordingly. The Utilities further note that if they must start over completely each Plan

Year and wait for new, Commission-approved TRM values, as suggested by Staff's position, they would face needless uncertainty on key values needed for the multi-month program design and implementation decisions. This result, they argue, would unfairly increase regulatory risk for the Utilities under 220 ILCS 5/8-103 or 8-104, lead to expending precious resources dealing with that needless risk, and contradict the purpose of creating stability and certainty for Program Administrators as they make program design and implementation decisions.

3. Staff's Position

Staff states that the parties agree that consensus TRM Updates submitted and approved by the Commission before the start of the Plan Year will be applied to that Plan Year. Staff argues, however, that each specific version of the IL-TRM ceases to be effective at the end of each Plan Year but notes that some version of the IL-TRM will be in effect at any given point in time. Staff points to the IL-TRM Policy Document to support its position, first where the IL-TRM Policy Document sets out TRM implementation cycles, and which version of the IL-TRM will apply at the particular specified period of time. Second, Staff observes that the IL-TRM Policy Document states that the IL-TRM will be formally updated and approved by the Commission on an annual basis. Staff argues that there will be ample opportunity to review and plan before the beginning of each new Plan Year as the parties will know the consensus and contested changes and the potential range in unit savings for the non-consensus components. Thus even if the Commission does not issue an order approving the TRM Update before the Plan Year start date, the parties will know this information months in advance of the start of the Plan Year.

Staff argues that both the Utilities and AG/CUB's proposal provides uneconomic and perverse incentives that do not adequately protect the ratepayers funding the energy efficiency programs. Staff maintains that because the TRM is a living document that should keep pace with rapidly changing technology it is important that the Commission prevent outdated components of energy efficiency measures from being used in the TRM, causing the TRM to be obsolete or the range in savings to be unreliable. Staff asserts that the Utilities have an obligation to make prudent adjustments to their energy efficiency programs based on new information as it becomes available. According to Staff, the IL-TRM Policy Document allows Program Administrators to deviate from the Commission-approved TRM in a number of situations which allows Program Administrators to incorporate TRM Updates into their tracking system before the Commission approves the TRM Update.

Staff claims that the Utilities and AG/CUB's position would render the TRM static, immutable, and subject to little change over time by allowing the outdated TRM to remain in effect beyond its Plan Year. Not only would adoption of the Utilities and AG/CUB's recommendation incent inefficient management of the energy efficiency programs, but it would also incent Utilities to take actions to delay updates to the TRM in cases where TRM Updates result in lower savings values for the measures. Staff maintains that the IL-TRM Policy Document clearly specifies that the TRM will be

updated annually by incorporating new and better information to the start of the Plan Year for which the Updated TRM will take effect.

4. Commission Analysis and Conclusions

The Commission adopts the recommendation advanced by AG/CUB and the Utilities and conclude that the TRM's goals of continuity and updating would be better served if the TRM remains in effect following the end of each Plan Year until it is modified or updated in accordance with a Commission final order. It is evident from the record that the TRM's repeated references to annual updates and the "TRM Update Process" emphasize its continuous nature and demonstrates an intention by the parties to have the TRM remain in effect for future plan years until modified or updated pursuant to a Commission order. To require that the Utilities start over each Plan Year and wait for new, Commission-approved TRM values would cause the Utilities to face needless uncertainty regarding the key values needed for program design and implementation decisions. This would contradict the purpose of creating stability and certainty for Program Administrators as they make program design and implementation decisions. In the unlikely event that a Consensus TRM is approved by the Commission after June 1, the values therein shall be applied retrospectively to June 1 of the relevant program year given the consensus nature of the document.

B. Impact of Disagreement Regarding Subcomponent of TRM Measure

1. AG/CUB's Position

AG/CUB note that under the TRM annual measure evaluation process, it is possible that consensus may not result from annual attempts to establish energy savings values for every efficiency program measure. AG/CUB explain that as shown on page 17, subsection 2.3 of the Commission-approved TRM (Components of TRM Measure Characterizations), various efficiency measure parameters, such as the definition of baseline equipment, the deemed lifetime of efficient equipment and the deemed measure cost, are included within individual program measures, and all affect the total energy savings assigned to each measure.

AG/CUB argue that if a non-consensus measure is removed in its entirety, Utilities and evaluators are left with no values to assess energy savings for the time period between the start of the Program Year and the date of a Commission order that settles the non-consensus item. AG/CUB explain that because each new program year begins on June 1, Staff's assumption leaves the Utilities and evaluators with no parameters to insert in evaluations for the time period between the start of the program year and the issuance of a Commission Order approving the consensus TRM update for that particular non-consensus measure. AG/CUB allege that without such clarification, calculation of the savings that a utility forecast predicts will be achieved over a program year becomes difficult and potentially controversial.

AG/CUB also point out that ICC orders generally remain in effect until another ICC order is issued that in some way modifies the conclusions in the prior order. That

principle applies to individual parameters and program measures as well, and support retaining the measure in the new TRM pending resolution of the disputed parameter. Second, other jurisdictions of which the AG and CUB are aware do not remove measures included in previously approved TRMs when non-consensus exists among parties and there is pending re-adoption by the state regulatory body.

For these reasons, AG/CUB argue, the Commission should clarify its Order of March 27, 2013 and find that non-consensus items shall not be deleted from an update TRM. The goals of efficiency and certainty are served if the previous year's parameter value remains in effect until otherwise modified by the Commission in a future order.

2. Utilities' Position

The Utilities note that because the TRM should be viewed as a "living" document comprised of Commission-approved measure values to be used in a current Plan Year and in future Plan Years until changed, the Utilities join the AG/CUB recommendation that the Commission should find that existing Commission-approved TRM measures should not be removed from the TRM if there is a subsequent disagreement over a subcomponent of a measure. The Utilities assert that this position is supported by the same reasons and policy objectives that support the position that the TRM remain in effect following the end of each Plan Year until new values are approved. They contend that any other outcome would run contrary to those policy objectives, including the objective that the Commission-approved TRM should provide certainty regarding the values to be used by Utilities and evaluators when planning, implementing and evaluating energy efficiency programs. The Utilities assert that subjecting all measures to an annual consensus requirement would undercut these objectives.

The Utilities observe that the uncertainties that would result from the adoption of Staff's recommendation are underscored by Staff's suggestion that a placeholder could be included in the measure characterization of a particular value. A change in any one of the many inputs used in TRM calculations, including "deemed" values, will cause the use of the measure at issue to become uncertain as all of the components are needed to calculate a result. For this reason, the Utilities explain, if there is a dispute about a particular data input, that input should not be removed; instead, the dispute should be resolved by the Commission while the Commission-approved calculation remains intact and the corresponding measure remains part of the TRM until the Commission approves a new value to take its place.

According to the Utilities, Staff's recommendation also seems to imply urgency in Commission action on a non-consensus item but provides no basis to invoke quick action by the Commission. While no detrimental impacts necessarily result from the existence of a disputed item within a measure, removing the entire measure or a subcomponent as suggested by Staff would result in a waste of public resources. Staff's position, the Utilities state, will cause the Utilities to incur costs to account for uncertainty and to ramp-up new measures to replace the lost value of the removed measures. The Utilities further state that they would incur costs related to system programming changes to reflect the removal of certain measures and implementation of

new measures as well as possibly having to dispose of surplus equipment if it is no longer used in connection with a measure.

The Utilities explain that their customers and participating EE program vendors (“Contractors”) need controlled, predictable measure changes that premise themselves upon Commission-approved values. Indeed, the drain on public resources would be exacerbated by the negative impact that the adoption of Staff’s recommendation would have on these groups. The Utilities also contend that the removal of an entire measure would result in program interruption and confusion that would cause long-term damage, including damage to relationships with Contractors and trade allies. For example, the Utilities state that Staff’s position, if adopted, could result in Utilities having to terminate or suspend contracts that no longer provide adequate savings, which could lead to Contractors and trade allies terminating relationships with the Utilities. Significant customer confusion and backlash may also result when incentives do not remain consistently available. Specifically, for customers whose adoption of energy efficiency measures constitutes a multi-month program requiring a customer to enter into contractual agreements with a Utility and a variety of vendors, a sudden removal of an entire measure due to a TRM dispute may result in a series of contractual defaults and resulting contractual damages.

Finally, the Utilities observe that a protocol already exists in the TRM process by which non-consensus issues are resolved, and this process does not require removal of the values from the current TRM.

3. Staff’s Position

Staff believes the wording of the issue may cause unintentional confusion: the issue is whether a non-consensus portion of the measure would be included in the Consensus Updated TRM, not whether the measure would be removed from the previous Commission-approved IL-TRM. Additionally, Staff contends that an entire measure may not need to be removed if there is disagreement, but at least the subcomponent of the measure causing disagreement should be removed from the Consensus document.

Staff states that the IL-TRM Policy Document approved by the Commission states that any documents filed with the Commission will reflect any areas where consensus is not reached. Staff observes that this requires any non-consensus issues be removed from the consensus Updated IL-TRM, such that they can be addressed by the parties, and decided by the Commission separately from consensus issues. Once the Commission approves the consensus and non-consensus issues, then all the measures should be included in the IL-TRM for the Plan Year.

Staff argues that if the non-consensus issue covers nearly every component of the measure characterization, the entire measure should be removed from the consensus Updated TRM and should be filed in the non-consensus TRM Update proceeding for the Commission to decide for that Plan Year. Further, in some situations including the old TRM measure component in the consensus Updated TRM would be

meaningless. Staff also asserts the same incentives to delay exist for this issue as discussed in the prior issue and should be discouraged by the Commission.

Staff does agree with the Utilities that a non-consensus issue should not be removed from the current Plan Year's TRM and that an entire measure should not be removed from the Updated TRM simply because one subcomponent is subject to non-consensus. However, Staff states the non-consensus subcomponents should be removed from the consensus Updated TRM submitted to the Commission for approval. Staff contends that the Utilities will be incentivized to oppose or delay any TRM Update recommendations should the Commission adopt the Utilities' position on this issue. According to Staff, the other parties' proposals undermine the consensus-seeking process by having the entire outdated measure stay in effect in the event there is dispute on only one component of the updated version of the measure.

4. Commission Analysis and Conclusions

We agree with AG/CUB and the Utilities and find that existing Commission-approved TRM measures should not be removed from the TRM if there is a subsequent disagreement over a measure or a subcomponent of a measure. As we concluded in the previous section, the TRM is a "living" document designed to have continuity. The same reasons and policy objectives that support the position that the TRM remain in effect following the end of each Plan Year until new values are approved also support not removing TRM measures due to a subsequent disagreement over a component. The Commission-approved TRM should provide certainty regarding the values to be used by Utilities and evaluators when planning, implementing and evaluating energy efficiency programs. Removal of entire measures, or even subcomponents of measures, would result in program interruption and confusion that would likely discourage Contractor and customer participation and be antithetical to the controlled measure changes required for successful implementation of Commission approved EE measures.

The Commission therefore finds that in the event of a dispute about an input to a measure or its subcomponent, that input should not be removed but instead the Commission-approved calculation should remain intact and the affected input remain as part of the TRM until the Commission approves a new value to take its place.

C. Application of Resolved Measure Level Issues

1. Utilities' Position

The Utilities recommend that the Commission find that the values related to measure-level non-consensus issues that have been properly raised by March 1 under the TRM Update Process and then later resolved by the Commission should be applied prospectively to the following Plan Year. This would allow the Utilities and their respective Contractors time to incorporate new values into the Utilities respective portfolios. According to the Utilities, while AG/CUB properly recognize that the Commission should apply any resolution of non-consensus issues prospectively,

AG/CUB incorrectly posit that such prospective application should begin within 60 days of the Commission's Final Order on the issues. The Utilities also contend that Staff's recommendation that the application be retroactive to the start of the program year for which the updated TRM is in effect is also flawed and should be rejected as it fails to consider that there is no statutory timeframe or deadline for Commission action to resolve non-consensus issues.

As an initial matter, the Utilities note that the Commission may not resolve non-consensus issues until well into a Plan Year, or not within the Plan Year at all because non-consensus issues are likely to involve technical subject matters requiring complex evidentiary submissions, evidentiary hearings and briefing before a Final Order is issued. The Utilities further explain that by the time the procedural process is completed and a Final Order issued by the Commission, the Plan Year may well be near completion or completed. They opine that under Staff's interpretation, the resolved issue would be applied to a closed Plan Year, thereby reducing savings and potentially penalizing Program Administrators and their respective Contractors.

The Utilities posit three primary reasons why the Commission should clarify this issue. First, they state that prospective application is consistent with a primary purpose of the TRM Policy Document – to provide clarity and certainty to the Utilities, as well as their respective Contractors, in an effort to promote the growth of robust energy efficiency program offerings. The Utilities explain that stability and certainty for assessing the relative value of differing program measures provides them and their Contractors with clear signals regarding where to invest limited program resources.

Second, the Utilities state that the importance of the TRM's purpose becomes apparent when the Utilities and Contractors practical planning and implementation realities are considered. They explain that planning for an upcoming program year is a multi-month project requiring significant lead time, where the previous year's savings and costs are assessed against the relative risks and values of a variety of energy efficiency measures. A wide variety of program variables must be assessed prior to devoting limited resources to new and existing programs. Thus, if the measure-level values are known by March 1 for an upcoming Plan Year, the Utilities claim that they and their Contractors can efficiently invest in the highest value (i.e., greatest savings for the resource-input) options and their Contractors can then cost-effectively plan for the upcoming year, confidently contract with the Utilities on estimated program savings for the Plan Year, and provide accurate program availability to customers and trade allies.

The Utilities also express concern that if measure-level values were to unpredictably change mid-Plan Year, as proposed by AG/CUB, or be applied retroactively as proposed by Staff, that would add a new and unanticipated level of uncertainty into the planning and implementation process, which would increase costs in order to account for these contingencies. Other possible unintended consequences of mid-Plan Year changes that concern the Utilities include a decrease in the use of or level of investment in a measure with uncertain value, and reallocation of utility

resources from implementing and deploying energy efficiency programs to planning functions to readjust a portfolio in order to meet Plan Year or three-year Plan goals.

In addition, the Utilities believe that retroactive or mid-Year application of a Commission-resolved value would likely force the Utilities and their Contractors to abandon or dramatically curtail customer community development and trade ally programs designed to cultivate customers and trade allies, if the mid-Year change causes such programs to have lower value relative to alternative program measures.

The Utilities also explain that energy efficiency programs take time and effort to “sell” to the variety of customer communities and trade allies that they are meant to target. Resources are spent cultivating these relationships: for example, education, training, outreach, community involvement and trade ally forums are used by the utility and its Contractor to build a high performing energy efficiency program. Further, in many cases Contractors, subcontractors, and program allies have invested in a business model that includes appropriations for labor and resources; if the risk of retroactive application were introduced, this model would no longer be viable because of the new uncertainty regarding those appropriations. The Utilities further note that those customers who were participating or planning to participate in a program may be prevented or discouraged from participating if the program is dropped or the incentive changed as a result of a change in the measure value. According to the Utilities, this can lead to customer and vendor dissatisfaction and distrust, and ultimately produce a chilling effect on program participation, energy savings achievement and the growth of EE in Illinois.

The Utilities contend that the other parties’ recommendations also fail to address how a mid-Year measure value change could be accounted for when evaluating a program’s annual savings as part of the independent evaluation process. They posit that because many business projects are applied for and approved during the first half of the Plan Year based on then-known budget and measure values, it would be difficult to track and evaluate if mid-Year value changes are allowed. The Utilities state that a mid-Year value change could mean that some projects would be disqualified or agreed-to incentive values would need to be changed, which in turn would call into question how the evaluator would apply the measure value adjustment and determine its effect on the savings after the conclusion of the project. Thus, the Utilities argue it would be more appropriate and encourage continued growth of EE in the marketplace if adjusted program values were to be applied at the start of the next Plan Year where program offerings and project completion can be appropriately planned for and implemented, as well as consistently evaluated.

According to the Utilities, Contractors also could be discouraged from proposing new and innovative programs if the values on which they base their proposals are subject to change. This is because a Contractor may have performance incentives for achieving a set level of savings (or other measures of performance) and, by introducing regulatory uncertainty into measure level values through retroactive application, previously deployed Contractor and subcontractor resources (and the corresponding

savings values ultimately calculated) may either be unduly penalized (if the “value” of a particular measure falls) or overly rewarded (if the “value” of a particular measure increases). Accordingly, the Utilities conclude that to mitigate uncertainty, Commission-resolved values should be applied beginning with the next Plan Year.

In the alternative, the Utilities request that if the Commission adopts AG/CUB’s recommendation for prospective application, the Commission should confirm that such prospective application would apply only to future Contractor applications submitted to the Utilities. Specifically, all current applications and programs that were started under the previous values should continue and be evaluated using those previous values; new applications and programs would apply the Commission-resolved value after the 60 day “grace period.”

Third, the Utilities state that adoption of other parties’ recommendations would result in unfairness. Specifically, the Utilities and their Contractors need certainty by March 1 preceding a given Plan Year to appropriately plan, contract and then implement programs based on fixed, Commission-approved values. They explain that their customers and trade allies are educated and incited to adopt programs through the Utilities’ program decisions; sudden, after-the-fact changes in a measure level value create significant uncertainty for all parties and lead to confusion and distrust in the marketplace. The Utilities further note that if a measure-level value were to be applied retroactively, it could create a gap in expected savings for a program where a utility has devoted significant resources during a time when the utility relied on the information available to it. Under such circumstances, the Utilities assert that they and their Contractors would be forced to address that shortfall in the near term, and there would be ongoing implications for a utility potentially missing its statutorily required savings goals.

The Utilities also urge the Commission to disregard Staff and AG/CUB’s argument that prospective application of new Commission-ordered values will improperly incentivize the Utilities. The Utilities contend that Staff and AG/CUB fail to recognize the years of cooperation and collaboration that is reflected in the TRM, which at times resulted in lower savings values being used. They also observe that there is no benefit to the Utilities to drive savings values up or down – a change in either direction is problematic for the Utilities for the reasons previously discussed, and such conduct would rob the Utilities, Contractors and customers of the certainty the Utilities believe is necessary.

The Utilities suggest that the Commission reject Staff’s alternate recommendation of moving up the deadline for consensus between SAG and TAC members. They contend that it is being offered without allowing sufficient opportunity to fully vet the proposal with all interested parties, including the independent evaluators. The Utilities also contend that Staff’s proposal assumes that the evaluators, who are not participants in this proceeding, can meet an accelerated November 1 deadline and effectively conduct separate evaluations of (1) program level gross annual savings values and (2) measure-level unit savings values. And, assuming the November

deadline were achievable by the evaluators, the Utilities note that there has been no opportunity to determine what costs may be associated with Staff's proposal.

Finally, while the Utilities do not disagree with the concept of an earlier deadline, the two-part evaluation as proposed by Staff would fail to provide the Utilities with the certainty intended by the TRM. They therefore request that if the Commission embraces an earlier deadline, it should direct that all evaluations be completed at that same earlier time in order to provide the needed certainty and allow the Utilities to adjust their respective portfolios to account for the accelerated timeframe and increased expenses that they believe will be required.

2. AG/CUB's Position

AG/CUB explain that in SAG discussions to date, Staff has argued that any Commission-ordered resolution of a measure savings value should be applied retrospectively to the beginning of the program year, or June 1st, no matter what the date of the non-consensus order. Other parties believe the new value should be applied prospectively, but there is additional disagreement as to how far into the future that prospective application should begin. AG/CUB note in their Initial Comments that in SAG discussions to date, the AG, CUB, Ameren, ComEd, Nicor Gas and other stakeholders who are not parties to this docket concurred that the Commission approved and revised measure would apply prospectively to the existing program year from the date of the Commission Order forward plus a grace period of 60 days or the end of the current program year, whichever comes first. PG/NSG was the only utility at that time to argue that the approved and revised measure, as ordered by the Commission, would apply to the next program year. AG/CUB note that when it came to filing Comments in this Rehearing, the Utilities shifted their position and urged the Commission to wait up to 14 months to apply the new Commission-ordered value.

While the AG and CUB understand Staff's interest in ensuring cost-effective programs by applying the new Commission-ordered value retrospectively to the beginning of the program year and believe its view has merit, AG/CUB also understand the Utilities' argument that retrospective application of an ICC-resolved TRM value creates a disincentive to promoting and implementing the program. In the spirit of accommodating this utility concern, the AG and CUB agreed to endorse the compromise 60-day-post-Commission Order grace period position. Application of this new value at that time serves the goal of ensuring cost-effective programs by not falsely ascribing inappropriate savings values for an entire year, as PG/NSG recommends, and provides the Utilities with the time to adjust the affected measure's program delivery. First, practically speaking, it would be highly unlikely that the Commission could or would issue an order before June 1st in a litigated docket that would not likely be opened by the Commission until late March, after a Staff's March 1 Report on the Non-consensus item(s) is issued. Thus, AG/CUB finds that the Utilities' position virtually guarantees that Commission-ordered values would not be applied for a full year.

Second, Staff's position that a Commission-ordered value be implemented retroactively is not unreasonable per se. AG/CUB understand Staff's position to be

based on the desire to ensure that ratepayers continue to fund cost-effective programs based upon reliable and verified assumptions that help to ensure that energy savings calculations are accurate. The AG and CUB agreed to endorse the 60-day-post-ICC Order grace period position in good faith that this represented a compromise that serves both the Commission and ratepayers' interest in ensuring cost-effective programs. Application of this new value at that time serves the goal of ensuring cost-effective programs by not falsely ascribing inappropriate savings values for an entire year, as the Utilities now recommend, and provides the Utilities with the time to adjust the affected measure's program delivery, should that be necessary, based on the updated parameter value. AG/CUB argue that their position, in effect, represents a reasonable compromise affecting the evaluation and delivery of utility programs.

Third, the Utilities' "wait a full year" approach creates an incentive for Utilities to continually identify TRM parameter values as non-consensus, knowing that any Commission order in those dockets that is issued after the June 1st start date will not be implemented for another full year. AG/CUB continue that adoption of their compromise position helps incent all parties to come to the TRM negotiating table with a desire to fairly evaluate and endorse efficiency measure values.

Fourth, the Utilities claim that adoption of Commission-ordered values cannot be easily subsumed with program assumptions, program planning costs will increase and that "there will likely be a corresponding decrease regarding the use of that measure or the level of investment in that measure" are overstated at best. Under the AG/CUB approach, utility program planners could assume the continuation of the previous year's measure values or an opposing party's assumed value for purposes of planning and program implementation. Adjustment of parameter values in a Commission order that went against a utility position would then not impact an evaluator's assessment of utility program performance. Likewise, a utility might prevail in a non-consensus docket – a point that the Utilities Comments seem to ignore. In those instances, additional energy savings would be counted for the affected measure during the remainder of the Program Year. According to AG/CUB, no harm would come to any utility forecast of energy savings performance.

AG/CUB states that the position allowing for a 60-day grace period for implementing new Commission-ordered TRM values on non-consensus items represents a reasonable compromise to Staff's retroactive application position and the PG/NSG-recommended, inequitable full-year prospective application of Commission-ordered values. It helps ensure that efficiency programs remain cost-effective and maximum energy savings be delivered by ensuring that the evaluation of those programs be based on the most accurate data available. Adoption of the Utilities position, on the other hand, would lock in for up to a full 12-month period parameter values that all parties know are no longer valid. For all of these reasons, AG/CUB urges Commission adoption of their compromise position, which would apply the (Commission)-approved and revised measure prospectively to the existing program year from the date of the ICC Order forward plus a grace period of 60 days or the end of the current program year, whichever comes first.

3. Staff's Position

Staff argues that non-consensus TRM Update issues resolved by the Commission should be applied for evaluation purposes to the same Plan Year to which the consensus portion of the Updated IL-TRM applies. This is Staff's understanding of what was intended when parties agreed the TRM should be a living document. Moreover, Staff believes any other outcome would undo the purpose and intent of developing a Commission-approved TRM. Delaying application of the resolved non-consensus issues beyond the start of the Plan Year for which they were considered initially provides an incentive for the Utilities to oppose any TRM Updates that result in lowering of savings values. Staff believes this incentive would result in great increases in the number of non-consensus issues for the Commission to decide each year.

Alternatively, Staff argues the Commission should require non-consensus issues to be submitted to the Commission for review by November 1, rather than March 1 to provide adequate time to decide the issues before the June 1 Plan Year start date. If this were required, the Utilities and evaluators would have certainty as to the measures well in advance of the Plan Year start date, and could plan accordingly.

Staff argues the measure level non-consensus TRM Update issues are based on information that would, in each year, become available months before the start of the Plan Year for which the TRM was being updated, and therefore Staff's recommendation is not retroactive, nor would there be an "unanticipated level of uncertainty." Staff asserts the other parties' proposals do not serve the public interest, and should be rejected. Moreover, Staff believes the AG/CUB recommendation is not a reasonable compromise and is not in the best interest of ratepayers; the 60 day grace period continues to incent the Utilities to contest TRM Update issues and to delay Commission proceedings.

Staff maintains that its proposal is consistent with that portion of the IL-TRM Policy Document which has been approved by the Commission and is not the subject of this rehearing. Alternatively, Staff recommends the Commission require TRM Updates to be submitted by November 1 for consideration so the Commission may issue its Order before March 1, before the Plan Year would start.

4. Commission Analysis and Conclusions

The parties propose three different recommendations regarding when Commission-resolved measure level non-consensus issues should be applied. Although AG/CUB and the Utilities advocate for prospective application, the Utilities recommend that the measures should be applied to the following Plan Year while AG/CUB posits that prospective application should begin within 60 days of the Commission's Final Order on the issues. Staff advocates for retroactive application. The Commission finds that the Utilities' position—that resolved measure level issues should be applied in the following Plan Year—should be adopted. Prospective application, as advocated by the Utilities, best achieves the objectives of the TRM policy and would allow the Utilities to invest in the highest value options while also permitting

the Utilities and their Contractors to properly plan and implement programs. Many energy efficiency programs require investments in education, training, outreach and community involvement to encourage participation and fully realize their benefits. Retroactive or mid-Year application of a Commission-resolved value may force the utility to abandon or dramatically curtail their efforts at launching a program and may further prevent or discourage participation from those customers who would otherwise have joined.

While the AG/CUB's proposed 60 day post ICC Order grace period appears to be a reasonable compromise between all the parties' positions, from a practical stand-point it would still result in the same level of uncertainty for program participants. A Contractor who dedicates significant resources to a new or innovative program may be left holding the bag if the values on which their program is based change mid-year and the Utility shifts funds elsewhere. In addition, the Commission agrees with the Utilities that a mid-Year measure value change, as may occur under AG/CUB's recommendation, presents significant timing obstacles for evaluating a program's annual savings as part of the independent evaluation process. For these reasons the Utilities' recommendation is adopted. Though the resolved measure level valuations will not be applied until the following Plan Year, the Utilities should not take this decision as approval to completely discount the new ICC approved valuations which may show that a particular program or measure is no longer providing energy savings to Illinois consumers. As the energy efficiency programs continue to evolve, the Commission hopes the Utilities will take steps to achieve the greatest amount of participation and energy savings possible using the most current information and resources at its disposal.

IV. Findings and Orderings Paragraphs

The Commission, having given due consideration to the entire record and 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;
- (3) Commission-approved TRM values shall remain in effect following the end of each Plan Year until modified or updated in accordance with a Commission Final Order;
- (4) A Commission-approved TRM measure shall not be removed from the TRM on the basis that there is a subsequent disagreement over a subcomponent of that measure; and

- (5) Commission-determined resolutions of TRM measure level non-consensus matters that are issued during a Plan Year shall be applied in the following Plan Year.

IT IS THEREFORE ORDERED by the Illinois Commerce Commission that the IL-TRM Policies, as filed in this docket and as clarified under finding three (3) through five (5), are approved and adopted.

IT IS THEREFORE ORDERED by the Illinois Commerce Commission that the parties shall comply with findings three (3) through five (5).

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.

By Order of the Commission this 2nd day of October, 2013.

(SIGNED) DOUGLAS P. SCOTT

Chairman