STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

Commonwealth Edison Company	:	
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Approval of the Energy Efficiency and Demand Response Plan Pursuant to Section 8-103(f) of the Public Utilities Act.	:	**13-0495**

ORDER

January 28, 2014

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By the Commission:

I. Procedural History

On August 30, 2013, Commonwealth Edison Company (“ComEd”) filed a petition with the Illinois Commerce Commission ("Commission") pursuant to Section 8-103 of the Public Utilities Act (“Act”), 220 ILCS 5/8-103, requesting that the Commission issue an order on or before February 1, 2014 approving its 2014 – 2016 Energy Efficiency and Demand Response Plan (the “Plan” or “Plan 3”). A copy of the Plan, its appendices and supporting direct testimony, were included with ComEd’s Petition for Approval of its Energy Efficiency and Demand Response Plan.

In response to ComEd’s filing, each of the following parties contended that they had an interest in the outcome of the proceeding and filed a petition to intervene or entered an appearance in this docket: the People of the State of Illinois (“AG”), the Citizens Utility Board (“CUB”), the City of Chicago (“City”), the Environmental Law & Policy Center (“ELPC”), the Midwest Cogeneration Association (“MCA”), the Illinois Industrial Energy Consumers (“IIEC”), the Natural Resources Defense Council (“NRDC”), and the Coalition to Request Equitable Allocation of Costs Together (“REACT”).

Staff of the Commission (“Staff”), AG, REACT, NRDC, IIEC, ELPC, MCA, the Chicago Infrastructure Trust (“CIT”), and CUB and City (jointly “CUB/City”) filed Direct Testimony. The following parties filed Rebuttal Testimony on November 12, 2013: Staff, AG, CUB/City, REACT, NRDC, and IIEC. ComEd filed Rebuttal Testimony on November 26, 2013. Pursuant to notice duly given in accordance with the law and the rules and regulations of the Commission, an evidentiary hearing was held before a duly authorized Administrative Law Judge (“ALJ”) of the Commission, at its offices in Chicago, Illinois, on December 4, 2013. The ALJ marked the record “Heard and Taken” on December 11, 2013.

The parties filed simultaneous initial briefs on December 13, 2013. The parties also filed simultaneous reply briefs on December 18, 2013, and the parties filed draft Proposed Orders on December 19, 2013. The ALJ’s Proposed Order was served on January 2, 2014. Briefs on Exceptions (“BOE”) were filed on January 8, 2014 by IIEC, ELPC, NRDC, ComEd, CUB/City, REACT, and the AG. Staff filed its BOE on January 9, 3014. The statutorily-imposed mandate for commencing this docket was September 1, 2013. The statutorily-imposed deadline for a final Commission order in this docket is January 30, 2014. The issues in this docket involve the statutorily-mandated imposition of energy efficiency and demand response standards, which are intended to reduce energy consumption, thereby reducing energy costs, pollution from emissions and the need for new generation, transmission and distribution infrastructure. 220 ILCS 5/8-103(a).

II. Statutory Authority

Policy Rationales Underlying Section 8-103

Section 8-103 of the Act requires that Illinois electric utilities subject to the Act implement energy efficiency and demand response programs to meet aggressive energy reduction goals. Section 8-103(a) sets forth the policy objectives underlying the statutory framework for energy efficiency and demand response initiatives in Illinois, while recognizing the many direct and indirect benefits that inure to customers and the State as a result of such initiatives. The statute states that:

> It is the policy of the State that electric utilities are required to use cost-effective energy efficiency and demand-response measures to reduce delivery load. Requiring investment in cost-effective energy efficiency and demand-response measures will reduce direct and indirect costs to consumers by decreasing environmental impacts and by avoiding or delaying the need for new generation, transmission, and distribution infrastructure.

220 ILCS 5/8-103(a). It also ensures that the utilities will receive total and complete cost recovery for such measures, because “[i]t serves the public interest to allow electric utilities to recover costs for reasonably and prudently incurred expenses for energy efficiency and demand-response measures.” Id.

Energy Efficiency and Demand Response Savings Goals

Subsections (b) and (c) of Section 8-103 set forth two separate energy savings goals. The first pertains to energy efficiency, which “means measures that reduce the amount of electricity … required to achieve a given end use.” 20 ILCS 3855/1-10. It requires that in this third three-year Plan, “[e]lectric utilities shall implement cost-effective energy efficiency measures to meet the following incremental annual energy savings goals: … (7) 1.8% of energy delivered in the year commencing June 1, 2014; and (8) 2% of energy delivered in the year commencing June 1, 2015 and each year thereafter.” 220 ILCS 5/8-103(b).

While each Plan year is associated with a separate, incremental energy savings goal that ultimately must be achieved, the General Assembly recently amended Section 8-103 of the Act to expand the timeframe for determining compliance with each individual Plan year’s goal. See Public Act (“PA”) 98-0090. Specifically, subsection (b) of Section 8-103 now provides that “[e]lectric utilities may comply with this subsection (b) by meeting the annual incremental savings goal in the applicable year or by showing that the total cumulative annual savings within a 3-year planning period associated with measures implemented after May 31, 2014 was equal to the sum of each annual incremental savings requirement from May 31, 2014 through the end of the applicable year." 220 ILCS 5/8-103(b).

The second energy savings goal concerns demand-response, which "means measures that decrease peak electricity demand or shift demand from peak to off-peak periods." 20 ILCS 3855/1-10. It provides that "[e]lectric utilities shall implement cost-effective demand-response measures to reduce peak demand by 0.1% over the prior year for eligible retail customers …" 220 ILCS 5/8-103(c).

"[C]ost-effective," as used in Section 8-103(b) and (c), "means that the measures satisfy the total resource cost [("TRC")] test." 220 ILCS 5/8-103(a). The Illinois version of the TRC test is defined as follows:

> "Total resource cost test" or "TRC test" means a standard that is met if, for an investment in energy efficiency or demand-response measures, the benefit-cost ratio is greater than one. The benefit-cost ratio is the ratio of the net present value of the total benefits of the program to the net present value of the total costs as calculated over the lifetime of the measures. A total resource cost test compares the sum of avoided electric utility costs, representing the benefits that accrue to the system and the participant in the delivery of those efficiency measures, as well as other quantifiable societal benefits, including avoided natural gas utility costs, to the sum of all incremental costs of end-use measures that are implemented due to the program (including both utility and participant contributions), plus costs to administer, deliver, and evaluate each demand-side program, to quantify the net savings obtained by substituting the demand-side program for supply resources. In calculating avoided costs of power and energy that an electric utility would otherwise have had to acquire, reasonable estimates shall be included of financial costs likely to be imposed by future regulations and legislation on emissions of greenhouse gases.

20 ILCS 3855/1-10.

Statutory Spending Screens

A utility's obligations under subsections (b) and (c) of Section 8-103 are modified by subsections (d) and (e), however. In particular, Section 8-103(d) puts in place "spending screens" to limit the Plan's effects on rates:

> (5) ... thereafter, the amount of energy efficiency and demand-response measures implemented for any single year shall be reduced by an amount necessary to limit the estimated average net increase due to the cost of these

> measures included in the amounts paid by eligible retail customers in connection with electric service to no more than the greater of 2.015% of the amount paid per kilowatthour by those customers during the year ending May 31, 2007 or the incremental amount per kilowatthour paid for these measures in 2011.

220 ILCS 5/8-103(d)(5). With respect to the computation of the total amount paid for electric service per kilowatt-hour ("kWh"), Section 8-103(a) provides, in relevant part:

> For purposes of this Section, the total amount paid for electric service includes without limitation estimated amounts paid for supply, transmission, distribution, surcharges, and add-on taxes.

220 ILCS 5/8-103(a).

Anticipating the conflict between the increasing energy savings goals and flat budgets that would occur during ComEd's 2011 – 2013 Energy Efficiency and Demand Response Plan ("Plan 2"), the legislature directed that the Commission "review the limitation on the amount of energy efficiency and demand-response measures implemented pursuant to this Section and report to the General Assembly its findings as to whether that limitation unduly constrains the procurement of energy efficiency and demand-response measures." 220 ILCS 5/8-103(d). This June 30, 2011 report, which included a discussion of the Plan 2 modified goals approved by the Commission just six months earlier, has not resulted in any expansion of the statutory spending screens to date. See Illinois Commerce Comm'n, Report to the General Assembly Concerning Spending Limits on Energy Efficiency and Demand-Response Measures (June 30, 2011), http://www.icc.illinois.gov/reports/report.aspx?rt=32 ("June 30, 2011 Report to the General Assembly").

Coordination with State Agencies

Section 8-103(e) requires that the utility and the Department of Commerce and Economic Opportunity ("DCEO") share the duties of implementing the energy efficiency measures. Specifically, the statute provides that "[e]lectric utilities shall implement 75% of the energy efficiency measures approved by the Commission. … The remaining 25% of those energy efficiency measures approved by the Commission shall be implemented by [DCEO], and must be designed in conjunction with the utility and the filing process." 220 ILCS 5/8-103(e). Section 8-103(e) also requires that "[a] minimum of 10% of the entire portfolio of cost-effective energy efficiency measures shall be procured from units of local government, municipal corporations, school districts, and community college districts," and that DCEO "coordinate the implementation of these measures." Id. "The portfolio of measures, administered by both the utilities and [DCEO], shall, in combination, be designed to achieve the annual savings targets" in the statute. Id.

Cost Recovery

Consistent with the policy objectives set forth in Section 8-103(a), Section 8-103(e) provides for the recovery of the costs of the energy efficiency and demand response programs "through an automatic adjustment clause tariff filed with and approved by the Commission," and Section 8-103(f) requires the filing of such tariff. 220 ILCS 5/8-103(e) and (f). ComEd proposed Rider EDA in the first Plan docket, where it was approved and remains in effect. The statute further provides for an annual Commission "review to reconcile any amounts collected with the actual costs and to determine the required adjustment to the annual tariff factor to match annual expenditures." 220 ILCS 5/8-103(e).

The Filing Requirements for Commission Approval of the Plan

Section 8-103(f) sets forth the elements that an electric utility must include in its Plan filed with the Commission on or before September 1, which in turn must show how the utility will meet the energy efficiency and demand response goals for Plan Years 2017 through 2019. Each utility must set forth in its plan its "proposals to meet [its] portion of the energy efficiency standards identified in subsection (b) and the demand-response standards identified in subsection (c) of this Section as modified by subsections (d) and (e)," and, in particular, make the following showing:

(1) Demonstrate that its proposed energy efficiency and demand-response measures will achieve the requirements that are identified in subsections (b) and (c) of this Section, as modified by subsections (d) and (e).

(2) Present specific proposals to implement new building and appliance standards that have been placed into effect.

(3) Present estimates of the total amount paid for electric service expressed on a per kilowatthour basis associated with the proposed portfolio of measures designed to meet the requirements that are identified in subsections (b) and (c) of this Section, as modified by subsections (d) and (e).

(4) Coordinate with the Department to present a portfolio of energy efficiency measures proportionate to the share of total annual utility revenues in Illinois from households at or below 150% of the poverty level. The energy efficiency programs shall be targeted to households with incomes at or below 80% of area median income.

(5) Demonstrate that its overall portfolio of energy efficiency and demand-response measures, not including programs covered by item (4) of this subsection (f), are cost-effective using the total resource cost test and represent a diverse cross-section of opportunities for customers of all rate classes to participate in the programs.

(6) Include a proposed cost-recovery tariff mechanism to fund the proposed energy efficiency and demand-response measures and to ensure the recovery of the prudently and reasonably incurred costs of Commission-approved programs.

(7) Provide for an annual independent evaluation of the performance of the cost-effectiveness of the utility's portfolio of measures and [DCEO's] portfolio of measures, as well as a full review of the 3-year results of the broader net program impacts and, to the extent practical, for adjustment of the measures on a going-forward basis as a result of the evaluations. The

> resources dedicated to evaluation shall not exceed 3% of the portfolio resources in any given year.

220 ILCS 5/8-103(f). Following the utility's submission of its Plan, "[t]he Commission shall seek public comment on the utility's plan and shall issue an order approving or disapproving each plan within 5 months after its submission. If the Commission disapproves a plan, the Commission shall, within 30 days, describe in detail the reasons for the disapproval and describe a path by which the utility may file a revised draft of the plan to address the Commission's concerns satisfactorily. If the utility does not refile with the Commission within 60 days, the utility shall be subject to penalties at a rate of $100,000 per day until the plan is filed. This process shall continue, and penalties shall accrue, until the utility has successfully filed a portfolio of energy efficiency and demand-response measures." Id.

Breakthrough Technologies

Under Section 8-103(g), "[n]o more than 3% of energy efficiency and demand-response program revenue may be allocated for demonstration of breakthrough equipment and devices." 220 ILCS 5/8-103(g).

Penalties

Section 8-103(i) sets forth the penalty if utilities fail to meet the prescribed energy efficiency savings goals. In the event that the utility fails to meet the efficiency standard specified in Section 8-103(b), as modified by subsections (d) and (e), "the responsibility for implementing the energy efficiency measures of the utility … shall be transferred to the Illinois Power Agency …." 220 ILCS 5/103(i).

Potential Study

The General Assembly enacted new Section 8-103A of the Act (effective October 26, 2011), which requires that ComEd's Plan provide "an analysis of additional cost-effective energy efficiency measures that could be implemented, by customer class, absent the limitations set forth in subsection (d) of Section 8-103." 220 ILCS 5/8-103A.

III. ComEd's Filing

A. ComEd's Proposed Plan

The Planning Process

According to ComEd witness Brandt, ComEd developed the Plan through a collaborative process that included the participation of the Stakeholder Advisory Group ("SAG"), which was established pursuant to the Commission's Final Order in Docket 07-0540. While many groups have participated in the SAG over the past five years, key participants in the development of Plan 3 include the following: Ameren Illinois Utilities ("AIU"), Center for Neighborhood Technology ("CNT"), CUB, the City of Chicago, DCEO, ELPC, Future Energy Enterprise, Staff, AG, Integrys (Peoples Gas and North Shore Gas), Midwest Energy Efficiency Alliance ("MEEA"), NRDC and Nicor Gas. In addition to the SAG process, ComEd has worked separately with the two local gas companies, Nicor Gas and Integrys, to develop the joint or coordinated electric-gas program elements that are presented in this Plan. ComEd Ex. 2.0 at 20.

Mr. Brandt explained that ComEd has had significant dialogue with the SAG, and has listened to their comments and addressed them accordingly. Many ideas and concepts of the SAG members have influenced the final portfolio. For example, the Illinois Statewide Technical Reference Manual ("TRM"), which is new this year, is the direct result of the work of many members of the SAG. ComEd has also increased its effort on education and outreach in light of discussions with a SAG member. Overall, ComEd believes that the SAG has been very important and influential in the final portfolio design. ComEd Ex. 2.0 at 20-21.

Mr. Brandt further testified that ComEd is proposing seven program elements to be offered jointly between the gas and the electric utilities. He explained that several of the joint programs are smaller in scope due to the gas companies having much smaller goals and budgets during the Plan time period than ComEd. Also, according to Mr. Brandt, because the gas measures are the drivers for the Single Family and Multi-family Home Performance program elements, ComEd will be dependent on how much of the gas companies' resources can be invested into these programs. ComEd Ex. 2.0 at 21.

The Portfolio Framework

ComEd's portfolio includes a mix or balance of energy efficiency measures that are designed as a whole to produce a desired result with acceptable risk. Here, ComEd's portfolio is designed to achieve the proposed energy savings goals within the statutory spending screens, as well as satisfy other important policy and strategic objectives. The wide selection of measures that makes up the portfolio also creates a broad array of energy efficiency opportunities for all customers. Mr. Brandt explained that a portfolio is the best option for both maximizing energy savings and developing the necessary foundation to build an energy efficiency culture in the ComEd service territory. ComEd Ex. 2.0 at 22.

Mr. Brandt explained that, consistent with the statutory framework, ComEd's energy efficiency portfolio is designed to achieve the proposed energy saving targets within the spending screens while continuing to support ComEd's key themes, which include: support for the statutory requirements, building upon the existing energy efficiency foundation, inclusion and innovation, and ownership of responsibility for performance. He stressed that the portfolio has been put together as a three-year integrated plan, and that it is not and should not be viewed as three separate one-year plans. Indeed, this approach is consistent with the amendments to Section 8-103, which permit the utility to demonstrate compliance at the end of the three-year Plan period. 220 ILCS 5/8-103(b). This grants the utilities flexibility to offer programs that may take a full year just to implement, meaning that resulting energy savings in future years can be captured and accounted for under the existing Plan. ComEd Ex. 2.0 at 22.

Section 8-103(e) requires that ComEd and DCEO each implement a portion of the energy efficiency measures. ComEd must implement 75% of the measures, and DCEO must implement 25% of the measures. Mr. Brandt explained that ComEd and DCEO calculated the split by considering the nature of the programs and allocating the amount under the statutory spending screen to correspond with the statutory percentages. ComEd is requesting that the Commission approve this allocation. DCEO also has responsibility for specific programs under the statute. Section 8-103(e) requires that “[a] minimum of 10% of the entire portfolio of cost-effective energy efficiency measures shall be procured from units of local government, municipal corporations, school districts, and community college districts,” and that DCEO “coordinate the implementation of these measures.” 220 ILCS 5/8-103(e). In addition, ComEd and DCEO have agreed that DCEO would be responsible for presenting and implementing the portfolio of energy efficiency measures targeted at low-income households as required by Section 8-103(f)(4). ComEd Ex. 2.0 at 23.

Mr. Brandt explained that the 25% / 75% allocation between DCEO and ComEd does not correspond to the kWh savings. Because DCEO has taken on the responsibility of the low-income programs, which are exempted from the TRC test, ComEd and DCEO assumed that DCEO’s portion of the kWh savings would be less than 25% of the savings, and that therefore ComEd’s portion of the kWh savings would have to achieve over 75% of the savings to achieve the goal. Based on its results from the first several years of implementation, ComEd understands that DCEO can only achieve a $0.41 per kWh target. DCEO filed its three-year plan in a separate docket (Docket 13-0499). Mr. Brandt explained how ComEd and DCEO determined the energy efficiency goals over the life of the Plan. For Plans 1 and 2, ComEd and DCEO agreed to a percentage breakdown of kWh savings that each entity would achieve such that the overall statutory or modified goal, as applicable, would be attained. For Plan 3, ComEd and DCEO adopted a different approach because the statutory goal is not attainable under the spending screen for any of the three years. As a result, both ComEd and DCEO developed their goals by summing the total savings projected by their individual program elements (i.e., a bottom-up approach). This resulted in the “Projected Megawatt hours (“MWh”) Attained Each Year” values in the Plan. From these values, ComEd and DCEO reduced each goal by approximately 5% to account for additional risk, and rounded the goals for both entities to set the proposed goals for this Plan. ComEd Ex. 2.0 at 23-24.

ComEd’s Plan is made up of measures, program elements, and programs. Mr. Brandt explained that an energy efficiency measure is an individual technology (e.g., compact fluorescent lamps (“CFL”)), behavior (e.g., adjusting a thermostat up or down when leaving the house) or service (e.g., air conditioning (“AC”) tune-up) that reduces the amount of electricity used when installed or performed. He further explained that an energy efficiency program or program element consists of the bundling of one or more energy efficiency measures into an entire program concept, which includes program delivery mechanisms, incentive rebate levels, and marketing approaches. The measure is one component of the program element. A program represents a bundle of program elements. ComEd Ex. 2.0 at 25-26.

ComEd’s portfolio development process consisted of three primary stages – energy efficiency measure analysis, program analysis, and portfolio design, which are described below. ComEd Ex. 2.0 at 25.

Development of the Portfolio

ComEd developed its portfolio by identifying energy efficiency measures and programs and relying on the results of the TRC test to determine the cost-effectiveness of each measure and program. Mr. Brandt testified that the portfolio is designed to achieve the annual proposed kWh savings goals while also achieving ComEd's other portfolio objectives.

Measure Selection

To determine which measures to include in the Plan, Mr. Brandt testified that ComEd considered energy efficiency measures from a broad list compiled from the existing measures that ComEd's current programs offer. The list was supplemented with additional measures from other sources, including the TRM, programs currently offered in other jurisdictions, the California Database for Energy Efficiency Resources ("DEER"), the Consortium for Energy Efficiency ("CEE"), the American Council for an Energy Efficient Economy ("ACEEE"), and Focus on Energy. ComEd Ex. 2.0 at 26.

Mr. Brandt explained that the final database prepared for this analysis included nearly 2,000 measures. Many of these measures are combinations or variations of basic measures, such as different wattages of CFLs or different configurations of what are known as T8 linear fluorescent lamps, and a number of specific measures were analyzed for multiple building types. Even though the initial list included over 2,000 measures, the list of all possible measures would be several times as large. A list of all possible measures would require that ComEd look at every device or system that uses electricity in every possible building type, with every possible heating and cooling system. It would also entail evaluating measures that are not pertinent or applicable to ComEd's service territory. For example, evaporative air conditioning measures are very efficient and useful in the Southwest United States, but in Illinois' humid summer environment, it is impractical as an energy-saving technology except in certain custom applications. It is standard practice when conducting a first-stage measure screening to restrict analysis to those measures within a set of common building types that could account for the majority of energy efficiency potential in a given area. The goal of the measure screening process is to create the building blocks for energy efficiency programs. These programs should be designed such that if additional measures are considered important to include, they can easily be screened and included within the program without major redesign. Mr. Brandt testified that he considered the list of measures examined to have been comprehensive. Some new measures that were not included in the first two Plans include Agricultural energy saving measures and Laboratory Fume Hood Controls. ComEd Ex. 2.0 at 27.

The Illinois Statewide Technical Reference Manual. Mr. Brandt testified that the Commission orders approving the electric utilities' second Plans and the gas utilities' first Plans (Dockets 10-0562, 10-0564, 10-0568 and 10-0570) directed the utilities to work with one another, DCEO and the SAG to develop a statewide TRM. The collaboration was intended to ensure that a consistent format was developed for the TRM, and, on January 9, 2013 the Commission approved the TRM. See Commonwealth Edison Co., Docket 12-0528, Final Order (January 9, 2013). ComEd Ex. 2.0 at 28-29.

To ensure the consistent application of TRM policies, SAG participants also developed a TRM Policy Document that was approved by the Commission in Docket 13-0077. The Policy Document establishes policies that pertain to (1) the applicability of the TRM in planning, implementing and evaluating energy efficiency measures; and

(2) the process for annually updating the 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 TRM. Mr. Brandt explained that the TRM serves multiple purposes across the energy efficiency portfolios, but for the planning process, it is the primary data source for the majority of energy efficiency measures. For example, the TRM includes CFL data, which encompasses the definition of efficient equipment, the definition of baseline equipment, measure life, measure cost, coincidence factor, and calculation of savings. This data drives the analysis to determine the cost-effectiveness of the energy efficiency measures. ComEd Ex. 2.0 at 29-30.

Analysis of Cost-Effectiveness. Section 8-103(f)(5) of the Act requires that the portfolio of energy efficiency measures be "cost-effective," which is defined as having satisfied the Illinois TRC test. The standard TRC test was originally developed by the California Energy Commission in the 1980s as part of what is called the California Standard Practice Manual, and has been incorporated into the National Action Plan for Energy Efficiency. Virtually every jurisdiction uses some form of this test for energy efficiency analysis.

Mr. Brandt testified that in the Commission's Order in the Plan 1 docket (Docket 07-0540), the Commission concluded that "[c]alculation of the TRC test at the portfolio level provides utilities with greater flexibility to ensure that measures with less short-term savings value, but greater value over several years, will be included in any overall portfolio of measures and programs …." Commonwealth Edison Co., Docket 07-0540 (Feb. 6, 2008) ("Plan 1 Order") at 28. He observed that this finding was reaffirmed in the Plan 2 docket (Docket 10-0570 (Commonwealth Edison Co., Docket 10-0570 (Dec. 21, 2010) ("Plan 2 Order") at 42)), and ComEd again proposes that calculation of the TRC test be conducted at the portfolio level. ComEd Ex. 2.0 at 31.

Mr. Brandt explained that the TRC test compares the benefits realized by installing a measure with the costs to install that measure. Benefits are calculated as the product of the measure's estimated energy and peak demand savings and the utility's avoided cost. Costs are equal to the incremental capital, installation and operating and maintenance ("O&M") costs. The incremental cost is defined as the difference between the cost of the efficiency measure and the cost of the measure that otherwise would have been installed. ComEd Ex. 2.0 at 31.

Mr. Brandt testified that before applying the TRC test to the potential energy efficiency measures, ComEd gathered additional data and performed further analysis related to the measures. Beginning with Plan 3, utilities have the benefit of the Illinois TRM. ComEd's initial efforts focused on measures that are contained within the TRM, which covers a wide range of residential and commercial and industrial ("C&I") measures that have been exhaustively reviewed and vetted by members of the SAG. Version 1 of the TRM, which was approved by the Commission in Docket No. 12-0528, contains 98 core energy efficiency measures covering both electric and natural gas savings. Of these measures, 60 are C&I-focused, and when expanded to cover the various permutations of technology sub-types and building types, can exceed 2,000 permutations. As an example, one measure (T-5 Fixtures and Lamps) contains 12 different combinations of baseline and new fixtures, each of which would need to be evaluated against 15 different building load profiles. As such, this one measure would require 180 different analyses. While the TRM provides an extensive starting point for measures, it is by no means comprehensive, particularly where more sophisticated programs such as Retrocommissioning are concerned. For these measures, ComEd relied on savings algorithms, assumptions and values from the program implementers and evaluators. ComEd Ex. 2.0 at 32.

ComEd was next required to estimate the useful life of each measure. Mr. Brandt explained that measure lifetime was needed because the TRC test analysis needs to account for all of the energy savings realized by implementation of a measure over time. Last, the cost-effectiveness analysis requires a discount rate that is used to estimate the present value of the efficiency measure's costs and benefits. ComEd Ex. 2.0 at 32-33.

Mr. Brandt testified that ComEd used DSMore, an industry-standard demand-side management planning model, as its tool for determining the cost-effectiveness of all measures. He explained that the method that DSMore uses to determine cost-effectiveness varies by measure category. For lighting measures, ComEd developed a lighting profile that allowed it to disaggregate annual energy savings into hourly values. These hourly values were then entered into DSMore, which applied the appropriate hourly energy price to assign a value to the annual savings for each measure. For other measures, ComEd developed an annual energy savings target which DSMore then apportioned based on the load profile of the customer class being evaluated. ComEd Ex. 2.0 at 33.

Mr. Brandt stated that the avoided energy values used for the analysis were developed in 2013 by Integral Analytics ("IA") using 2 years of historical prices, 3 years of forecasted wholesale energy prices and 30 years of historical weather data. ComEd provided the price data while IA provided the weather data for the Chicago-O'Hare weather station. The forward prices were based on NYMEX Around-The-Clock ("ATC") prices that are traded up to three years prior to delivery. These ATC prices were "shaped" using ComEd's actual monthly costs to arrive at peak and off-peak monthly costs. Mr. Brandt explained that with this data, IA developed a series of weather-price correlations using the historic data and applied those correlations to the forecasted prices to develop appropriate load/price shapes for ten customer load shapes. Beyond the three-year price horizon, ComEd relied on the latest Energy Information Administration ("EIA") Annual Energy Outlook for price escalators to estimate long-term energy prices. Avoided capacity costs were taken from PJM's Reliability Pricing Model ("RPM") auction clearing price for the 2014, 2015 and 2016 delivery years; future years were assumed to escalate at the same rate as energy prices, using the EIA values mentioned above. ComEd Ex. 2.0 at 33-34.

Mr. Brandt testified that using the above data, ComEd calculated the value of the TRC test for each of the measures in the database. Measures that score a ratio of benefits to costs of 1.0 or greater are considered to pass the TRC test. ComEd Ex. 2.0 at 34.

Mr. Brandt explained that the TRC test often is applied to assess the cost-effectiveness of individual energy efficiency measures as well as energy efficiency programs. When the analysis of measures is prepared, ComEd looks at a single measure's costs and benefits and not variables such as Program Administrator program costs because, at this stage in the analysis, there are no program costs. Importantly, the calculation of cost-effectiveness incorporates both electricity savings and demand reductions. Most energy efficiency measures not only reduce the total amount of electricity consumed over the course of a year, but also reduce peak demand. When ComEd calculates the cost-effectiveness of a measure, it: (i) multiplies energy savings by the avoided energy cost, and (ii) multiplies peak demand savings by avoided capacity costs. ComEd Ex. 2.0 at 35.

Mr. Brandt further noted that the Illinois TRC test differs from standard formulations of the test used in other states in two ways. First, the Illinois TRC test now allows the inclusion of "other quantifiable societal benefits" within the benefits calculation. Second, the Illinois TRC test does not include tax credits as a benefit within the calculation. Also, the Illinois TRC test includes avoided natural gas utility costs as a societal benefit to measure. Mr. Brandt testified that this is important because some energy efficiency measures produce both electricity and natural gas savings, which allows ComEd to develop joint programs with the natural gas utilities. ComEd Ex. 2.0 at 36.

In his direct testimony, Mr. Brandt reported that of the nearly 2,000 measures that were screened, approximately 1,600 passed with a benefit-cost ratio of 1.0 or greater. ComEd Ex. 2.0 at 36.

Development of the Energy Efficiency Programs

Bundling of Measures. After the energy efficiency measure analysis is complete, the next stage is program analysis. As explained by Mr. Brandt, a program element is a general classification that references the types of measures that might be offered within a program targeted at a specific market. The bundling process is used because very few, if any, program elements and programs are designed and implemented that include only one single measure. Program designers build programs around combinations of measures that might appeal to a given market and that can be delivered using similar channels. Mr. Brandt noted that the bundling process also is necessary because in subsequent steps, ComEd estimates how many of each measure would or could be adopted by program participants and then sums the energy and demand reduction impacts of these measures. ComEd Ex. 2.0 at 38.

Mr. Brandt explained that ComEd began the process of designing programs by reviewing the existing portfolio of programs ComEd offers. ComEd then conducted industry research by interviewing energy efficiency program personnel from other utilities, organizations and regional forums in an effort to identify program practices and emergent issues that are being encountered throughout the country. ComEd also reviewed the baseline and potential study that were commissioned during the Plan 2 cycle, to determine if there were markets or sectors that existing programs had difficulty penetrating. Finally, ComEd solicited additional program concepts from internal staff and stakeholders with the overall objective of ensuring that the portfolio reaches the widest audience of customers in the most cost-effective manner. ComEd Ex. 2.0 at 38-39.

Mr. Brandt testified that ComEd found that there are no significant gaps either in target markets or end-uses that the existing portfolio of programs is not able to address. ComEd's research findings show that significant potential exists for behavioral-based energy efficiency in the C&I sector, but due to the lack of evaluation evidence that would support a fully-developed program, the best approach toward this type of program is via a research pilot. Likewise, there is a small group of very large manufacturing customers for which a tailored program would potentially be viable, and ComEd proposed a pilot to address this small but significant group of customers. ComEd Ex. 2.0 at 39.

Cost-Effectiveness Analysis. Mr. Brandt testified that to determine cost-effectiveness at a program level, ComEd reran the TRC test on the programs, rather than on the measures. He noted three differences between the screening process for measures and programs. First, when screening measures, the PRC variable ("program administrator costs") in the Illinois TRC test is set to zero. However, program-level screening requires that the PRC variable equal the cost to implement and administer the program. Second, while the measure screening focused on the cost-effectiveness of a single measure, program screening by definition is the cost-effectiveness of a bundle of measures as these measures are adopted by program participants. This means that at the program level, ComEd must also project the number of measures that we expect to be adopted as a result of the program. Third, every customer that receives an incentive for undertaking a specific program-sponsored activity is a participant, but not every participant is motivated to undertake that activity by the program. Some fraction of program participants will be "free riders" – participants that would have undertaken the desired action in the absence of the program. The estimated savings for a program is reduced by the amount of savings attributed to these free riders. At the same time, however, there will be some customers who undertake the action the program is attempting to motivate, but who do not actually take any incentive from the program. These customers are known as "free drivers" and the savings that their actions produce are termed "spillover." Just as the effects of free riders must be accounted for, so must the effects of free drivers. ComEd Ex. 2.0 at 39-40.

Mr. Brandt explained that the net effect of free-ridership and spillover is known as the net-to-gross ("NTG") ratio – the ratio of: (1) net program savings calculated as the net of free-ridership and spillover and (2) gross program savings, which are equal to the total number of measures installed and their associated savings. The NTG ratio is a number calculated based on post-implementation evaluation of program impacts. Using various evaluation methods dependent on the program type, evaluators attempt to determine which participants are free riders (i.e., would have undertaken a program-sponsored action even without the program) and which non-participants and participants are free drivers (i.e., took action even though they did not avail themselves of the program incentives). Program designers use the results of prior NTG ratio analyses as inputs to program cost-effectiveness calculations. ComEd Ex. 2.0 at 40-41.

Mr. Brandt described the sources that ComEd relied upon to compile the program cost, participation, and NTG ratio data. For continuing programs, cost data was based on the current costs to deliver the programs. These costs were adjusted in consultation with the program managers to reflect potential increases or decreases in cost elements over time. The program cost data that was used for new programs is based on the costs reported by utilities running similar programs in other parts of the country. After beginning with this data, ComEd modified it to reflect adjustments that would be expected in its service territory. Similarly, the participation data also are based on the actual or projected achievements of similar programs as prepared by the utilities managing the programs. These data were also compared against the market potential study that ComEd conducted. The NTG ratio estimates for continuing programs are generally based on the results of the most recent evaluation reports completed by the independent evaluator. In certain cases, these values were adjusted to reflect likely future market behavior. For new programs, ComEd developed estimates of NTG ratios using proxy values from current programs. ComEd Ex. 2.0 at 41.

Portfolio Design

ComEd began the development of its final energy efficiency and demand response portfolio with the program elements that successfully passed the two-stage design process described above. Mr. Brandt testified that ComEd also developed budget estimates for portfolio-level activities, which include education and outreach, program evaluation, research and development, market research, legal, the tracking system, and non-program specific labor costs. ComEd also quantified the statutory target (prior to application of the spending screen) as well as the spending screen for each year. Mr. Brandt stated that ComEd then balanced the portfolio, scaling certain programs up or down in size to arrive at a portfolio that would allow ComEd to achieve the proposed energy savings goals while also achieving the other objectives of a robust portfolio. ComEd Ex. 2.0 at 42-43.

Mr. Brandt noted that ComEd did not analyze the cost-effectiveness of the programs proposed by DCEO. DCEO has a statutory responsibility to deliver statewide integrated gas and electric energy efficiency programs. Therefore, DCEO elected to use a single cost-effectiveness analysis for all of its programs, which transcends four utility territories. ComEd provided DCEO with its list of measures as well as the avoided cost tables from DSMore. ComEd Ex. 2.0 at 43.

The Energy Efficiency Portfolio's Ability to Achieve the Energy Savings Goals

Mr. Brandt opined that the ComEd energy efficiency portfolio is designed to achieve the proposed energy savings goals within the spending screens. He explained that the explicit objective of the analysis process was to design a portfolio that achieves aggressive energy savings goals within the spending screens, while also achieving other objectives (e.g., a robust and diverse portfolio). While Mr. Brandt testified that he believes this proposed portfolio does just that, he recognized that there are a number of uncertainties that characterize the analysis. For example, if the values that ComEd has used to represent energy efficiency measure savings are incorrect, if program participation is not what ComEd estimated, or if the NTG ratios vary from those that ComEd has used in its analysis, the verified net savings estimated by the evaluator could be very different than the ComEd estimate. ComEd Ex. 2.0 at 43.

Mr. Brandt testified that this uncertainty materially affects ComEd's ability to achieve the proposed savings goals under the Plan. Because the spending screens do not provide sufficient funding to achieve statutory targets in each year of the Plan, ComEd has proposed modified targets that reflect the fact that the statutory spending screens essentially stopped increasing after Plan Year ("Plan Year" or "PY") 4. Even under the modified goals, however, an adverse NTG value can put ComEd at risk of not achieving the target. To address and manage this risk, ComEd has worked with the other State utilities, DCEO and stakeholders in the development of a modified NTG framework. At this time, not all parties have agreed to all aspects of this NTG framework. Nevertheless, in Section 6 of the Plan ComEd submitted its proposed framework to the Commission for approval going forward. Mr. Brandt explained that consistent with the flexibility granted to ComEd in the Orders approving ComEd's first and second Plans, ComEd must retain the ability to adjust its portfolio and program design based on the real-time information it receives regarding program performance. Specifically, ComEd must be able to reallocate funds across program elements and modify, discontinue and add program elements within approved programs based on actual implementation experience and the results of the evaluation of its programs. ComEd Ex. 2.0 at 43-44.

The Portfolio of Energy Efficiency Programs

Mr. Brandt testified that ComEd analyzed over 2,000 energy efficiency measure combinations, of which 73% passed the TRC test. The majority of measures that did not pass the TRC test is in the C&I Incentives program element and reflects new technologies with very low uptake (e.g., light-emitting diode ("LED") lighting fixtures). ComEd believes that these measures will become cost-effective over the next three or four years as they achieve critical mass in the market. At the program design stage, ComEd focused in particular on the cost-effective measures from a marketplace perspective. ComEd also believed it was important to have programs available for all customers, including programs that went across various end-uses (e.g., lighting, heating, ventilation, air conditioning ("HVAC"), motors, refrigeration) and that addressed special customer groups (e.g., multi-family, small business). By focusing on these objectives, ComEd made the portfolio more accessible to all customers and spread its investment in energy efficiency across many customers and end-uses. The portfolio consists of two broad programs, Smart Ideas for Your Home and Smart Ideas for Your Business, that target the residential and C&I customer segments, respectively. There are 12 energy efficiency program elements – 7 residential programs and 5 commercial and industrial programs proposed to be offered under the Smart Ideas banners. ComEd Ex. 2.0 at 44-45.

The Smart Ideas for Your Home Program

Smart Ideas for Your Home provides a variety of options for residential customers including the following: (1) Residential Lighting; (2) Appliance Recycling; (3) Complete System Replacement; (4) Multi-Family Comprehensive Energy Efficiency Program; (5) Energy Efficiency Kits Program; (6) Single Family Home Performance; and (7) Residential New Construction. ComEd Ex. 2.0 at 45-47.

Mr. Brandt explained that the Residential Lighting program element will continue to provide the most kWh savings among residential program elements, but, similar to Plan 2, its kWh contribution will be decreasing over time as the incandescent bulb disappears from the market pursuant to federal legislation mandates. This program will continue to be available to all customers. The Appliance Recycling program element is the second largest residential program in terms of projected kWh savings, and will be open to all customers who own old working appliances (e.g., refrigerators, freezers, and window ACs). In Plan 2, the second largest residential program was the Home Energy Report ("HER") program element. This program will continue, but is now part of ComEd's Illinois Power Agency ("IPA") filing. The scope of this program has been dramatically increased such that this program will be ComEd's largest program in the residential sector, providing approximately 300,000 MWh annually during the three-year period covered in this Plan. Although the other programs are more narrowly focused on particular segments and smaller in scale, they are targeted at either an important end use (e.g., AC), a critical customer segment (e.g., multifamily customers), or a critical market sector (e.g., new construction). These programs, along with the two larger programs, create a diverse residential portfolio that provides opportunities for all residential customers to participate while also minimizing portfolio risk and laying the foundation for future offerings. ComEd Ex. 2.0 at 48.

The Smart Ideas for Your Business Program

Mr. Brandt explained that Smart Ideas for Your Business is targeted at ComEd's C&I customers, offering a complementary set of energy management options. Although customers can participate in the program through any individual program element, ComEd will also encourage participants to use the available building benchmark services as a means of increasing awareness of the "whole building" solutions. For this Plan, ComEd has repositioned the business portfolio around four core programs, with an overarching customer acquisition platform that ensures interested customers are directed to the programs that most suit their needs. In Plan 2, a number of "boutique" programs were developed to target certain niche markets. While these programs were successful in addressing these markets, ComEd has come to realize that they were really just strategic delivery mechanisms for its core set of programs. The following Plan 3 programs are designed for C&I customers – the first four represent core programs, and the fifth is a proposed pilot program for large C&I customers: (1) C&I Incentives; (2) C&I Optimization Program; (3) Midstream Incentives; (4) C&I New Construction; and (5) Large C&I Pilot. ComEd Ex. 2.0 at 48-50.

Mr. Brandt testified that the C&I program mix is driven by three programs. The C&I Incentives program element is by far the largest program in terms of both costs and kWhs saved in the overall portfolio, and will continue to be the foundation on which the C&I program elements are built. Two other program elements – C&I Optimization and Midstream Incentives – are each projected to account for over 15% of the total MWhs saved in the C&I sector. These three program elements taken together account for approximately 95% of the MWhs projected to be saved in the C&I sector. The remaining program elements are designed to target hard-to-reach customer segments, including the C&I new construction market and our largest manufacturing customers, which ensures that all customers have the opportunity to participate in energy efficiency. ComEd Ex. 2.0 at 51.

Mr. Brandt noted that the Small Business Direct Install Program, while not represented in Plan 3, is being offered under the IPA portfolio on a much larger scale when compared to Plan 2. However, in the event the Small Business Direct Install program achieves its IPA MWh goal and additional funding remains under Plan 3, ComEd intends to continue offering the program under this Plan with the energy savings inuring to this Plan. ComEd Ex. 2.0 at 51.

DCEO Programs

Mr. Brandt testified that DCEO's portion of the portfolio consists of seventeen programs (described in more detail in the DCEO docket). Seven programs are targeted at the public sector segment, five are aimed at the low-income segment, and five are designed as market transformation programs. ComEd Ex. 2.0 at 51-52.

Achievement of Energy Savings Goals and Opportunities for Customers

Mr. Brandt stated that ComEd's proposed portfolio of energy efficiency measures, when considered in conjunction with the measures that DCEO is implementing, is designed to achieve the proposed energy savings goals within the spending screens. ComEd Ex. 2.0 at 53.

Mr. Brandt testified that ComEd's proposed portfolio provides a diverse cross-section of opportunities for customers of all rate classes. He pointed out that the Smart Ideas for Your Home and Smart Ideas for Your Business programs are designed to provide all residential and C&I customers with the opportunity to participate in energy efficiency programs. In the residential sector, a lighting program element is available to all customers. In addition, appliance program elements are aimed at ACs and refrigerators/freezers, which are some of the largest loads in the home. ComEd also has residential program elements aimed specifically at whole-house, comprehensive measures, which are jointly offered with the gas companies. Concerning the C&I sector, the C&I Incentive program element provides every C&I customer with multiple opportunities to take advantage of energy efficiency offerings. In addition, the Optimization and New Construction program elements allow customers to participate at the whole-building level. Also, ComEd will be testing a new Large C&I Pilot concept targeted at our largest customers to encourage their increased participation in the portfolio. Overall, ComEd believes the portfolio as a whole provides a diverse cross-section of opportunities for all of its customers. ComEd Ex. 2.0 at 53-54.

Program Implementation, Management and Administration

Implementation and Marketing

Mr. Brandt testified that factors such as whether the program element is new or existing, tied to another program element, or jointly offered with a gas company all come into play in determining an appropriate implementation strategy. Regardless of the approach, however, a key driver is to deliver the most cost-effective program elements possible. With respect to the existing programs currently offered under Plan 2, the existing implementation contractor contracts expire at the end of Plan Year 6. As a result, ComEd will review each contract to ensure costs continue to be prudently incurred and reasonable in amount. In some cases, ComEd may rebid the contract. In other cases, ComEd may seek to renegotiate a contract in order to leverage the experience and lessons learned during Plan Years 4 through 6. In the event renegotiation is not successful, ComEd would then initiate a request for proposal ("RFP") process. ComEd Ex. 2.0 at 54.

Mr. Brandt explained that in addition to the implementation information provided in each program element template presented in Section 6 of Plan 3 (ComEd Ex. 1.0), ComEd realizes that the actual implementation process for each program will require much more detail. Because most programs will be implemented by third parties, ComEd expects to work with each implementation contractor in the development of the final, more detailed program designs and implementation plans. This will allow ComEd to bring the third party administrator's expertise into the process before the program design is complete. Working with the implementation contractors, ComEd will finalize the program structure, incentive levels, and marketing and recruitment strategies to maximize the success of achieving the program goals. ComEd and the implementation contractors will develop a detailed roadmap for program roll-out and management, including customer qualification, rebate fulfillment, customer care, data capture and tracking, reporting and quality control processes. ComEd Ex. 2.0 at 55.

Mr. Brandt testified that ComEd views the marketing of the portfolio as one of the key elements that can lead to the overall success of the portfolio. It is important to stress that ComEd does not view the portfolio as individual program elements offered separately to customers. Rather, ComEd views the portfolio at a customer segment level with programs presented together as Smart Ideas for Your Home and Smart Ideas for Your Business, which ComEd believes will allow customers to learn about and make energy management purchasing decisions in a one-stop shopping environment that matches programs to their needs for energy savings and environmental benefits. These groupings present all the programs for the particular customer segment as a package, and are designed to avoid the potential confusion that might be caused by presenting each program and its details individually. ComEd Ex. 2.0 at 55-56.

Mr. Brandt added that ComEd is proposing market transformation and educational programs, in conjunction with those offered by DCEO, that are designed to actively promote an energy efficiency culture and the value of ComEd's energy efficiency programs. Two of ComEd's market transformation programs are the Energy Usage Data System, a web-based tool that allows customers to obtain certain energy usage on a monthly basis, and the Energy Insights Online Program, a web-based energy consumption-tracking tool. ComEd Ex. 2.0 at 56.

Company Management and Administration

Mr. Brandt testified that ComEd's portfolio will continue to be administered by ComEd's Energy Efficiency Services Area. Two sub-departments will play major roles in implementing the portfolio. The Energy Efficiency Planning & Measurement Department, led by Mr. Brandt, will have responsibility for the planning, measurement and verification, cost tracking, goal tracking and reporting, and portfolio risk assessment functions. The Energy Efficiency Services Department will be in charge of the implementation of all energy efficiency programs, serving as program managers and overseeing management of third party program administrators. Many other internal ComEd departments will play supporting roles throughout the implementation process, including Marketing, Demand Response, Large Account Services, Customer Care, Communications, and Information Technology. ComEd Ex. 2.0 at 57.

Ongoing Evaluation and Risk Management

Mr. Brandt described three activities that ComEd proposes to undertake to address portfolio risk over the Plan's three-year period. First, at the portfolio level, ComEd will continue to reassess its mix of programs and timing to ensure it remains on track to achieve the proposed energy savings goals within the applicable spending screens. Second, to address risk going forward, ComEd also must retain flexibility to adjust portfolio and program design based on the real-time information it receives. ComEd requires the ability to modify programs during the three-year Plan cycle as results are realized. On-going program modifications are a key to a well-designed portfolio – as information is received and analyzed, program designs will be modified accordingly. This will be critical if the proposed energy savings goals are to be achieved. Although ComEd has conducted a risk analysis, it is impossible to foresee every contingency that might arise in the future. To ensure that ComEd has the ability to respond to such challenges following approval of Plan 3, it must retain sufficient flexibility to reallocate funds across program elements, including the ability to modify, discontinue and add program elements within approved programs based on subsequent market research and actual implementation experience. Third, ComEd will continue to meet and work with other Illinois stakeholders through the SAG. ComEd is committed to continued engagement with the stakeholders to provide opportunities to review ComEd's progress towards maximizing energy savings in Illinois through the Plan. ComEd Ex. 2.0 at 57-58.

ComEd proposes a process for making changes to its programs following the Commission's approval of the Plan. Mr. Brandt explained that it is essential to ComEd's risk management strategy to retain sufficient flexibility to reallocate funds across program elements, including the ability to modify, discontinue and add program elements within approved programs as dictated by additional market research and actual implementation experience. At the same time, ComEd recognizes the importance of having stakeholder participation in this process of review and, as necessary, modification. Consistent with the Commission's Orders in Dockets 07-0540 and 10-0570, ComEd proposes that the following matters would be discussed within the SAG: (1) the reallocation of funds among program elements within the Smart Ideas for Your Home and Smart Ideas for Your Business programs (excluding those elements managed by DCEO) to ensure ComEd's ability to achieve its goals, where the change in budget for any specific program element is greater than 20%; (2) discontinuing approved program elements within the Smart Ideas for Your Home and Smart Ideas for Your Business programs; and (3) adding new program elements within the Smart Ideas for Your Home and Smart Ideas for Your Business programs, as long as those program elements pass the TRC test. ComEd Ex. 2.0 at 58-59.

Mr. Brandt testified that the proposed portfolio represents ComEd's best effort to design a cost-effective mix of program elements with a high probability of success. Following Commission approval of Plan 3, ComEd will proceed with final and detailed program designs and implementation plans. This process will include further discussions with stakeholders, customer groups and trade allies. Continuing market research will also influence ongoing program direction. Based on the information compiled through this process, these initial program designs most likely will be refined to strengthen the program offerings. In the event ComEd revises the proposed budget for any specific program element within the Smart Ideas for Your Home and Smart Ideas for Your Business programs by more than 20%, it will notify the SAG of these changes. ComEd Ex. 2.0 at 59.

Mr. Brandt testified that the programs in ComEd's portfolio are not limited to a certain participation level or kWh limit each year. He explained that although ComEd has done its best to model projections of program participation, costs, and other impacts, they are still projections. ComEd cannot predict with certainty what will happen in the marketplace when the programs are launched. Although ComEd has projected participation rates for each program element, each program element could potentially realize much different participation rates. ComEd will require the flexibility necessary to manage the costs and the program and customer mix to determine when funds are reallocated and to properly manage the portfolio. ComEd Ex. 2.0 at 60.

Mr. Brandt reiterated that the recent legislative changes to Section 8-103 permit ComEd to demonstrate compliance with each of the three annual goals at the end of the three-year Plan period. 220 ILCS 5/8-103(b). In doing so, the statute necessarily permits ComEd to measure the total amount of energy savings cumulatively achieved over the three-year Plan period. Put more simply, during each three-year period, the General Assembly has approved unlimited "banking" of energy savings to be applied through and including the third Plan year. Accordingly, ComEd's Plan 3 proposes that the Commission confirm this new framework and revise its annual goal compliance schedule to reflect the new triennial evaluations as contemplated by the statute. Consistent with the Commission's Order in Docket 10-0570, ComEd further proposes that the Commission again approve two related banking proposals – (1) that kWh savings banked during Plan Year 1 through Plan Year 6 can be applied to the proposed goals set in this Plan, and (2) that kWh savings achieved in this Plan can be banked and applied during ComEd's next Plan. Plan 2 Order at 53-54. Mr. Brandt explained that these proposals recognize the need to maximize every kWh achieved under the constrained budgets, provide ComEd the proper incentive to aggressively promote its energy efficiency portfolio over the entire life of portfolio, and ensure that the verified energy savings funded by customers are given full effect. He stressed that this banking concept is very important to the overall management of ComEd's portfolio. ComEd Ex. 2.0 at 60-61.

Evaluation, Measurement and Verification ("EM&V") Process

ComEd's proposed EM&V process is intended to serve several purposes. Mr. Brandt explained that first the process determines the actual savings achieved by a program element, known generally as an impact evaluation. Second, by combining actual savings data with actual program cost data, the EM&V process calculates the cost-effectiveness of a program element. Third, the EM&V process develops estimates of program planning variables such as per unit measure energy savings and demand reductions and NTG ratios. Fourth, the EM&V process can provide a vital early-warning system to ComEd regarding savings shortfalls, if the evaluation can be conducted in a timely manner. Fifth, a process evaluation that evaluates the process of program implementation can occur. ComEd Ex. 2.0 at 61.

Mr. Brandt explained that like the first two Plans, ComEd intends to have an independent contractor perform the EM&V work. This contractor will complete an assessment independent of ComEd, implementation contractors and stakeholders. Consistent with the Commission's Orders in Dockets 07-0540 and 10-0570, ComEd proposes to enter into a contract with the EM&V contractor, and the contract will provide that the Commission has the right to: (i) approve or reject the contract, (ii) direct ComEd to terminate the evaluator if the Commission determines that the evaluator is unable or unwilling to provide an independent evaluation, and (iii) approve any action by the utility that would result in termination of the evaluator during the term of the contract. Mr. Brandt testified that ComEd believes that the EM&V process has worked very well, and ComEd has coordinated with ICC Staff to retain an independent evaluation contractor for ComEd's entire portfolio. Although ComEd managed the evaluation contractor, the ICC still maintains oversight authority of the evaluation. ComEd proposes the continuance of this process in its current form. ComEd Ex. 2.0 at 62.

Mr. Brandt further testified that the 3% of the total portfolio budget that the statute allocates to EM&V translates to approximately $3.6 million per year. ComEd plans to work with the independent evaluator to determine how best to allocate the dollars across the program elements. Also, because ComEd proposes to claim the kWh savings from its Research & Development ("R&D") projects, it will also have to work with the evaluators to ensure budget dollars are set aside for these pilot programs. Each program element has its own unique evaluation needs and, because ComEd will now be starting the seventh year of implementation for some programs, it may not need to allocate as many dollars for established programs. ComEd Ex. 2.0 at 62-63.

The EM&V activities that ComEd proposes for the Plan include: (1) continuation of current process for selection and management of the independent evaluation contract, (2) approval of a modified NTG framework, and (3) establishment of a realization rate ("RR") framework. The details of these frameworks are discussed below. Mr. Brandt explained that the NTG framework that was approved in Plan 2 was developed through the SAG, and has worked reasonably well over the past several years. This framework has proved to be a highly valuable tool in managing ComEd's risk because, in many cases, it institutes a prospective application of revised NTG ratio values. This is important because it allows ComEd to manage its programs while having certainty regarding the application of one of the key inputs to the net savings calculation. Even so, Mr. Brandt described certain limitations during implementation of this framework. For example, "market change" was a criterion that was supposed to determine whether a new NTG ratio would apply retrospectively or prospectively. In other words, NTG ratios that were revised due to a market change were to be applied retrospectively. While this approach sounds relatively straightforward, its implementation revealed that this concept meant different things to different stakeholders, which led to confusion and a lack of direction in the implementation of the NTG framework. As a result, ComEd is proposing in this docket to further refine and improve upon the current NTG framework. Indeed, it is ComEd's understanding that many stakeholders now concur that prospective application of NTG ratios makes the most sense and that the modified NTG framework set forth below addresses this point while building on the success of the initial framework and addressing its limitations. ComEd Ex. 2.0 at 63-64.

NTG Framework. Accordingly, Mr. Brandt explained ComEd's proposed NTG framework for new and existing programs. For existing programs, when a ComEd evaluation of a program has identified an estimated NTG ratio, that ratio will be used prospectively until a new ComEd evaluation estimates a new NTG ratio. The prevailing NTG ratio provided by the EM&V contractor by March 1 of any Plan year is the NTG ratio value to be applied to the next Plan year beginning June 1. For new programs, planning NTG ratio values that have been provided by the EM&V contractors by March 1 of any Plan year will be applied prospectively to the next Plan year beginning June 1. These values will be used until a ComEd evaluation estimates a revised NTG ratio. If the revised NTG ratio is provided by the EM&V contractor by March 1, then the ratio will be applied to the next Plan year beginning June 1. Thereafter, NTG ratios shall be revised according to the framework for existing programs as described above. ComEd Ex. 2.0 at 64-65.

Mr. Brandt proposes one additional EM&V change concerning the calculation of the NTG ratio. A NTG ratio is calculated based on the combination of both free rider impacts and spillover impacts. To date the evaluations have placed much more emphasis on the free rider component, which has been at the expense of considering the spillover effect. Starting with Plan 3, ComEd proposes that all program evaluations must address, in addition to free ridership, spillover from both the participant and non-participant perspectives. Without these perspectives, the evaluation is unduly reducing the net program impacts that should be realized by a program. ComEd proposes that if an evaluation does not account for spillover, then the free rider effect should also be ignored. ComEd Ex. 2.0 at 66.

RR Framework. Mr. Brandt explained that a realization rate is the ratio of measured savings to projected savings. ComEd proposes a framework similar to the NTG framework under which the realization rate would only apply prospectively. In other words, the newly calculated realization rates would not apply until the start of the next Plan year. ComEd proposes a framework similar to the one for NTG ratios. Specifically, for existing programs, when a ComEd evaluation of a program has identified an estimated realization rate, that rate will be used prospectively until a new ComEd evaluation estimates a new realization rate. The prevailing realization rate provided by the EM&V contractor by March 1 of any Plan year is the realization rate to be applied to the next Plan year beginning June 1. For new programs, planning realization rates that have been provided by the EM&V contractors by March 1 of any Plan year will be applied prospectively to the next Plan year beginning June 1. These rates will be used until a ComEd evaluation estimates a revised realization rate. If the revised realization rate is provided by the EM&V contractor by March 1, then the rate will be applied to the next Plan year beginning June 1. Thereafter, realization rates shall be revised according to the framework for existing programs as described above. ComEd Ex. 2.0 at 65.

Requirement to Provide Analysis of Energy Efficiency Potential

Section 8-103A of the Act imposes a new requirement that ComEd provide an analysis of additional cost-effective energy efficiency measures that could be implemented by customer class, absent the spending screens. 220 ILCS 5/8-103A. Mr. Brandt testified that ComEd addressed this new requirement by conducting a potential study of energy efficiency in the ComEd service territory. This analysis is included in Appendix D to Plan 3. This study was conducted by an outside contractor, ICF Consulting, and covered the energy efficiency potential for the period 2013-2018. It also breaks down this potential by residential, commercial and industrial customer classes. ComEd Ex. 2.0 at 66.

B. Commission Analysis and Conclusion

The minimum requirements for Commission approval of ComEd's Plan are set forth in Sections 8-103(f), 8-103(g), and 8-103A of the Act. The Commission has reviewed the Petition, testimony, and record evidence in this Docket, and finds that while certain portions of the plan should be modified or altered, ultimately the plan meets the minimum requirements of the Act once modified. The Commission directs the Company to submit a Revised Plan in a compliance filing in this Docket that incorporates the modifications discussed and adopted below.

IV. Energy Efficiency Goals

A. Savings Goals

1. ComEd

As set forth in Plan 3 and described in ComEd witness Brandt's testimony, under Section 8-103(b) the energy savings goals increase by 0.4% for Plan Year 7, and by an additional 0.2% for Plan Years 8 and 9. ComEd Ex. 1.0 at 1; ComEd Ex. 2.0 at 8. However, beginning with Plan Year 5, the spending screen under Section 8-103(d) has been essentially frozen at the Plan Year 4 budget, and has not increased along with the escalating energy savings goals. ComEd Ex. 2.0 at 8; 220 ILCS 5/8-103(d).

ComEd observes that because this incongruity first arose in Plan 2, the Commission initially addressed the issue there and approved a complex stipulation to address these challenges, which included a modified energy savings goal for Plan Year 6 ("PY6"). Notably, following the approval of Plan 2, the legislature directed the Commission to study the budget constraints and issue a report in 2011. 220 ILCS 5/8-103(e). The Commission did so, noting that the budget limitation had indeed required modification of the statutory energy savings goals. See June 30, 2011 Report to the General Assembly. In response, the General Assembly left Section 8-103's goals and budgets unchanged, but separately enacted Section 16-111.5B of the Act just a few months later, which provides for additional procurement of energy efficiency measures pursuant to an IPA process that is subject to different statutory criteria and no express budget limitation. 220 ILCS 5/16-111.5B.

Because the General Assembly made no changes to the Section 8-103 structure, ComEd realized early in the Plan 3 planning process that the goals for Plan Years 7 through 9 would again require modification, and shared these concerns with the SAG. ComEd Ex. 3.0 at 7-8. Although the challenges of this incongruity between increasing goals and flat budgets are obvious, ComEd contends that they are further exacerbated by three factors:

First, newer energy efficiency portfolios have the benefit of initially rolling out the simpler, less costly measures that generate substantial kWh savings (e.g., CFLs).

ComEd Ex. 2.0 at 8-9. However, as Plan 3 moves into Plan Years 7 through 9, much of this “low-hanging fruit” has been captured, which creates significant challenges to developing additional energy efficiency programs within the spending screens. Id. at 9. Second, because the federal Energy Independence and Security Act (“EISA”), Pub. L. 110-140, 121 Stat. 1492, prohibited the manufacture of certain incandescent bulbs beginning January 1, 2012, the impact of the lighting program elements will be further reduced – if incandescent bulbs are no longer available in the market, then the baseline will be a more efficient light bulb, possibly even the CFL. ComEd Ex. 2.0 at 8; ComEd Ex. 3.0 at 9. This federal legislation essentially eliminates over time some of the least expensive kWh savings opportunities. ComEd Ex. 3.0 at 8. NRDC similarly acknowledged the challenges posed by EISA. NRDC Ex. 1.0 at 9. Third, the HER program offered under Plan 2, which procured the cheapest energy efficiency in Plan Year 5, was transferred to the new IPA portfolio under Section 16-111.5B. ComEd Ex. 3.0 at 8. NRDC also acknowledged the adverse impact of the HER program transfer. NRDC Ex. 1.0 at 9.

Mindful of these challenges and Section 8-103’s provision for modified goals where the spending screens are not sufficient to fund achievement of the statutory energy savings goals (see 220 ILCS 5/8-103(d)), ComEd undertook a “bottom up” portfolio-building process to construct the diverse mix of programs that would provide opportunities for all customers to participate in the portfolio while delivering energy savings. ComEd Ex. 3.0 at 8. In brief, ComEd conducted hundreds of hours of analysis of available energy efficiency measures, including the bundling of these measures into program concepts and conducting cost-effectiveness analyses at the measure, program and portfolio levels. Id. It is this process that generated the modified savings goals proposed by ComEd in this docket, which are supported by a vast collection of data and analyses. Id. In fact, during the discovery phase of this docket, ComEd produced over seven gigabytes of DSMore analysis, which is an industry-standard model for building energy efficiency portfolios. This analysis shows the individual measure analysis for every program included in the portfolio and the measure make-up within each program. Id. at 9.

ComEd states that from these analyses, it summed up what each program was capable of delivering in terms of kWh savings and these calculations formed the basis of the modified goals. ComEd Ex. 3.0 at 9. Based on these projections, ComEd has proposed three modified annual goals for Plan Years 7, 8 and 9 of 630,000 MWhs, 615,000 MWhs, and 600,000 MWhs, respectively. Each goal also includes an approximate 5% reduction to account for the risks that ComEd has identified and described in this proceeding. ComEd believes these modified goals are very aggressive in light of the budgets, and will require strong management skills and diligent oversight to achieve. ComEd Ex. 2.0 at 10-11. In sum, ComEd’s proposed goals are supported by thorough and rigorous analysis, and ComEd remains convinced that these are the correct goals for the next three years. ComEd Ex. 3.0 at 9.

Having shared this analysis with the SAG during the planning of Plan 3, no intervenor has challenged the inputs to or results of the DSMore analysis, and ComEd credits the SAG process for the apparent agreement among participants in this docket regarding this analysis. ComEd Ex. 3.0 at 9. Rather, in an effort to increase the modified goals, intervenors propose programs or budget reallocations that they speculate may generate some undefined amount of additional kWh savings. It is important to underscore that additional funds do not automatically translate to additional kWh savings. To the contrary, ComEd witness Brandt testified that the residential Smart Ideas for Your Home program and commercial Smart Ideas for Your Business program already reflect maximum kWh savings under the current program designs. Regarding the Smart Ideas for Your Home programs, the different dynamics occurring within the various residential programs preclude additional funds from being added to the residential sector to produce additional kWh savings. ComEd Ex. 3.0 at 8, 9, 10; ComEd Ex. 1.0 at 33. The Residential Lighting program is maximized, and actually will decline due to EISA; Appliance Recycling cannot be further expanded without dramatically increasing incentives, which will alter the entire cost structure of the program; and the remaining programs are jointly offered with and primarily driven by gas companies, which means the gas companies would need to commit more funds. In addition, as NRDC acknowledges, the HER program was transferred to the IPA portfolio, which caused a loss of the cheapest kWh savings available to Plan 3. NRDC Ex. 1.0 at 9; ComEd Ex. 3.0 at 11. Regarding the Smart Ideas for Your Business programs, similar to the Smart Ideas for Your Home programs, additional funding of the Smart Ideas for Your Business programs does not automatically translate to a proportionate level of additional kWh savings, which is illustrated by the C&I Incentives and Optimization programs. ComEd Ex. 3.0 at 11. Based on ComEd's experience of offering these programs in some format over the last several years, it has learned that it is funding these programs at the correct level for the current program designs – during each of the last several years, the budgets for these programs have allowed ComEd to incent all of the qualifying projects that were submitted while leaving some budgeted funds unspent. Id. at 11-12. And, these unspent funds may be further increased by customers who delay the completion of projects to the following year, which leaves ComEd with unspent incentive funds for the year in which the project was to have been completed. Id. at 12.

ComEd states that it has not identified any other significant sectors or markets that are not already addressed or targeted in its program design. ComEd Ex. 3.0 at 12. As a result, channeling additional funds to the C&I programs would require program design changes that could achieve additional kWh savings at the same cents per kWh. Id. However, ComEd is unaware of any program design changes that meet this requirement, and no such changes have been proposed by intervenors. Id. And, even if such changes had been proposed with specificity, they would presumably require further investment in costly program design, meaning that the achievement of additional savings would likely come at a higher cents per kWh cost (e.g., higher incentives, a more elaborate marketing campaign, or additional engineering assistance). Id. at 12-13. According to ComEd, there is no guarantee or evidence in this docket to show what the cents per kWh increase would be. Id. at 13. In the worst-case scenario, the cents per kWh cost could actually increase to the point where less (and not more) kWhs are saved. Id.

ComEd further observes that Intervenors instead complain that the portfolio's energy savings goals will not sufficiently challenge ComEd, and base these complaints on ComEd's past success in exceeding the energy savings goals. These complaints, however, fail to consider that the legislature – not ComEd – set these prior statutory goals and budgets. While it chose to adequately fund achievement of these prior goals, ComEd notes that is not at all the case for Plan Years 7 through 9. Thus, according to ComEd, the past cannot be used as "evidence" that ComEd has a history of proposing cautious or unchallenging goals – to the contrary, the past goals and budgets were set by the General Assembly, and ComEd performed as best it could under that framework. Here again, ComEd states that it proposes the best portfolio it could build under the budget constraints.

ComEd explains that under the Plan 1 AC Cycling program (then known as "Nature First"), ComEd offered residential customers a financial incentive if they allowed ComEd to install a direct load switch on their central air conditioner, which allows ComEd to cycle off the air conditioner on key usage days. ComEd Ex. 3.0 at 40. This program predates Plan 1, but was transferred to that Plan in order to achieve the demand-response goal. Id.; Plan 1 Order at 14, 46-49. In order to free up additional funds to achieve increased kWh savings within limited budgets during Plan 2, ComEd proposed, and the Commission approved, achievement of the demand response goals through its energy efficiency programs. ComEd Ex. 3.0 at 40; Plan 2 Order at 20. Accordingly, ComEd no longer offered the AC Cycling program to new participants through Plan 2, but new customers could continue to sign up for the program outside of the portfolio. However, the costs of enrolling and servicing these customers are recovered through base rates rather than through Rider EDA. ComEd Ex. 3.0 at 40. Under Plan 3, ComEd proposes to continue the AC Cycling program in "maintenance mode", meaning that it will continue the program but, like Plan 2, it will no longer accept or fund new customers under or through the Plan. See ComEd Ex. 1.0 at 59. ComEd Initial Brief ("IB") at 32-33.

Staff agrees with ComEd's proposal to continue the AC Cycling program in maintenance mode but questions why $3.69 million of AC Cycling program costs are allocated to the energy efficiency portfolio in Plan 3. Staff Ex. 1.0 at 15-16. ComEd explains that this $3.69 million is comprised of two components, each of which is directly related to AC Cycling participants who joined the program during Plan 1 when the AC Cycling program was part of the portfolio. ComEd Ex. 3.0 at 41. The first cost component is the annual incentive that ComEd pays the customer who signed up during Plan 1 based on the cycling option chosen, and the second cost component is the amortization costs of the capital investment in the direct load control switches installed in these participants' homes. Id. For accounting purposes, these switches are considered capital equipment and must be treated as such, requiring amortization over the life of the measure. Id. As it did for Plan 2, the Commission should recognize that these costs are incremental energy efficiency costs incurred in the implementation of the Plan that will be a part of the portfolio for the life of the capital investment and until these customers are no longer part of the program. Id. ComEd IB at 33-34.

ComEd also disagrees with the NRDC proposal that the amortized costs associated with the capital investment in the Plan 1 AC Cycling program be recovered through base rates rather than through Rider EDA. NRDC Ex. 1.0 at 18. This proposal should be rejected as contrary to Section 8-103, the Plan 1 Order, the Plan 2 Order, and Rider EDA. Under Plan 1, the Commission approved the implementation of the AC

Cycling program during Plan 1. Plan 1 Order at 46-49. Because the costs associated with the AC Cycling program are "incremental costs" incurred to implement the Plan, they must be recovered through Rider EDA. Plan 1 Order at 23-25, 46-49, 56 ¶ 6 (approving Nature First as a demand response measure, approving the recovery through Rider EDA of costs associated with demand response measures, and describing the Nature First costs to be recovered through Rider EDA as "all incremental costs," including, inter alia, "incremental capital investment to purchase and install Nature First switches"). Under Plan 2, the Commission rejected a Staff proposal to carve out certain plan costs and recover them through base rates, and again confirmed that all costs related to the implementation of energy efficiency plans must be recovered through Rider EDA.

ComEd explains that while it has not added new participants to the AC Cycling program through the portfolio since Plan 1 due to budget constraints, the law is clear that the legacy costs of the Plan 1 investment cannot be recovered outside of Rider EDA. Indeed, ComEd continued to recover these costs through Rider EDA during Plan 2, and proposes to continue to do so during Plan 3. ComEd Ex. 3.0 at 26. ComEd further observes that the AC Cycling participants that joined the program during Plan 1 (when the portfolio funded their participation) are part of the portfolio and their costs (and revenues) are part of the portfolio. Id. at 26-27. Indeed, the PJM revenues associated with the demand response procured from these Plan 1 participants are also credited back to customers through Rider EDA during the annual reconciliation dockets. Id. at 27. NRDC's proposal accordingly should be rejected as contrary to Section 8-103, the Plan 1 Order, the Plan 2 Order, and Rider EDA.

Other NRDC proposals.

In its Initial Brief, NRDC now claims that the 62% increase in the assumed cost of acquired savings from ComEd's C&I Incentives program and a 25% increase in the cost per unit of savings in the Appliance Recycling program support raising the savings goals because the costs are too high and should be lowered. NRDC IB at 6. In reply, ComEd notes that these costs, along with the analysis of every individual measure for every program in the portfolio, were included in the DSMore analysis provided to all of the parties during the discovery phase of this docket. See App. B to ComEd IB; ComEd Ex. 3.1; ComEd Ex. 3.0 at 9. No intervenor challenged the inputs to or results of the DSMore analysis or proposed data or inputs that they believed to be more accurate or credible. ComEd Ex. 3.0 at 9. Indeed, AG witness Mosenthal testified that "[f]or the most part, [sic] I believe overall costs per unit of savings are reasonable and reasonably consistent with past performance." AG Ex. 1.0C at 5, 8.

Moreover, as to NRDC's claims regarding the assumed cost of acquired savings from the C&I Incentives program, NRDC cites four factors identified in ComEd's Response to NRDC Data Request 5.05, and claims these factors do not justify the increased costs. NRDC IB at 8-11. Yet, ComEd observes that NRDC plainly ignores the other factors identified by ComEd in the same Response. Specifically, ComEd responded: "Because of the factors described above, ComEd anticipates that it will need to increase marketing, outreach and bonus offerings to meet projected C&I Incentives program energy savings goals. This will translate to a higher cost per kWh overall." NRDC Cross Ex. 1, ComEd Response to NRDC Data Request 5.05. As to the increase in the cost per unit of savings in the Appliance Recycling program, ComEd notes that NRDC errs in its claim that the projected increase in costs is unsupported. NRDC IB at 6. To the contrary, while NRDC may disagree with ComEd's assumptions, it has not provided any substitute. Indeed, ComEd explains that its assumptions are based on, inter alia, over five years of managing this program in the marketplace and working with implementation contractors. Accordingly, ComEd concludes that NRDC's claims fail to provide any evidentiary basis to raise the savings goals. ComEd further observes that the same is true concerning NRDC's speculative assertion regarding potential additional PJM revenue. NRDC IB at 6, 16-17. As ComEd explains, the portfolio reflects maximum kWh savings under the current program designs and there is no indication that additional funding would produce additional savings. ComEd Ex. 3.0 at 8-12; ComEd Ex. 1.0 at 33; NRDC Ex. 1.0 at 9. ComEd Reply Brief ("RB") at 17-18.

CUB/City's proposal that the PY7 through PY9 goals should be consistent with the PY4 through PY6 goals.

ComEd disagrees with CUB/City's proposal that the PY7 through PY9 goals should be consistent with the PY4 through PY6 goals. CUB/City Ex. 1.0 at 9-10. The proposal lacks foundation and should be rejected. According to ComEd, CUB/City take an overly simplistic approach that wrongly assumes that the same factors that impacted ComEd's performance during Plan 2 will also impact its performance during Plan 3. For example, as NRDC witness Neme explained, ComEd's least expensive or "cheapest" program on a first-year cost basis in Plan 2 – the residential HER program – was transferred to the IPA portfolio of energy efficiency programs. The loss of this program to the IPA portfolio deprived Plan 3 of its cheapest kWhs. No replacement program at this cost level has been identified. NRDC Ex. 1.0 at 9. Mr. Neme also has noted that the EISA legislation has dramatically reduced the impact of the Residential Lighting program, because of lower gross savings per CFL and the loss of low cost kWh savings for Plan 3. Id. In fact, the MWh savings goal of 233,000 in PY6 has dramatically fallen to 86,000 MWh savings in PY9. See ComEd Ex. 1.0 at 33. ComEd explains that these examples demonstrate that the factors that will determine ComEd's performance during Plan 3 accordingly will differ from those that determined its performance during Plan 2 and establish that there is basis for consistency between the Plan 2 savings goals and Plan 3 savings goals.

ELPC's claims that the modified goals should be two-thirds of the statutory goals related proposals.

ComEd notes that like CUB/City, ELPC also claims that the modified goals should be higher – i.e., two thirds of the statutory goals – but does not cite to any considerations or analysis that would make this arbitrary fraction of the statutory goals achievable or more "correct" than the reasoned and thoroughly supported goals calculated by ComEd. ELPC Ex. 1.0 at 6. ELPC only states that "ComEd should acquire more of the identified economic savings potential," but offers no specific proposals or substantive modifications as to how to achieve this objective. Id. at 2. Rather, ELPC recommends that a host of proposals (like its proposals relating to additional financing) be studied further in the SAG. ComEd observes that while ELPC suggests that the Commission direct ComEd to revise Plan 3 or prepare a supplement within 6 months of the Plan 3 order addressing a list of "solutions/partial solutions," Section 8-103 forecloses this option. Rather, the Commission must review and approve Plan 3 – and any proposed changes to that Plan 3 – within the five-month statutory period set by the statute. 220 ILCS 5/8-103(f). Moreover, as the AG observes, ELPC's proposal is unworkable in any event, which confirms the wisdom of the statutory framework. See 220 ILCS 5/8-103; AG Ex. 2.0C at 16 ("I do not believe it is realistic to expect ComEd to submit a revised plan on the day the Plan period starts. ComEd needs the time and certainty provided by timely Commission approval of its plan to put in place the many activities and decisions necessary to run an effective and efficient portfolio of programs."). ComEd IB at 36-37.

ComEd further notes that ELPC's array of ideas has not been presented previously or vetted through the SAG. These include the use of aggressive and targeted marketing, public service announcements, additional technical assistance, third party financing, smart meters, rate modifications, and PJM resource bidding, and additional financing of the portfolio through amortization and capitalization of costs. ELPC Ex. 1.0 at 15-16. ComEd disagrees with the ELPC financing proposals because the Plan 2 Order previously rejected them as contrary to Section 8-103. ELPC's Initial Brief (at 10-11) offers nothing new and no basis to alter these conclusions.

ComEd further observes that ELPC also suggests that ComEd modify or expand existing programs to improve cost-effectiveness, but offers no concrete recommendations as to which programs could be modified or expanded. ELPC Ex. 1.0 at 16-17. According to ComEd, ELPC generally provides no support for these proposals, including any indication of how much they would cost or whether they would achieve any savings, if implemented. Absent this support (and in light of the fact that many of these ideas are presented only for consideration and study rather than immediate implementation), there is nothing that ComEd or the Commission can or should do with these proposals in this docket. Rather, adoption of ELPC's arbitrary fraction of the statutory goals or adoption of any unsupported recommendations requires substantial evidence, and that has not been provided in this docket. ComEd IB at 37-38; ComEd RB at 19-20.

REACT's claims regarding ComEd's achievement of energy savings goals.

ComEd argues that REACT's unfounded and inaccurate assertion that the Plan 3 overhead budgets are "staggering" (REACT Ex. 1.0 at 14) exemplifies the lack of credibility of its positions. Indeed, ComEd explains that a key indicator regarding the reasonableness of the portfolio's costs is the cents per kWh cost of achieving kWh savings, and no one has challenged the reasonableness of ComEd's cents per kWh cost of achieving savings.

ComEd also took issue with Mr. Fults' speculation that "[t]here is a serious question whether ComEd has appropriate motivations and incentives relating to energy efficiency" (REACT Ex. 1.0 at 12). To the contrary, ComEd explains that it has performed at the highest levels since the inception of its energy efficiency portfolio – in each of Plan Years 1 through 5, ComEd has greatly exceeded the statutory energy savings goal under budget. In fact, ComEd has been recognized several times at the national level for its energy efficiency portfolio.

ComEd argues that the NRDC, ELPC, Staff, and CUB/City proposals to significantly reduce the Education and Outreach budget are mistaken and, in some instances, are based on assumptions or positions whose consideration is beyond the scope of this docket. NRDC Ex. 1.0 at 14-15; ELPC Ex. 2.0 at 29-31; Staff Ex. 3.0 at 32-33; CUB/City Ex. 2.0 at 4. ComEd believes that it has never been more important to increase and enhance the education and outreach component of the portfolio, especially as ComEd searches for new and creative approaches to encourage participation and increase kWh savings within the overall budget constraints. ComEd Ex. 3.0 at 20. To this end, ComEd believes that its Customer Engagement Process model described in Plan 3 provides the platform for aggressive education and outreach efforts during Plan 3, and it is ComEd's understanding that this model has been well received by stakeholders. Id. at 20-21; ComEd Ex. 1.0 at 88. Indeed, ComEd believes much more can be gained by increasing the resources devoted to this effort. ComEd Ex. 3.0 at 21. While some intervenors proposed that the Education and Outreach budget not exceed Plan 2's budgets based on language in Plan 3 that ComEd intends to "continue" its current efforts, ComEd clarifies that it should not be inferred that ComEd's level of effort during Plan 3 would remain unchanged. Id. To the contrary, ComEd intends to continue building on the foundation it has established over the last several years, and is proposing to significantly expand and enhance its efforts. Id.

ComEd contends that the NRDC, Staff, and CUB/City proposals to reduce the Emerging Technology / R&D budget and, in the case of ELPC to eliminate it, similarly are shortsighted and, again, beyond the scope of this docket in some instances. NRDC Ex. 1.0 at 15-16; ELPC Ex. 2.0 at 31-32; Staff Ex. 3.0 at 32-33; CUB/City Ex. 2.0 at 4-5. Section 8-103 specifically contemplates an Emerging Technology / R&D budget amounting to up to 3% of the overall spending screen. 220 ILCS 5/8-103(g). This is exactly what ComEd proposed, and the Commission approved, for Plans 1 and 2. Plan 1 Order at 24; Plan 2 Order at 56. According to ComEd, for Plan 3 it is more important than ever for ComEd to have the ability to explore new energy efficiency concepts as they arise, and therefore it is crucial that money be set aside for this function. ComEd Ex. 3.0 at 22. While intervenors correctly observe that ComEd did not fully exhaust the R&D budget under Plan 1 and may not do so under Plan 2, ComEd notes this is not reason enough to constrain the Plan 3 budget below the statutorily-permitted 3%. Id.

ComEd also contends that the NRDC, Staff, and CUB/City proposals to reduce non-program specific Labor costs (included in Portfolio Administration) ignore the evidence and, in any event, prematurely seek to litigate the prudence and reasonableness of these costs prior to their incurrence. NRDC Ex. 1.0 at 16-17; ELPC Ex. 2.0 at 32-33; Staff Ex. 3.0 at 32-33; CUB/City Ex. 2.0 at 8-9. In brief, Staff and intervenors complain that the Labor budget should remain at essentially the same level as Plan 2. As ComEd explained in rebuttal testimony, however, ComEd continued to build up its staffing during Plan Years 4 through 6, but at no point was the portfolio fully staffed. ComEd Ex. 3.0 at 23. Moreover, Plan 2's proposed budget inadvertently neglected to include certain components of employees' total compensation, such as healthcare benefits. Id. Accordingly, ComEd's Plan 3 budget for non-program specific Labor includes the fully embedded labor costs to completely staff the portfolio across all three Plan Years, and includes the projected total compensation and inflation assumptions. Id. In short, ComEd states that it has consistently managed its portfolio to date under budget while exceeding the statutory energy savings goals. Id. Indeed, the AG acknowledges that the cost per kWh savings is reasonable. AG Ex. 1.0C at 8. As with its prior Plans, ComEd believes its combination of employees and contractors is a successful business model that should be continued. ComEd Ex. 3.0 at 23. According to ComEd, now is not the time to arbitrarily cut the Labor budget and, consequently, eliminate portfolio jobs. Id. As with all costs incurred by ComEd, the labor costs are subject to a prudence and reasonableness review in the annual reconciliation dockets. Id. ComEd IB at 29-30.

Finally, and perhaps most importantly, ComEd points out that the fact that dollars could be freed up from cutting budgets does nothing to show how these dollars would generate actual kWh savings. To be sure, Staff and intervenors make no specific showing as to which programs would receive these funds or how programs would be modified to achieve increased kWh savings. Indeed, ComEd observes that no intervenor took issue with ComEd witness Brandt's testimony that the current program designs already reflect the maximum amount of kWh savings that can be achieved thereunder. ComEd Ex. 3.0 at 8-12; ComEd Ex. 1.0 at 33; NRDC Ex. 1.0 at 9. Cutting important budgets just to pour cash into undefined programs is not a proposal ComEd believes should be adopted in this docket.

2. NRDC

NRDC recommends that the Commission direct ComEd to increase its savings goals by at least 90,000 MWh per year. NRDC notes that ComEd spent less in PY4 and PY5 than it is proposing to spend in PY7 through PY9, but achieved approximately 50% greater savings in those years than it is proposing for PY7 through PY9. NRDC asserts ComEd has built its proposed savings goals on a foundation of conservative assumptions, budget allocations and other decisions too numerous and unsupported to be acceptable.

NRDC disagrees with ComEd's assertion that three factors (less "low-hanging fruit" available for energy savings; an increased baseline due to the federal Energy Independence and Security Act's prohibition of the manufacturing of certain incandescent bulbs; the Home Energy Report program from Plan 2 moving to the IPA portfolio) sufficiently justify the low savings goals. As for the first factor, NRDC argues that ComEd has presented no evidence supporting this assertion and notes that ComEd's own studies presented as evidence in this case suggest that there are still significant opportunities for capturing the "low-hanging fruit" energy savings. This includes ComEd's Residential Saturation Study which shows that only 23% of all residential light bulbs in homes served by ComEd are currently CFLs and ComEd's Commercial Saturation study which states that roughly 40% of linear fluorescent light fixtures in use today are very inefficient T12s. NRDC acknowledges that the second and third factors ComEd identified would result in the expected savings per dollar spent in Plan 3 to be somewhat lower than in PY4 and PY5 but asserts that the magnitude of the reduction in savings should not be as great as ComEd has proposed.

To increase ComEd's savings goals by at least 90,000 MWh per year, NRDC makes several recommendations. These include: increasing ComEd's savings target for the C&I Incentives program by at least 25,000 MWh per year; properly accounting for CFL carry-over savings, which would result in a 19,000 MWh increase over the three years of the plan assuming the same cost per unit of savings as the rest of the plan; keeping general education spending at the levels experienced in PY4 and PY5, resulting in $1.5 million in additional funds, which would generate approximately 9,000 MWh in savings per year; setting the R&D budget at $1.4 million per year – the most ComEd has historically spent – which would create $2.2 million per year in additional funds that would be expected to generate approximately 13,000 MWh in additional savings per year; reducing the non-program specific labor budget by $0.5 million per year (i.e. to levels comparable to PY5, after adjusting for inflation), and using that funding to generate approximately 3,000 MWh in savings per year; shifting funding of the maintenance of Plan 1 AC cycling participants ($1.23 million per year) to base rates and spend the freed up funds to acquire approximately 7,000 MWh in savings per year; and eliminating the 5 percent downward adjustment for risk of not meeting targets.

NRDC acknowledges that increasing ComEd's savings goals hinge on the assumption that shifting budget out of general education, R&D, overhead labor and the AC cycling program and into efficiency programs would lead to greater energy savings. ComEd challenges that assumption, suggesting that its forecasts for its programs "already reflect maximum kWh savings under the current program designs." But NRDC finds this assertion contradicted by the evidence in this case. At a macro-level, ComEd's own efficiency potential study suggests that Company could acquire energy savings of between 827 and 868 GWh per year (including DCEO contributions) from 2014 through 2016 under the same budget constraints underpinning ComEd's filing, which is more than 200 GWh (or 200,000 MWh) more than ComEd's proposed annual savings goals.

ComEd also identifies specific programs that are at capacity, Residential Lighting, Appliance Recycling, and C&I Incentives, but NRDC also takes issue with this assertion. For the Residential Lighting program, NRDC notes that ComEd's own potential study suggests that, even under a 2% spending cap, the Company could achieve roughly double what ComEd is forecasting from its Residential Lighting program. For the Appliance Recycling program, NRDC demonstrates that ComEd is forecasting that the program will have 9,000 fewer participants per year in PY7 through PY9 than it had in PY5 and the Company is proposing a large, increase in the incentives for years PY7 through PY9, relative to what it offered in PY5. This suggests that shifting funds into this program to increase participation appears manageable. Lastly, for the C&I Incentives Program, NRDC notes that the proposed participation levels for this program are about 30 percent lower than what was actually achieved in PY5. Similarly, ComEd's proposed savings from the program are 28 percent (nearly 65,000 MWh per year) lower than it achieved in PY5. Thus, NRDC asserts there is room for increased participation through increased funding for this program as well.

NRDC's suggested increase in program goals by 90,000 MWh per year would mean a three-year savings target of 0.80% of sales rather than the Company's proposed 0.68%. NRDC notes that its recommendations still allow several risk mitigating assumptions to be embedded in the savings goals. First, ComEd has the ability to augment its budget through revenues from PJM's capacity market, and assuming the PJM capacity market revenues remained at the level from PY7 through

PY9, they would provide the same 5 percent risk relief that ComEd has suggested it needs. Second, NRDC continues to support ComEd's request to claim savings generated from its R&D spending towards its goals even though ComEd did not estimate any R&D savings goals. Third, ComEd can leverage successful programs that will be funded through the IPA like funding the acquisition of such additional savings through its 8-103 budget for its Small Business Direct Install program. Fourth, NRDC notes ComEd has some history of being conservative in its estimates of what it can achieve given available budgets and then exceeding those goals, meaning the Company likely has been conservative in its estimates overall.

3. CUB/City

CUB/City notes that the Company proposes modified goals which translate to 0.71%, 0.68%, and 0.66% reductions in usage in PYs 7-9, respectively, absent the DCEO portion of the goal, as compared to the statutory goals of 1.8%, 2.0%, and 2.0% over the same time frame. ComEd Ex. 2.0 at 10-11. In sum, ComEd's proposed electric savings goals are only 37% of what the statute requires. ComEd Ex. 2.0 at 11.

ComEd's past performance indicates that the Company can achieve more savings than the Company has proposed, even under the supposed constraints of the spending screen. Since PY 4, ComEd's program budget has consistently hovered around $100 million. CUB-City Ex. 1.0 at 9. ComEd achieved savings of 943,704 MWH in PY 4, and projected savings (ex ante) of 944,529 MWH in PY 5. Yet ComEd is projecting the Company can only achieve savings of approximately 518,750 MWH each year in PYs 7-9.

ComEd is currently implementing programs for PY 6, and is in the third year of operating under the spending screen. CUB-City Ex. 1.0 at 10. Absent specific evidence per program of why ComEd will achieve lower goals while spending the same amount of money, it is clear that ComEd can achieve greater savings of at least 425,000 more MWH per year than the Company has proposed in this proceeding – almost twice as much as ComEd has proposed to achieve. Id. Given ComEd's demonstrated ability to achieve savings of around 944,116 MWH by spending approximately $92 million, it is reasonable to expect ComEd to deliver similar energy savings especially since the proposed budget of approximately $100 million is greater than what ComEd has spent in previous PYs. Id.

It is possible ComEd's modest goals are motivated by the provision in the PUA that states that if the Company fails to meet the statutory savings targets, the Company is subject to penalties. 220 ILCS 5/8-103(i); 220 ILCS 5/8-104(i). While CUB-City are sympathetic to ComEd's concerns related to the spending screen, ComEd is required by law to maximize achievement of savings under the spending screen. A spending screen is not an excuse for setting unrealistically low targets so that the Company can avoid any risk of penalties.

CUB-City recommend the Commission follow the steps it took in Ameren's 2010 plan filing in Docket 10-0568 and order ComEd to present a revised Plan. Final Order, Docket 10-0568 at 30-31. The revised Plan should include increased savings goals that are in line with what the Company's achievements have been in previous years. If the Company predicts that any existing program or measure will lead to fewer MWH savings during the upcoming PYs than that program has been saving, ComEd must provide extensive explanation and evidence for stakeholder and Commission review and approval.

CUB/City agree with ELPC and NRDC's critique of ComEd's forecasted spending in three categories: education and outreach, R&D/Emerging Technologies, and labor, which total $39.4 million in PYs 7-9 and represent 11% of ComEd's proposed costs. ELPC Ex. 2.0 at 29. The Commission should adopt ELPC and NRDC's recommendations. Specifically, the Commission should order ComEd to reallocate portions of the education and outreach, R&D, and labor budgets toward the voltage optimization and smart devices programs. ComEd's AMI investment must maximize energy efficiency and demand response customer savings. The remainder of the funds should be directed toward program budgets as recommended by NRDC.

4. ELPC

ELPC notes that Section 8-103 allows for modified goals where the spending caps prevent achievement of the statutory energy savings goals. 220 ILCS 5/8-103(d). As ELPC witness Crandall explains, ComEd has set its proposed modified Plan 3 goals at a level too low, only 37% of the statutory MWH goals, to accomplish the legislative objectives of implementing energy efficiency. He points out that ComEd has proposed MWH goals that are 5% less than the savings level ComEd projects to achieve in Plan 3. ELPC Ex. 1.0 at 5. Mr. Crandall states, "The Commission should not approve a modified goal that presents an insufficient challenge for ComEd while falling so far short of the statutory goal." ELPC recommends that the modified goals be set at no less than two-thirds of the statutory goals. While ComEd witness Brandt criticizes this goal as not having a strong basis in fact, the record in this case reflects the difficulty of setting an appropriate goal. ComEd Ex. 3.0 at 28. The Commission should certainly not set a goal that does not challenge ComEd to achieve the greatest savings level possible, and the 66% target represents a reasonable compromise. ELPC notes that the AG witness Mosenthal similarly recommends a 22% increase over ComEd's targets.

All parties acknowledge that budget concerns present an impediment to ComEd's ability to establish programs that would help increase energy savings. Mr. Crandall discusses two potential remedies: amortization/capitalization of customer incentives and program costs, and alternative financial incentives. As Mr. Crandall explains, "amortization is a means to smooth out the lumpiness of resource cost recovery of a utility over a multi-year period to better match the productive value and useful life of a resource…[and] may be described as the deduction of capital expenses over a specific period of time, often over the life of an asset." Id. at 18. For instance, if a utility wants to launch an energy efficiency program, amortization/capitalization would allow the utility to pay for the program without needing to immediately recover the amount of money spent. The utility can pay back or recover the money over a period of time. Amortizing/capitalizing a cost, therefore, bears some semblance to taking out a loan. It allows the utility to stretch the repayment of debt incurred to initially start a program. ComEd has not proposed to amortize/capitalize its energy efficiency improvements, incentives, or program costs. However, amortization/capitalization of its energy efficiency related funds and resources would increase ComEd's annual program budgets, which would help alleviate the budget impediments constraining ComEd from fully implementing energy efficiency resources. Id.

In addition to amortization/capitalization, ComEd should explore alternative financial incentives to generate additional savings. Mr. Crandall explains that, for PY7 through PY9, ComEd has relied heavily on cash incentives and on-bill financing but has not made available other alternative consumer incentives for energy efficiency and demand response. ELPC Exhibit 1.0 at 20. Alternative financial incentives used by other implementers to promote energy efficiency include "leases on water heaters, high efficiency lighting, and other energy efficiency equipment." Id. at 20-21. Despite budget constraints, ComEd could generate a significant amount of energy savings through the use of these and other alternative financial incentives. The Commission should instruct its staff to conduct a workshop and, along with SAG and ComEd, review the feasibility and likely impact of amortization/capitalization and to explore alternative financial incentives.

At a minimum, the Commission should reject ComEd's 5% downward risk adjustment. As AG witness Mosenthal explains, ComEd simply lowering ComEd's goal by 5% to reduce risk shifts risk from ComEd to ratepayers. AG Ex. 1.0 at 13.

5. Staff

Staff asserts that the Plan demonstrates that the modified energy efficiency and demand response measures required under 8-103(f)(1) will be achieved. Staff Ex. 1.0, 16. The Company requests the statutory goals set forth in Section 8-103(b) be modified as allowed under 8-103(f)(1). Staff supports this request in concept. Staff notes that NRDC makes a number of recommendations concerning adjustments to budgets in Education, Research and Development, and Labor Costs such that ComEd's proposed modified savings goal can be increased. NRDC Ex. 1.0, 14-17. Staff is convinced by the arguments made by NRDC that ComEd's initial budgeted dollars for these activities are unreasonably high. Staff Ex. 3.0, 32. The Commission should adopt NRDC's proposals and require ComEd to file a Revised Plan incorporating these adjustments which would increase ComEd's three-year savings goals by 75,000 MWh. Staff Ex. 3.0, 32-33.

ELPC recommends that the "Commission should instruct its staff to conduct a workshop and that the SAG and ComEd review the feasibility and likely impact from the amortization/capitalization of energy efficiency and demand response resources. The SAG and ComEd should submit recommendations to the Commission within six months of the issuance of the Order in this proceeding." ELPC Ex. 1.0, 19-20. ELPC further suggests that "the Commission instruct the Staff to conduct a workshop and ComEd and the SAG to review and prepare recommendations to the Commission regarding the use of alternative financing option." ELPC Ex. 1.0, 23. Staff urges the Commission to reject ELPC's proposal.

The basis of ELPC's recommendations appears to be that "funds available to ComEd as well as its customers in the form of incentives is beginning to become a significant impediment to ComEd's ability to meet the statutory targets." ELPC Ex. 1.0, 18. ELPC ignores the fact that additional efforts are already underway to increase savings. Staff Ex. 3.0, 30. In particular, Section 16-111.5B of the Act provides a mechanism for the Commission to approve, as part of the annual procurement plan proceedings, expansion of cost-effective Section 8-103 EE programs and new cost-effective EE programs that are incremental to the Section 8-103 EE efforts. Section 16-111.5B EE programs are not subject to budget constraints, unlike Section 8-103 EE programs. Currently, there is an ongoing procurement plan proceeding before the Commission to consider approving Section 16-111.5B EE programs. In that docket, the IPA is recommending Commission approval of a non-trivial $168 million to implement eight EE programs in ComEd's service territory for program years ("PY") 7-9, where program year 7 begins June 1, 2014. 2014 Procurement Plan, Docket 13-0546, Order at 88. Additionally, Section 8-103 of the Act allows for modifying the statutory targets if the goals cannot be achieved within the spending limits. 220 ILCS 5/8-103(d). One key reason that the proposed level of savings will fall short of the statutory targets is due to the statutory budget restrictions. Staff Ex. 3.0, 30.

Given additional efforts are already underway to increase savings based on the additional funding allowed by Section 16-111.5B of the Act and that the statute clearly allows for modified savings goals, Staff recommends that the Commission decline to direct Staff to conduct workshops concerning additional financing options. Staff Ex. 3.0, 30-31. While ComEd does not object to ELPC's proposal, Staff objects on the basis that limited SAG and Staff resources should not be diverted to such an investigation that is not related to any statute at issue in this proceeding. ComEd Ex. 3.0, 29. Staff anticipates hosting workshops concerning Section 16-111.5B EE programs in the coming year and believes these workshops will address issues related to ensuring greater energy savings is achieved (e.g., improvements to the annual solicitation process) through the Section 16-111.5B EE programs. Proposed Order, Docket 13-0546 at 146.

6. Commission Analysis and Conclusion

The Commission finds that ComEd has proposed a diverse portfolio that will provide energy efficiency opportunities for all ratepayers. The Commission recognizes that ComEd has proposed this portfolio with a constricted budget and agrees that ComEd's savings goals should be lower than that required by the statute. The Commission sees that ComEd's proposed savings are low and intervenors complain that many of the assumptions used to develop the goals are overly conservative.

In particular, the Commission agrees with NRDC that ComEd's assumed increased costs for C&I measures are excessive and unexplained. Although it is clear based on ComEd witness Brandt's rebuttal testimony that savings were included in the plan for the C&I Pilot, the Commission does not agree with the Company's underlying assumptions. Thus, NRDC's annual goal increase of 25,000 MWh is adopted. This increase in the savings goal still allows for a 42% assumed increase in costs. NRDC IB at 11. ComEd must file a revised Plan reflecting this change.

Other proposals require that funds be shifted between budgets, which are adopted in part. The Commission does not agree that the R&D budget should be reduced because of the many new programs that intervenors want to explore through SAG and, similarly, ComEd has adequately explained its proposed labor budget. The Commission also agrees that Plan 1 AC cycling costs may be recovered through

Section 8-103 because the savings generated count toward ComEd's goal. The Commission is not convinced, however, that the customer education budget as proposed by ComEd is appropriate. The Company has proposed an increased budget, but it is not clear in the record where the additional money will be spent. The Company should file a revised plan reflecting a reduction in the education and outreach budget similar to levels actually spent in previous years. This adjustment will free up funds for other programs.

The Commission agrees with NRDC's analysis that the Company's assumptions regarding participation levels in certain programs is low. In particular, ComEd is offering higher incentives in the Appliance Recycling program, but predicts lower participation. Similarly, the C&I incentives program has an unexplained assumed 30% lower participation rate. NRDC's proposal to shift fund to these programs is appropriate and should be reflected ComEd's revised plan. In its BOE, ComEd asserts that the Commission's final order should identify specific energy savings goals, but the shifting of the education budget to other programs results in an unidentified increase in savings. The Commission sees that NRDC claims that this will generate approximately 9,000 MWh in savings per year. The modified plan should reflect a commensurate increase, but the exact number cannot be known until ComEd modifies its plan.

B. 5% Risk Adjustment

1. ComEd

ComEd explains that it has made efforts to minimize risks associated with its programs by, for example, vetting them through the SAG and conducting studies and analyses prior to inclusion in the Plan, but it asserts that no portfolio is without risk. As a result, ComEd has reduced its goals by approximately 5% to account for risks inherent in the portfolio and in the evaluation process. ComEd Ex. 2.0 at 11, 24. While no party contends that the portfolio is without risk, several parties object to the 5% downward adjustment to account for risk. AG Ex. 1.0C at 13-14; NRDC Ex. 1.0 at 19-21; CUB/City Ex. 2.0 at 9-10. Elimination of the risk factor, however, ignores the variety and nature of the risks associated with the portfolio and its ability to achievement the energy savings goals.

ComEd describes the risks associated with the Large C&I Pilot program, evaluation, and planning. Specifically, the level of participation, the number of projects that will be implemented and completed over the three year Plan period, and the cents per kWh savings per project in the Large C&I Pilot program are all unknown and particularly difficult to forecast, as the Large C&I Pilot program is both a new program and the first pilot program of its kind to be offered in the State. ComEd Ex. 3.0 at 19. While ComEd has proposed fixed energy savings goals for the Plan's three-year period, ComEd faces risks due to the fact that the planning assumptions for the Plan are not fixed and will likely change during the three-year period. Id. at 18. For example, the deemed values set by the TRM will be updated during Plan 3 and therefore impact achievement of the fixed energy savings goals. Further, the unpredictability of Staff and intervenor positions in efficiency dockets – exemplified, for example, by their proposals to change the NTG and RR frameworks in this docket – increases risk, especially when these proposals would introduce retroactive application, if adopted. Finally, the development of the portfolio and calculation of its costs and energy savings involve very complex planning that inherently presents significant planning risk. For example, ComEd recently discovered a "bug" in the DSMore software program that produced a calculation error based on misstated incremental energy savings in certain circumstances. ComEd Ex. 3.0 at 35-36. The error caused the PY8 and PY9 savings for ComEd's Residential Lighting program to be overstated by 5,514,020 kWh and 7,872,285 kWh, respectively. Id. at 36. Although this error was identified after the filing of Plan 3 and the calculation of ComEd's proposed modified energy savings goals, this newly introduced risk can likely be managed if the 5% risk adjustment is adopted by the Commission. Id. If this needed risk factor is eliminated, then the goals for PY8 and PY9 must be reduced to reflect the overstatement. Id. While ComEd stated in its testimony and its Initial Brief that it could absorb this risk if the 5% discount were adopted, it cannot do so without such protection. ComEd has set forth in its Reply Brief how its goals would need to be adjusted to account for the error if the Commission were to eliminate ComEd's proposed risk factor.

Finally, ComEd notes that both Staff and the AG take the contradictory position that this risk adjustment should be eliminated while, at the same time, proposing to increase ComEd's evaluation risks through their NTG frameworks. Indeed, both Staff and the AG acknowledge that their various proposals increase evaluation risk for ComEd. AG Ex. 1.0C at 32, 35; Staff Ex. 3.0 at 14-15, 19. According to ComEd, these parties should not be permitted to introduce additional risks while simultaneously recommending that ComEd be denied any protection against these risks. The Commission should approve ComEd's proposed modified goals, which include the modest risk factor proposed by ComEd.

2. AG

The AG notes that ComEd seeks to remove 5% of the estimated savings for each goal in an apparent hedge against risk. ComEd Ex. 2.0 at 24. According to the AG's briefs, this request is inappropriate because: ComEd's request questions the accuracy of its own projections; ComEd's perceived uncertainty does not warrant shifting the risk to ratepayers; and no additional risk has been inserted into this docket that would require such a hedge. Therefore, the Commission should reject ComEd's proposal to reduce their risk by shifting it to ratepayers.

The AG noted that, first and foremost, ComEd's request leaves parties questioning the accuracy of its remaining projections if ComEd is seeking to cut 5% of its risk before the plan is even approved. If the Commission and all of the parties to this docket are to presume that ComEd has successfully and accurately estimated its goals, effectively, ComEd is now asking the Commission to only set its goals at 95% of what it actually plans to achieve. AG Ex. 1.0 at 13-14. ComEd should be setting its goals based on what ComEd actually plans to achieve. To do otherwise would be to explicitly set the goals lower than ComEd has indicated it can achieve within the spending cap. AG witness Mosenthal noted that the spending cap is a driving force behind ComEd's request to modify goals. AG Ex. 1.0 at 13-14. Ostensibly, this is to serve as a buffer against the possibility that ComEd might not fully succeed and causes risk to shift away from ComEd and shift toward ratepayers. AG Ex. 1.0 at 13.

The AG also argues that ComEd’s perceived or claimed uncertainty does not warrant its risk reduction strategy. The AG applauds ComEd for proposing a diversified portfolio that includes numerous programs and thousands of individual efficiency measures. In addition, for better or worse, ComEd is seeking an unlimited level of flexibility to vary from its plan. In the event that the Commission approves ComEd’s requested plan and flexibility, ComEd will have developed a portfolio with ample room for adjustments and mid-course corrections throughout the course of the three-year plan. Each of these adjustments provides ComEd with more than enough “wiggle room” to make up for any assumptions that may turn out to be too aggressive.

In addition, presuming that the plan numbers in fact represent ComEd's best estimate of impacts, then there is an equal probability that savings could be higher or they could be lower. AG Ex. 1.0 at 14. The attendant goals should have been designed to reflect these best estimates. Because the TRM deems savings values for the vast majority of ComEd's efficiency measures and all parties agree that NTG values should ultimately be deemed, ComEd’s risk has been greatly minimized and should fall well within the range of what can be effectively managed through corrections and adjustments during the Plan 3 period. AG Ex. 1.0 at 14.

In summation, goals should be set based on ComEd’s best estimate of impacts, and that the diversity of its portfolio and measures promoted provides sufficient risk protection to it without this further 5% decrease. Therefore, the Commission should reject ComEd’s proposed 5% reduction of its achievable savings estimate to reduce its risk exposure.

3. CUB/City

CUB-City agree with the AG and NRDC that this risk reduction strategy is inappropriate for the energy efficiency portfolio standard (“EEPS”), and that ComEd has other ways to reduce risk, including, as NRDC pointed out, using PJM revenues. NRDC Ex. 1.0 at 20. The Commission should order ComEd to remove this 5% risk reduction strategy from the revised Plan that the Company should file with the Commission.

4. Commission Analysis and Conclusion

The Commission rejects ComEd’s 5% risk adjustment. The Commission finds that the Company’s goal should be set at the level it is projected to be able to achieve, without an artificial 5% reduction.

In its BOE, ComEd raises an error or “bug” in its DSMore cost-effectiveness model. The “bug” caused the PY8 and PY9 savings for ComEd’s Residential Lighting program to be overstated by 5,514,020 kWh and 7,872,285 kWh, respectively. The “bug” was first mentioned in ComEd’s rebuttal testimony and, thus, no party had the opportunity to respond in testimony. At the same time the Commission sees that ComEd discussed it in its initial brief and no party objected to correcting for this “bug.” Because it appears to be undisputed, ComEd may correct for it in its modified plan.

C. CFL Carryover

1. ComEd

ComEd addresses parties' proposed adjustments to the CFL carryover as well as the AG's proposal that the Commission exclude the CFL carryover altogether. First, the AG, CUB/City, and NRDC have proposed adjustments to the CFL carryover calculation and claim that these adjustments will increase the savings that can be achieved in PY7 through PY9. AG Ex. 1.0C at 5, 19; CUB/City Ex. 1.0 at 17. 18; NRDC Ex. 1.0 at 12-14. In brief, these proposals attempt to estimate carryover impacts for PY7 through PY9 even though the amounts are set by the TRM and are not yet known. As explained below, these speculative adjustments should be rejected.

ComEd states that, as an initial matter, the CFL carryover calculation determines the amount of savings that can be recognized in a given Plan Year for CFLs sold in a prior Plan Year, and is designed to recognize and account for the fact that not all customers who purchase CFLs install them at the time of purchase. ComEd Ex. 3.0 at 16. To illustrate, in PY7 ComEd will receive credit for CFLs purchased in PY5 and PY6 but not installed until PY7. Id. A subsequent version of the TRM will establish the applicable carryover installation rate values, and correctly ensures that savings associated with measures purchased through the portfolio are counted even if their installation is delayed. Id. In Plan 3, ComEd accounted for CFL carryover – for planning purposes – by simply assuming all CFLs are installed in the year they are purchased. Id. Because the TRM values for PY7 through PY9 are not yet known, the most straightforward approach for planning purposes is to include all CFLs in the year of purchase rather than speculating regarding what the TRM carryover values might be. Id. at 16-17. This approach makes the most practical sense and reflects an accurate representation of the potential kWh achievement. Id. at 17.

ComEd further observes that while NRDC claims that ComEd has not demonstrated that its approach is "the most accurate" (NRDC IB at 12), ComEd finds this criticism to equally apply to NRDC's own proposal, which engages in speculation regarding what the subsequent TRM values might be. According to ComEd, it is true that the Commission has a choice between competing methodologies here, and ComEd urges the Commission to adopt its simple and transparent planning methodology rather than engage in the speculation invited by NRDC. The Commission will ultimately determine these values in the respective TRMs, but that time is not now. The modified goals thus should not be further adjusted based on this issue. ComEd RB at 12.

ComEd argues that the AG's proposal that the Commission dispose of the carryover process altogether for evaluation purposes and simply assume that CFLs are installed in the year they are purchased (AG Ex. 1.0C at 20) also should be rejected. While its simplicity is attractive, this proposal is inconsistent with the requirement of Section 8-103 that utilities "implement" measures to achieve certain savings each year. 220 ILCS 5/8-103(b). CFL carryover ensures that the focus is kept on measures actually implemented rather than just purchased. ComEd Ex. 3.0 at 17. The AG also recommends against allowing the carryover of CFL savings from PY5 and PY6 to be incorporated into Plan 3, and appears to conflate "banking" kWh savings with the distinct concept of CFL carryover. AG Ex. 1.0C at 20. Banked kWh savings reflect excess savings associated with measures that were actually installed in a previous year, with a portion of those savings being carried over for application in a future year. ComEd Ex. 3.0 at 17. CFL carryover, on the other hand, reflects the deferred installation of measures purchased in a previous year. Id. Counting CFL carryover is consistent with Section 8-103 as the deferred installations are still being implemented in the year that savings are claimed, regardless of whether banked kWh savings may be applied.

ComEd agrees with Staff that this docket is not the correct forum to consider the AG's proposal. Staff notes that if the AG "wants to remove CFL carryover from the IL-TRM," then the AG "should submit a recommendation for a TRM Update through the TRM Update Process outlined in the Commission-adopted IL-TRM Policy Document. (Staff Ex. 3.2 at 5-8.) The proper forum to raise this issue is not a single utility's three-year plan filing docket, when the IL-TRM impacts all the Illinois program administrators. Thus, [Staff] recommends that the Commission decline to rule on [the AG's] proposal to discontinue CFL carryover in this docket." Staff Ex. 3.0 at 23-24.

2. NRDC

Although customers install most of the CFLs and other efficient lighting products purchased under a ComEd program during the year they are purchased, nearly 30% are installed in later years. Nevertheless, Com Ed assumed that all CFLs rebated under its residential lighting program would produce savings in the year they were rebated (other than the 2% that are assumed to never be installed). While such an approach may be appropriate if the same number of the same types of products was rebated each year, that is not the case here. The Company rebated more CFLs in the years from which savings would be carried over from Plan 2 into Plan 3 (an annual average of about 9.3 million over PY5 and PY6) than it is forecasting will be rebated in the years from which savings would be carried out of Plan 3 and into Plan 4 (an annual average of 6.0 million from PY8 and PY9).

Thus, the Company has underestimated CFL savings from its residential lighting program. Mr. Neme calculated that the total underestimate is approximately 19,000 MWh over the three years of the plan, with most of the underestimation occurring in PY9. NRDC Ex. 12-14.

In his rebuttal testimony, ComEd Witness Brandt implies that because there is uncertainty about TRM savings values for CFLs for PY7 through PY9 that accounting for CFL carry-over savings in the way that Mr. Neme has is speculative. ComEd Ex. 3.0 at 16-17. However, that argument makes no sense. Mr. Neme's approach to estimating CFL carry-over savings used the same savings per CFL assumptions that Com Ed used in its plan. Thus, while ComEd's approach to estimating CFL savings may be simpler than Mr. Neme's (Mr. Brandt calls its approach the "most straightforward" and the "most practical"), it is clearly not the most accurate. Indeed, Mr. Brandt never claims that ComEd's approach is more accurate. Nor does he challenge the accuracy of Mr. Neme's estimate of the impacts of properly accounting for CFL carry-over savings. NRDC contends that savings goals need to be based on the most accurate possible estimates of what can be accomplished. Thus, ComEd's savings should be increased as Mr. Neme suggests.

3. AG

ComEd's compact fluorescent light program promotes the sale of screw-in CFLs as a replacement for incandescent bulbs. Past evaluations have indicated from customer surveys that within the first year on average only about 69.5% of these CFLs get installed, with the remainder stored as future replacements when lights burn out. As a result, Illinois utilities have claimed only a portion of the ultimate CFL savings in the year that the bulbs were sold. AG Ex. 1.0 at 18. Based on the TRM, it is assumed that ultimately 98% of CFLs eventually get installed, with the remainder claimed at a rate of 15.4% and 13.1% in the subsequent two years, respectively. In effect, this has resulted in an additional "banking" of savings, over and above the 10% banking limit the ICC imposed in Docket 07-0540. Id.

In this docket, ComEd has stated that for planning purposes, it has not included CFL carryover savings from previous years that are tied to the recognition that customers regularly delay installation of CFL bulbs, thereby impacting the recognition of energy savings. However, that position ignores the fact that currently ComEd is given credit, going forward, in annual energy savings reconciliation docket, for the delayed energy savings associated with CFL bulbs, as discussed above. If the Commission grants ComEd's request to continue counting CFL carry-forward savings as the current TRM dictates, then ComEd's savings goals amount approved in this docket must be adjusted to account for the additional carry-forward savings that it would accrue from Plan 2, to be counted in the next three-year plan.

As noted in the AG Initial Brief, ComEd provided CFL savings from prior years, as well as its expected CFL savings from PY6 in response to discovery. AG IB at 31. From these data, given the current values in the TRM, Mr. Mosenthal calculated that an additional savings of 83,468 MWh could be applied to PY7 savings goals and 28,270 MWh could be applied to PY8 goals, for a total additional savings from CFL carry-forward of 111,738 MWh. While Mr. Mosenthal acknowledged that the exact amount of CFL carry-forward that could be counted in Plan 3 is not known with certainty, this estimate should be approximately correct. Id. In combination with the estimated accumulated banked savings of 491,695 MWh referenced above, total additional savings available to ComEd could potentially total 603,433 MWh. This exceeds ComEd's proposed PY7 goal and is more than one third of ComEd's proposed three-year goal. AG Ex. 1.0 at 17.

While ComEd did not include any CFL carryover it will have accrued at the end of Plan 2 that could be counted in Plan 3 in this docket, the Company did include the full, ultimate savings over time from each CFL within the year it was actually purchased in Plan 3, unlike prior CFL savings calculations, for purposes of Plan 3, that account for the delay in customer installations. In other words, the PY7 CFL savings figure represents not only the savings that could be claimed in that year, but also the subsequent savings that would be claimed in PY8 and PY9 from these bulbs, as determined by the Technical Reference Manual ("TRM"). Id. at 19.

As a result, Mr. Mosenthal testified that ComEd slightly overestimates the actual savings it will be able to claim from new CFLs sold in Plan 3, absent any change in the CFL carry-forward approach, which does not recognize CFL savings until subsequent years under the current TRM.

Because the overall volume of CFL bulbs promoted is expected to drop significantly, and the baseline assumptions in the TRM continue to decrease over time as a result of federal standards, the additional savings ComEd is including in its Plan 3 are significantly smaller than the carry-forward savings from Plan 2 that it is omitting. Specifically, AG witness Mosenthal calculated that ComEd has included approximately 32,739 MWh in Plan 3 of additional CFL savings from its PY8 and PY9 activity that it would actually not be able to claim until PY10 and PY11. In summary, ComEd did not include 111,738 MWh of estimated CFL carry-forward from Plan 2, but has counted an extra 32,739 MWh in Plan 3 that they would not actually be able to count under current procedures. This results in a net adjustment (assuming this net is added to ComEd's proposed goals) of an additional 78,999 MWh. Id. at 19-20.

The AG urges the Commission to take into consideration these banked and carry-forward savings from prior plans that will be recognized as savings, if the ICC permits the recognition of banked and CFL carry-forward savings to continue, as ComEd has requested.

AG witness Mosenthal argued, as an alternative to adding the unaccounted for banking and CFL carry-forward savings from Plan 2 to ComEd’s Plan 3 modified goals, that the Commission could eliminate the CFL carryover process (along with inter-Plan banking), and simply assume they are installed in the year they are purchased, which is what ComEd did in establishing projected savings for new CFL purchases in Plan 3, unlike prior CFL savings calculations. This would simplify the planning and goal setting process, because the exact banking and CFL carry-forward values cannot be known with certainty at this time. While ComEd complains that would require modification to the TRM used in Plan 3, the Commission has the authority to do so in this docket. ComEd IB at 24-25. Contrary to ComEd’s position, there is nothing prohibiting the Commission in its review of both energy savings to be achieved and evaluation processes to be followed, to make a finding that the TRM should be modified for CFL evaluation purposes in Plan 3. This finding could similarly be made in Ameren’s Plan 3 docket, Docket 13-0498 for purposes of consistency.

4. Commission Analysis and Conclusion

The AG’s CFL Carryover adjustment is adopted. The Commission notes that ComEd will be credited in PY7 and beyond with CFL carryover pursuant to the IL-TRM. The Commission agrees with the AG that because the overall volume of CFL bulbs promoted is expected to drop significantly, and the baseline assumptions in the TRM continue to decrease over time as a result of federal standards, the additional savings ComEd is including in its proposed Plan 3 are significantly smaller than the carry-forward savings from Plan 2 that it is omitting. Adoption of the AG’s proposal results in a net adjustment to ComEd’s proposed savings goal of 78,999 MWh. This approach retains the CFL carryover for both planning estimates and evaluation purposes. The

AG's alternate proposal to do away with the CFL carryover for evaluation purposes is rejected because the IL-TRM is not being changed in this docket.

D. Banking

1. ComEd

Background. ComEd explains that the Commission first addressed the issue of banked energy savings when it considered the utilities' initial energy efficiency plans. Specifically, as ComEd developed Plan 1, it became concerned about the disposition of excess energy savings achieved in a given Plan year. Because Section 8-103 does not address this issue, ComEd proposed that it be permitted to apply excess energy savings to future Plan years in the event it fell short of that year's goal. Plan 1 Order at 39. The Commission concluded that banking of energy savings was permissible, but limited the amount that may be banked in a particular year to "no more than 10 percent of the energy savings required by statute in the year, in which, it is 'banked.'" Id. at 41.

ComEd states that the Commission's policy on banking further evolved in response to the challenges facing ComEd and stakeholders in the development of Plan 2 due to the increasing energy savings goals but flat budgets beginning in Plan Year 5. These challenges were resolved by a comprehensive Stipulation, and included several provisions addressing banking. Specifically, the stipulation permits ComEd "to accumulate and apply 'banked' kWh savings across years – specifically from PY1 through PY4 for application in PY5," and "apply any banked savings or CFL carryover from PY1 through PY5 to PY6," subject to two restrictions. First, in any given Plan year, no more than 15% of that year's compliance obligation should be met with banked savings from previous Plan years. Except that, in any Plan year for which the statutory target has been adjusted downward to accommodate the rate impact screen, if the availability of banked savings, including banked savings in excess of 15% of the current year's target, plus planned program savings, would allow ComEd to come closer to reaching the statutory target, the target shall be readjusted upward accordingly. Plan 2 Order at 53. The Commission approved the Stipulation, including its banking provisions. Id. at 53-54.

According to ComEd, the Plan 2 Order permitted ComEd to carry over savings from Plan 1 to Plan 2. Plan 2 Order at 53-54. ComEd similarly requests that the Commission permit ComEd to carry over savings from Plan 2 to Plan 3. ComEd notes that the Commission's reasoning in the Plan 2 Order for permitting ComEd to carry over savings from Plan 1 to Plan 2 is equally applicable to carrying over savings from Plan 2 to Plan 3. "Banked savings represent an important means for ComEd to achieve its savings goals effectively and efficiently by encouraging the steady flow of programs in the marketplace and ensuring that retail customers' investments in energy efficiency are not wasted." Id. at 53. "[A] banking allowance is necessary because of fluctuations in utilities' energy savings from year to year and to ensure that programs are not abruptly halted once goals are achieved, which would have a chilling effect on customer participation and enrollment." Id. at 54.

ComEd urges the Commission to reject the argument by the AG, NRDC and ELPC in opposition to permitting ComEd to carry over savings from Plan 2 to Plan 3. One of the main concerns identified by these parties is the fear that ComEd has amassed a large pool of banked savings, and that these savings could be used to achieve an entire Plan year's savings goal while ComEd essentially sits on its hands for the year. AG Ex. 1.0C at 5; NRDC Ex. 1.0 at 7; ELPC Ex. 1.0 at 8. Yet, ComEd explains that the Commission has already forbid such an absurd result based on the restrictions it set forth in its Plan 2 Order. First, the Plan 2 Order placed a limit on the amount of banked savings that could be applied to a given Plan year (i.e., no more than 15% of the goal). Plan 2 Order at 52-53. ComEd confirms that it does not oppose the imposition of this limitation in Plan 3, and believes it strikes the right balance between providing ComEd some additional coverage if a program or two do not perform as planned and assuring stakeholders that ComEd will not simply rest on banked savings for a given Plan year. ComEd Ex. 3.0 at 82. Second, and equally important, ComEd notes that the Plan 2 Order provides that ComEd may apply more than 15% if the goal for a given year has been modified and the banked savings would help ComEd achieve the statutory savings goal. Plan 2 Order at 52-53. Indeed, ComEd believes this to be the case in the current Plan Year 6, and expects that it will exhaust much of its banked savings in Plan Year 6 in an effort to achieve the statutory energy savings goal. ComEd Ex. 3.0 at 83. As a result, ComEd concludes that intervenors' arguments based on fears of a large pool of banked savings simply do not take into account the protections of the Commission's Plan 2 Order, lack foundation, and should be rejected.

ComEd also contends that the argument against inter-plan banking based on the amendment of Section 8-103 is mistaken. According to ComEd, the AG and Staff wrongly assert that Section 8-103, by its amendment permitting compliance with savings goals to be determined by "total cumulative annual savings within a 3-year planning period," somehow precludes the carrying over ("banking") of savings from Plan 2 to Plan 3. See AG IB at 28, 30; Staff IB at 76, 76 fn 9. ComEd notes that this argument misconstrues the amendment to Section 8-103, however. Section 8-103, as amended, neither addresses, nor prohibits, the carrying over of savings from Plan 2 to Plan 3.

ComEd points out that before its amendment, Section 8-103 neither expressly addressed, nor expressly prohibited, the carrying over of excess savings from one year to a later year, either within the same plan or within a later plan. In the Plan 2 Order, however, the Commission interpreted Section 8-103 as permitting the carrying over of excess savings from one year to a later year, and expressly permitted the carrying forward of energy savings from Plan 1 to Plan 2. Plan 2 Order at 53-54. Thus, ComEd contends that, as amended, Section 8-103 continues to neither expressly address, nor expressly prohibit, carrying over excess savings from one measurement period to a later measurement period. The amendment of Section 8-103 instead merely permits the relevant measurement period to be three years. 220 ILCS 5/8-103(b) ("Electric utilities may comply with this subsection (b) by meeting the annual incremental savings goal in the applicable year or by showing that the total cumulative annual savings within a 3-year planning period").

With respect to the claim that inter-plan banking is irrelevant and a "zero-sum game," as the application of more than 15% will "only" help ComEd achieve the statutory savings goal, ComEd observes that this also is inconsistent with statutory policy and intent. AG IB at 29-30. According to ComEd, the policy and intent of Section

8-103 is to achieve the highest level of savings subject to the constraints imposed by Section 8-103. Permitting ComEd to apply banked savings from Plan 2 to Plan 3 to achieve a higher level of savings thus is consistent with this statutory policy and intent.

Finally, ComEd cites to the Commission's key finding in the Plan 2 Order regarding the importance of banking. ComEd observes that the following finding remains fundamental and eviscerates the argument against inter-plan banking: "Banked savings represent an important means for ComEd to achieve its savings goals effectively and efficiently by encouraging the steady flow of programs in the marketplace and ensuring that retail customers' investments in energy efficiency are not wasted." Plan 2 Order at 53. If inter-plan banking is not permitted, ComEd's incentives during the remaining months of Plan 2 – and perhaps even during Plan 3, when the possibility of carrying over savings from Plan 3 to Plan 4 will remain an open issue – will be diminished.

2. NRDC

NRDC opposes ComEd's proposal for inter-plan banking. NRDC notes that ComEd is proposing savings targets for Plan 3 years that are 60 to 70 percent lower than the statutory savings goals, and inter-plan banking is not appropriate in this new paradigm. Also, NRDC notes that ComEd's Plan 3 savings targets implicitly assume that there will be no Plan 2 banked savings available, and therefore reasons that the use of any Plan 2 banked savings to meet any portion of Plan 3 goals should be prohibited.

3. CUB/City

The PUA does not mention the word "banking." However, in the past year, the General Assembly amended the Act to allow ComEd to either meet annual incremental savings goals in the applicable year or by showing that the total cumulative annual savings within a 3-year planning period is equal to the sum of the annual incremental savings requirements. 220 ILCS at 5/8-103(b). Though this language does not include the term banking, it means that ComEd can bank savings within the years included in a plan filing, beginning with this Plan filing. For example, if ComEd exceeds the approved annual goal in PY 7, they can apply the MWH achieved beyond the PY 7 goal toward either PY 8 or PY 9 goal achievement. While under the original EEPS achievement in PYs 7 and 8 should constitute a third of the cumulative goal each year, essentially, the final count of savings would not occur until the end of PY 9. CUB-City Ex. 1.0 at 15.

ComEd has banked savings of 39,369 MWH thus far. CUB-City Ex. 1.2 (ComEd DRR to NRDC 2.02 Attach 1). The Commission has not yet approved the amounts ComEd can bank in subsequent compliance dockets, which ComEd estimates is a total of banked savings from PYs 1-6 of 491,695 MWH. Id.

The Company requests that the Commission allow the Company to carry over banked savings from PYs 1-6 to PYs 7-9, and to carry over future savings from PYs 7-9 to future years. ComEd Ex. 2.0 at 60-61. ComEd's estimate of the number of banked savings the Company will have from PYs 7-9 is almost equivalent to the proposed modified goal for PY 9 the Company has presented in this Plan (491,695 versus 498,000 MWH). CUB-City Ex. 1.0 at 17. If the Commission approves ComEd's request for the Company to be able to carry over banked savings from PYs 1-6 to PYs 7-9, then the banked savings would amount to almost one year's worth of proposed MWH savings. Id.

ComEd did not account for the impact that the banked savings would have on goal achievement when it calculated its modified goals. CUB-City Ex. 1.0 at 17. ComEd's proposal would minimize the amount of savings that ComEd achieves in PYs 7-9. Id. ComEd is already greatly underestimating the amount of savings the Company is capable of achieving in the next few years. If the Commission allows ComEd to apply banked savings from earlier program years, ComEd will lack motivation to achieve additional MWH savings, and fall even further away from the statutory goals. CUB-City Ex. 1.0 at 17-18.

Banking was originally approved to ensure that ComEd would continue to run programs even after goals had been achieved. CUB-City Ex. 1.0 at 18. Now, six years in, it is evident that ComEd will continue to run programs, even if annual goals have been met, because shutting down programs is detrimental to their short and long term success. Id. The new, cumulative savings goal provides an even stronger incentive to continue programs after one year's goals are met.

CUB-City recommend that the Commission disallow the application of banked savings from PYs 1-6 to PYs 7-9, and reject ComEd's request to credit possible banked savings from PYs 7-9 to future plan years.

4. ELPC

As noted, ComEd has proposed a modified goal that projects ComEd will achieve only 37% of the statutory goals. In addition to setting a very limited goal, ComEd requests that the Commission allow it to bank savings from PY1-6 in to the current PY7-9 Plan. Allowing ComEd to bank savings in excess of such a low modified goal would contradict the legislature's objective of encouraging the utilities to do as much efficiency as they can each year. As ELPC witness Crandall explains, unlike in the early years of the Plans, "There are no excess savings relative to the statutory goal to bank." ELPC Exhibit 1.0 at 8.

While allowing banked savings between years of a program makes logical sense, ComEd's notion that if it fails to meet the legislative standards it can still bank its savings does not send the right signals that the utilities should be striving to do all the efficiency they can, even if they cannot meet the targets. The Commission should reject this proposal.

5. AG

The AG asserts that ComEd's banking proposal should be rejected and notes that in the first electric three-year plans, the Commission allowed the "banking" of excess savings beyond that required to meet goals to be applied to future year savings requirements. However, in doing so, the Commission expressed concerns that if banking were to grow too large, it would be inconsistent with legislative intent for meeting annual savings goals pursuant to Section 8-103(b), and therefore limited allowable banking. In Docket 10-0520, the Commission added a secondary criterion to banking that prohibited any banking if the combined savings of ComEd and DCEO did not also exceed the combined savings goal, even if ComEd individually exceeded its portion of the goal. Docket 10-0520, Order of May 16, 2013 at 5.

ComEd makes clear in its testimony that it is seeking Commission approval to incorporate previously accumulated banked savings into its Plan 3. There are several reasons why ComEd's request to carryover banked savings from Plan 2 to Plan 3 should be rejected. First, due to a recent amendment to Section 8-103(b) of the Act, electric utilities may comply with the annual savings goals of this subsection (b) by meeting the annual incremental savings goal in the applicable year or by showing that the total cumulative annual savings within a three-year planning period associated with measures implemented after May 31, 2014 was equal to the sum of each annual incremental savings requirement from May 31, 2014 through the end of the applicable year. 220 ILCS 5/8-103(b). No such transfer of banked savings is permitted between three year plans, however. It is worth noting, too, that Ameren Illinois Company requested no such transfer of banked savings between plans.

Second, as noted by Mr. Mosenthal, there has been significant dispute around how to count banked savings, and also conflicting recent Orders and Proposed Orders. Perhaps most importantly, the Commission indicated when it first established its banking policy that it should be limited to a de minimis amount. Although not specifically authorized in Section 8-103 or 8-104 of the Act, the Commission did so in response to utility claims that without banking, achievement of annual statutory energy savings goals would be difficult if not improbable. See Docket 07-0540, Order at 40-41. However, in doing so, the Commission expressed concerns that if banking were to grow too large it would be inconsistent with legislative intent, and therefore limited allowable banking. Id. In Docket 10-0520, the Commission added a secondary criterion to banking that prohibited any banking if the combined savings of ComEd and DCEO did not also exceed the combined savings goal, even if ComEd individually exceeded its portion of the goal.

It is important to note when examining the banked savings is that this forecasted banked amount at the beginning of Plan 3 is 87% of ComEd's proposed PY7 goal and 30% of the cumulative three year Plan 3 goals. AG Ex. 1.0 at 17. In other words, if these goals are inclusive of any applications of prior banked savings as ComEd requests, ComEd could effectively completely shut down its programs for almost the entire first year of the three-year plan and still meet its goals. Clearly, the constant accumulation of banked savings to the point where the amount constitutes such a significant portion of a year's goals exceeds any notion of the Commission-required de minimis amount.

Finally, the importance of banking savings is significantly diminished due to the cost cap inherent in Sections 8-103(b) and 8-104(b). Because the Section 8-103 goals continue to increase while budgets remain capped, Plan 3 and any future plans (barring a legislative modification) will require modified goals. Under these modified goals, any available banked savings must be added to them to arrive at a reasonable achievable target within the budget limits. Therefore, Mr. Mosenthal notes, banking becomes a zero-sum game. AG Ex. 1.0 at 21. In other words, there is no real difference whether you grant ComEd X MWh of banked savings for the next year and then increase its goal by X MWh, or simply discontinue counting banked savings. If goals are no longer set by legislation but simply set as the most the available budgets can support, then simply adding in extra banked savings provides no real incentive, because the utilities would simply have to meet a higher goal if it achieves more banked savings. Id.

6. Staff

Staff recommends that ComEd not accumulate banked savings from PY1-PY6 to be applied in PY7 per Section 8-103(b) of the Act. Staff recommends that the issue concerning whether to allow savings achieved in excess of the modified Plan 3 savings goals to be applied in PY10 should not be determined in this proceeding, but may be addressed in ComEd's Plan 4 proceeding.

7. Commission Analysis and Conclusion

The Commission cannot approve ComEd's request to bank savings from PY6 into PY7 for several reasons. The record does not contain evidence regarding how much energy ComEd would claim. It is also not entirely clear whether ComEd is attempting to carryover savings in excess of its Commission approved goal or in excess of the statutory goal. The Commission can say without hesitation, however, that banking of savings is inappropriate where a drastic reduction of the statutory goal is being approved. Because ComEd's Commission approved goal for this proceeding is only around 40% of the statutory goal (ComEd originally proposed 37%, but the Commission has made various adjustments to that number) any carry over from PY6 would have no impact because the Company's goal would have to be adjusted upward towards the statutory goal to reflect the banked savings.

Also, the Commission agrees with intervenors that the amendment permitting the utility to demonstrate compliance with each annual goal at the end of the three-year period, but without a similar to amendment to allow for interplan banking, speaks loudly for disapproval of interplan banking. One reason for allowing banking was to ensure the continuity of programs. The adoption of a 3 year evaluation period alleviates that concern. Although ComEd states that no finding is required now for determining whether PY9 savings can be banked into PY10, the Commission sees no reason to litigate this question again. The legislature did not amend the statute to allow for inter-plan banking and most importantly, the Company's projected energy efficiency savings are so far below the statutory goal that there will be no savings to bank.

E. Program Flexibility

1. ComEd

ComEd points out that no party disputes that it requires flexibility to manage its portfolio. Indeed, there are a number of risks involved in implementing the measures and programs. ComEd Ex. 2.0 at 44. ComEd witness Brandt explained that this flexibility is critical for allowing ComEd to meet ComEd's statutory goals, as it allows ComEd to "adjust portfolio and program design based on the real-time information it receives." Id. at 57. While ComEd has conducted risk analysis of its programs, it is possible for programs to lose their cost-effectiveness in unpredictable ways. Id. at 58. To ensure that ComEd can respond to such changes, ComEd contends that "it must retain sufficient flexibility to reallocate funds across program elements, including the ability to modify, discontinue and add program elements within approved programs based on subsequent market research and actual implementation experience." Id. And, consistent with the Plan 1 Order and Plan 2 Order, ComEd recognizes the importance of having stakeholder participation in this process of review and, as necessary, modification. Id.

As such, ComEd requests that the Commission grant it the same flexibility and discretion to adjust program design and budgets and to add or discontinue program elements within approved programs that the Commission granted ComEd in the Plan 1 Order and Plan 2 Order, and therefore proposes that the following matters would be discussed within the SAG: (i) the reallocation of funds among program elements within the Smart Ideas for Your Home and Smart Ideas for Your Business programs (excluding those elements managed by DCEO) to ensure ComEd's ability to achieve its goals, where the change in budget for any specific program element is greater than 20%; (ii) discontinuing approved program elements within the Smart Ideas for Your Home and Smart Ideas for Your Business programs; and (iii) adding new program elements within the Smart Ideas for Your Home and Smart Ideas for Your Business programs, as long as those program elements pass the TRC test. ComEd Ex. 2.0 at 59.

ComEd explains that the proposed portfolio represents its best effort to design a cost-effective mix of program elements with a high probability of success. ComEd Ex. 2.0 at 59. Following Commission approval of Plan 3, ComEd will proceed with final and detailed program designs and implementation plans. Id. ComEd notes that this process will include further discussions with stakeholders, customer groups and trade allies. Id. Continuing market research will also influence ongoing program direction. Id. Based on the information compiled through this process, these initial program designs most likely will be refined to strengthen the program offerings. Id. at 59. In the event ComEd revises the proposed budget for any specific program element within the Smart Ideas for Your Home and Smart Ideas for Your Business programs by more than 20%, ComEd confirms that it will notify the SAG of these changes. Id. ComEd IB at 92.

ComEd notes that other parties have taken positions concerning ComEd's proposal regarding flexibility, and responds accordingly.

AG's Position. According to ComEd, the AG has expressed concern that ComEd could "game" the system (despite having no evidence to support this newly announced concern). Specifically, AG witness Mosenthal states that "ComEd is proposing complete flexibility to modify its Plan 3 unilaterally throughout the Plan period" (AG Ex. 1.0C at 5) and requests that any change above 20% require a change in the goal. Id. at 26. ComEd explains that the AG's proposal to change the energy savings goals is unacceptable because it would undermine the most likely reason that ComEd would change a program – to make up for an underperforming program and ensure the applicable savings goal is achieved. Id. The AG's proposal to increase the goal thus would hamstring ComEd's ability to implement significant changes in response to a change in circumstances and make goal attainment more difficult, if not impossible, to attain. Id. Further, ComEd observes that the AG's proposal that the Commission "order ComEd, prior to implementing any proposed modifications, to bring them to the SAG for discussion and attempt to build consensus around the change" (AG IB at 39) would further undermine the purpose of flexibility by precluding ComEd from nimbly managing the portfolio. NRDC, indeed, has explained that even a far less time consuming requirement to notify the Commission of all changes, regardless of size, would be defeating. NRDC Ex. 2.0 at 21.

Staff's Position. ComEd observes that Staff again seeks to micromanage the portfolio through its proposal. Staff would require ComEd to notify the Commission in writing of any changes it plans to make to its program – regardless of whether the changes to the budget are more than 20% – and otherwise "include a discussion of how it uses its flexibility in its reports submitted to the Commission," including its quarterly reports to the Commission and the testimony filed in ComEd's Rider EDA annual reconciliation proceeding. Staff Ex. 1.0 at 30-31. In addition, Staff proposes that ComEd file semi-annual reports with the Commission describing program activities, implementation modifications, and spending and savings projections compared to the Plan filing. Id. at 30. Staff further proposes that to the extent ComEd's responses to past evaluators' recommendations and changes in the IL-TRM and NTG ratios "changes significantly impact the portfolio and expected cost-effectiveness, ComEd should also report a revised projected portfolio level TRC prior to the start of the program year." Staff Ex. 1.0 at 31.

ComEd explains that these are simply additional burdensome administrative requirements for which there is no need or purported value. ComEd already files quarterly reports with the Commission and the SAG, as well as annual reconciliation reports and evaluation reports. To implement Staff's proposal, ComEd notes that it would likely need to retain additional resources just to comply with the additional reporting requirements – with little to no value to any party involved. ComEd Ex. 3.0 at 85. In its Initial Brief, Staff further proposed that instead of requiring ComEd to file semi-annual reports, the Commission should order ComEd "to provide all the information requested by Staff in its Reconciliation Reports it files with the Commission." Staff IB at 55. In other words, Staff would have the Commission order ComEd to provide in Reconciliation Report any and all information, of whatever kind, nature, or detail, that Staff might choose to demand – essentially unlimited micromanagement. ComEd RB at 53-54. ComEd concludes that Staff's proposal is impractical, could be detrimental to the portfolio's success by burdening it with unjustified costs and resources demands, and would deprive ComEd of the flexibility to properly manage the portfolio consistent with its performance over the past five years. ComEd Ex. 3.0 at 85.

ComEd further objects to the proposals by the AG, Staff, and CUB/City to severely restrict ComEd's flexibility for the first time in the portfolio's history because they are not based on a single instance of this flexibility framework having been abused over the past six years. Rather, Staff and intervenors base their proposal solely on the fact that ComEd is proposing modified goals in this docket. In other words, although these parties each admit that ComEd must modify the goals due to the budget limitations, they go on to imply that the modified goals are somehow up to ComEd's discretion and, further, that this has suddenly created a substantial risk that ComEd will abuse the flexibility it is granted. To the contrary, the need to modify the goals is a statutory construct and requirement – the General Assembly originally set the goals and has decided to make no change to the budgets in order to fund increasing goals. Parties' attempts to punish ComEd for this legislative framework should be rebuffed. ComEd RB at 51. In addition, ComEd notes that the evidence in this docket shows that it is maximizing available savings subject to the spending screen and in a changing regulatory environment that has limited the availability and size of some programs. ComEd RB at 52-53.

2. NRDC

NRDC recommends the Commission reject Staff's suggestion that ComEd should be required to notify the Commission in writing of any changes it plans to make to its efficiency programs after they are approved, even if the changes would affect the budgets of individual programs by less than 20%.

3. CUB/City

CUB-City support ComEd having flexibility to improve the performance of the portfolio. ComEd has used this flexibility to increase and decrease spending on measures and programs, or in other words, to shift spending between measures and programs and to change how programs are implemented. CUB-City Ex. 1 at 13. Such flexibility allows ComEd to respond to changes in the market, or changes in Technical Reference Manual or NTG values, which impact how much in net savings a program is anticipated to generate. Id. Such flexibility is a safeguard to help ComEd meet the goals and avoid being subject to the statutory penalty. CUB-City support ComEd having this flexibility, but do not support ComEd setting low goals that fail to account for the Company's past performance.

However, CUB-City argue that the flexibility given to ComEd must be capped to ensure that the Company does not implement a different plan than the one litigated in this docket. CUB-City support the AG's proposed parameters for program flexibility.

4. AG

The AG notes that ComEd proposes that it be granted essentially unlimited flexibility to modify its Plan 3 as it deems fit, with the only discernible restriction being that it remains within the bounds of any clear statutory or regulatory rules, such as ensuring that budgets do not exceed the budget cap. Although ComEd claims that it is not seeking unlimited flexibility and that it is essentially seeking to maintain the status quo (see ComEd Ex. 2.0 at 44; ComEd Ex. 3.0 at 83), its request speaks to the contrary. ComEd witness Brandt states in his direct testimony that "ComEd will require the flexibility necessary to manage the costs and the program and customer mix to determine when funds are reallocated and to properly manage the portfolio" (ComEd Ex. 2.0 at 58), which from the AG's perspective reads like a request for unilateral permission to alter its plans as it chooses without approval from any stakeholders or the Commission. The AG cannot support ComEd's request.

Although the AG is generally supportive of granting program administrators wide-enough latitude to make plan and program design modifications as they see fit, such decisions should be typically responsive to what they are learning in the field, how markets are responding, and to effectively and in a timely manner make mid-course corrections to improve program effectiveness. That said, AG witness Mosenthal cautions in his testimony that he believes that ComEd's request is "too broad" and opens a door for ComEd to "game the system." AG Ex. 1.0 at 24. Prior to recent legislative changes, such as those implementing budget constraints that drastically limit the approved goals, ComEd's requested flexibility may have been appropriate if ComEd had found better and more effective ways to meet the goals while still achieving broad policy objectives. However, given the reality of the statutory modifications, allowing flexibility without limits provides ComEd with an ability to pursue a completely different plan than what was originally designed in an effort to achieve cheaper savings by shifting from more expensive to less expensive programs. AG Ex. 2.0 at 24.

The AG also notes that ComEd witness Brandt falsely asserts that Mr. Mosenthal presented no evidence to support the possibility that ComEd could "game the system." ComEd Ex. 3.0 at 83-84. Mr. Mosenthal explained the potential for ComEd to shift funds from expensive programs to cheaper programs. AG Ex. 1.0 at 25. At the same time, ComEd has proposed a relatively balanced program portfolio that Mr. Mosenthal has generally supported. AG Ex. 1.0 at 25. That said, ComEd is coming to the Commission seeking approval of significantly downward modified goals, largely due to the Section 8-103 budget cap limits. 220 ILCS 5/8-103. These goals are based on this specific plan and specific allocations of resources among different programs with widely varying costs per unit of savings.

Even though a 10 to 15 % shift could have a noticeable impact on the portfolio, Mr. Mosenthal proposed the 20% threshold in order to continue to grant program administrators with the flexibility to manage their portfolios and ensure that resources are devoted where they will work best and result in the greatest overall impacts, in light of the statutory policy objectives and constraints. Specifically, he proposed that any budget shifts resulting in a 20% or greater variance from planned annual program budgets would trigger goal adjustments. Mr. Mosenthal recognizes the reality of these programs and notes that it is unreasonable and unrealistic to expect a program administrator to always expect an administrator to complete a program by the end of the year exactly on budget. AG Ex. 1.0 at 27. The AG also deems it worth noting that ComEd itself appeared to identify this 20% budget variance as a reasonable benchmark. See ComEd Ex. 2.0 at 59. The AG also urges ComEd to bring any proposed modifications to the SAG for discussion whether or not the 20% limit is exceeded. The SAG has proven to be an effective sounding board to allow various stakeholders to provide input and ultimately help build support for the programs and provide the program administrators with an added level of security in knowing if any stakeholders have major concerns prior to any after-the-fact litigation.

5. Staff

The Company requests the Commission grant ComEd flexibility in implementing its Plan. ComEd Ex. 2.0, 4, 44, 57-60. Staff supports the Company's request subject to the requirement that the Company report to the Commission how it uses its flexibility. ComEd objects to Staff's request on the basis of reporting to the Commission being a "significant administrative burden" and the reporting being largely "duplicative" of all the reporting and docketed proceedings to which ComEd is already subject to throughout a program year. ComEd Ex. 3.0, 78. The current reporting ComEd provides has been insufficient as it does not describe the information Staff requests ComEd to provide in this proceeding. The gas utilities subject to Section 8-104(f)(8) are required to submit quarterly reports to the Commission. ComEd administers the largest amount of ratepayer-funded energy efficiency programs in Illinois and ComEd produces the fewest number of reports to the Commission.

In the interest of minimizing contested issues in this case, Staff would be willing to compromise and rather than having ComEd file semi-annual reports with the Commission that includes the information Staff requests, the Commission should order the Company to provide all the information requested by Staff in its Reconciliation Reports it files with the Commission.

The Commission should order the Company to include the following information in its Reconciliation Reports:

> ComEd should notify the Commission in writing of key changes it makes to its programs, regardless of whether the changes are less than 20%. This recommendation should not be construed as reporting "every" change, simply changes that ComEd believes would be relevant to demonstrating the Company is using its Commission-granted flexibility to prudently manage its programs. This recommendation should not be construed as needing to request approval from the Commission to make changes.

The Company should describe program activities, implementation modifications, spending and savings amounts compared to the Plan filing, and other relevant information concerning Plan 3. Staff Ex. 1.0, 30. After IL-TRM and NTG changes and receiving findings from evaluation and market research, the Company should describe the impact of the changes on its portfolio and how the Company to responds. The Company should also respond to each of the recommendations contained in the prior evaluation reports. ComEd currently tracks this information, thus Staff's recommendation only involves ComEd reporting information it already has in its possession to the Commission. ComEd Ex. 1.0, 91.

ComEd argues that Staff's reporting recommendations, which would keep the Commission apprised of changes to the Commission-approved Plan, is an example of Staff attempting to "micromanage" the portfolio, and "it would essentially require ComEd to re-run its entire measure screening process every time an avoided cost input, TRM value, NTG value or program element cost changes." ComEd IB at 87. NRDC also argues that Staff's recommendation is an attempt to "micromanage" the portfolio. NRDC IB at 26. The Commission should reject these assertions.

Adoption of Staff's recommendation is necessary for the Commission to ensure that the Company is utilizing its Commission-authorized flexibility in a reasonable and prudent manner. The so-called "micromanagement" is for the Commission's benefit, not for Staff's. The Commission has previously determined that a flexibility not outlined in the Illinois Public Utilities Act is afforded to the utilities in administering EE Plans subject to adequate reporting to the Commission. See, Order Dockets. 13-0423/13-0424 (Consol.) at 12 (Dec. 18, 2013). This reporting is required for the Commission to undertake a meaningful review of the Company's reasonable and prudent use of the Commission's generous grant of flexibility. It cannot be said that Staff is attempting to "micromanage" ComEd's portfolio, when Staff has agreed that annual savings evaluation dockets are unnecessary if Staff's reporting recommendations are adopted and that flexibility is essential and should again be authorized by the Commission. Any suggestion that the recommendation constitutes an attempt to "micromanage" ComEd's portfolio is absurd.

Ironically, in its request for flexibility, ComEd argues that programs could lose their cost-effectiveness during implementation so to ensure ComEd can respond to such changes (program-level TRC changes), ComEd must retain sufficient flexibility to reallocate funds across program elements including the ability to modify, discontinue and add program elements based on subsequent market research and actual implementation experience. ComEd Ex. 1.0, 91. The market research findings upon which ComEd claims it will use as a basis for making such decisions such as dropping cost-ineffective programs during implementation is exactly the type of information Staff requests ComEd provide in its reporting to the Commission. In requesting flexibility, ComEd states that "as information is received and analyzed, program designs will be modified accordingly." ComEd Ex. 2.0, 57-58. Again, this is exactly the type of information Staff requests ComEd to provide in its reporting to the Commission. Staff believes it is reasonable for ComEd to include this type of information it already has in its possession to the Commission. Having this type of information filed with the Commission should help facilitate the timely completion of Rider EDA reconciliation proceedings.

ComEd states that it should be allowed to add new program elements as long as those program elements pass the TRC test. Staff's recommendation to limit participation of cost-ineffective measures is comparable to this last provision proposed by ComEd.

ComEd states that it currently collects implementation and tracking data on a daily or weekly basis for most programs because it allows ComEd to monitor the progress and performance of the programs and program managers can modify marketing tactics and incentive structures as needed to remediate program performance shortfalls. ComEd Ex. 1.0, 104. Staff cannot reconcile the fact that ComEd requires its implementers to report to ComEd on a daily and weekly basis with the Company's unwillingness to report to the Commission how it uses its flexibility on even an annual or semi-annual basis. ComEd's position is unreasonable and should be rejected.

Based on past experience, Staff is concerned about the addition of cost-ineffective measures to the programs after the Commission approves the Plan. Staff believes the Commission's order in this docket should expressly prohibit ComEd from taking such action in exercising its flexibility.

This is ComEd's first Plan filing wherein ComEd proposes modified savings goals for every single program year of the Plan and it proposes to promote cost-ineffective measures. ComEd Ex. 1.0 App. A, 7. The reporting requirements Staff proposes are further necessitated by the change from annual to triennial review dockets. That is, given the longer gaps between implementation and the evaluation proceeding, it is important the Company keep the Commission and all interested parties apprised on a timely basis through such reports of changes made by ComEd under its grant of flexibility. In light of the vast flexibility the Company is requesting the Commission grant to ComEd, Staff's recommendations are certainly reasonable and they should be adopted.

It should also be noted that Staff and the AG's proposals concerning flexibility are not competing, meaning the Commission could adopt both Staff's and the AG's proposals. In the event the Commission adopts the AG's flexibility proposal, Staff would urge the Commission to also adopt Staff's flexibility proposal.

6. Commission Analysis and Conclusion

The Commission agrees that ComEd requires flexibility to effectively manage its portfolio. The Commission urges ComEd to bring any proposed modification to the SAG for discussion, but requires that any modifications that require a 20% budget shift be brought to SAG as well as reported to the Commission. To clarify, ComEd proposes that the following matters would be discussed within the SAG: (i) the reallocation of funds among program elements within the Smart Ideas for Your Home and Smart Ideas for Your Business programs (excluding those elements managed by DCEO) to ensure ComEd's ability to achieve its goals, where the change in budget for any specific program element is greater than 20%; (ii) discontinuing approved program elements within the Smart Ideas for Your Home and Smart Ideas for Your Business programs; and (iii) adding new program elements within the Smart Ideas for Your Home and Smart Ideas for Your Business programs, as long as those program elements pass the TRC test. The Commission requires that these items that ComEd proposes to discuss with SAG also be reported to the Commission.

The AG proposes that if ComEd proposes a budget shift resulting in a 20% or greater variance from planned annual program budgets, a goal adjustment would be triggered. The Commission does not find this to be necessary because the Commission will be aware of large budget shifts through reports to the Commission, but also if indeed ComEd is abusing its discretion there is nothing to stop Staff or an Intervenor from bringing this to the Commission's attention.

Because of the shift to evaluation proceedings only every three years, Staff's semi-annual reporting recommendations regarding program activities, implementation modifications, spending and saving amounts are approved. This ensures that if there is a problem in the middle of the Plan, Staff will be aware of it and be able to bring it to the Commission's attention. It is hard to understand the Company's administrative burden argument when this is information apparently already available to the Company and the annual evaluation proceeding burden is removed.

F. Cost-Effectiveness

1. ComEd

ComEd urges the Commission to reject Staff's recommendations and disregard its "concerns" regarding cost-effectiveness. First, as to Staff's claims that the inclusion of some "cost-ineffective" measures raises the risk that the entire portfolio may become "cost-ineffective" (Staff Ex. 1.0 at 20), this risk is virtually nonexistent. Mr. Brandt testified that net benefits would have to be reduced by over $250 million over the 3-year plan for the TRC test result to be 1.0. Further, Staff's concerns appear to be based on an unsupported and short-sighted premise that a portfolio should not include any measure that diminishes the portfolio's net benefits. ComEd Ex. 3.0 at 76-77. As NRDC observed, however, there are a number of reasons why cost-ineffective measures should be included in the portfolio, including promotion of comprehensive treatment of energy efficiency opportunities and allowing programs to "get in the door" of customers and generate customer interest in future, cost-effective measures. NRDC Ex. 2.0 at 17-18. ComEd further notes, moreover, that the Commission has clearly stated in its prior Plan Orders that the portfolio-level TRC test is the relevant cost-effectiveness metric, which recognizes that some measures in the portfolio may be cost-ineffective. Plan 1 Order at 28; Plan 2 Order at 42. Staff's attempt to impose some other standard should be rejected.

Second, ComEd contends that the Commission should reject Staff's recommendations that the Commission require ComEd to provide cost-effectiveness screening for new measures in its reports to the Commission, that ComEd limit the participation of measures that are not cost-effective, and that ComEd provide screening results for measures that become cost-ineffective during the plan cycle. Staff Ex. 1.0 at 21. According to ComEd, capping participation levels for measures would be deleterious to portfolio performance. ComEd Ex. 3.0 at 77. Some measures, for example, are cost-effective for customers in some but not all businesses. Id. ComEd explains that if Staff's proposal were adopted, it could place ComEd in the untenable position of telling certain customers that it is unable to implement certain measures because these customers are in the wrong business. Moreover, as NRDC witness Neme observes in his rebuttal testimony, "Staff is inappropriately requesting that the Commission engage in micromanaging of ComEd's efficiency planning, the result of which would likely be an increase in the Company's administrative burden (and related costs) as well as other adverse consequences for the long-term effectiveness of efficiency program portfolio." NRDC Ex. 2.0 at 16.

Third, ComEd asks the Commission to reject Staff's proposals that ComEd file a number of reports with the Commission on a quarterly and semi-annual basis that would, inter alia, contain a variety of data comparing the programs to the filed plan and documenting any changes to programs – no matter how small they are. Staff Ex. 1.0 at 30-31. Consistent with NRDC witness Neme's rebuttal testimony (NRDC Ex. 2.0 at 16), the proposed additional reporting would create a significant administrative burden on ComEd (which would have to develop the reports) and the Commission (which would have to address them) and appear largely duplicative of all of the reporting and docketed proceedings to which ComEd is already subject throughout a given Plan year. ComEd Ex. 3.0 at 78. These include the following: Reconciliation Reports, Quarterly SAG Reports, and Evaluation Reports. ComEd IB at 85-86. According to ComEd, the current reporting structure has worked very well and ComEd is not aware of any complaints regarding a lack of information or transparency. Id. at 87.

ComEd also requests that the Commission reject two other Staff proposals. Staff proposes that ComEd closely monitor and report to the Commission concerning the RCx Program ex post cost effectiveness results along with program modifications and updated cost effectiveness projections. Staff also proposes that the Commission order ComEd to stay apprised of and respond prudently and reasonably to information concerning measure and program level cost-effectiveness during the course of implementing its portfolio to help ensure net benefits are maximized in Illinois. This level of micromanaging is not required and the proposals should be rejected.

In sum, ComEd urges the Commission to reject these recommendations because the Commission has clearly stated in its prior Plan Orders that the portfolio-level TRC test established by Section 8-103 is the relevant cost-effectiveness metric. Plan 1 Order at 28; Plan 2 Order at 42. Staff's proposal is another example of its attempt to micromanage the portfolio – it would essentially require ComEd to re-run its entire measure screening process every time an avoided cost input, TRM value, NTG value or program element cost changes. ComEd Ex. 3.0 at 79. Given how agile the program implementers try to be in response to the dynamics of the market, ComEd could end up having to add additional portfolio staff simply to comply with a terribly burdensome request. Id.

ComEd further notes that Staff's proposed reporting requirements are so poorly formulated that even Staff must go to great lengths in its Initial Brief to explain what they mean. For example, in its rebuttal testimony and Initial Brief, ComEd observed that Staff's proposed limits on cost-ineffective measures could result in ComEd having to tell some businesses that they cannot install a measure while other businesses can. Ignoring that its proposed limitation is vague, ambiguous and incapable of implementation, Staff tries to cure the defect by explaining its intent. See Staff IB at 60. Yet, the need for Staff to devote paragraphs of its Initial Brief to explaining what its proposals mean and how they are to be interpreted only further underscores that they are not well founded, capable of being implemented, or beneficial to the portfolio. ComEd RB at 43-44.

ComEd concludes that no additional reporting is needed or sought by any other party. To the extent Staff wishes to explore cost-effectiveness issues or other matters (i.e., those that comprise its over 50 recommendations), it is free to serve relevant discovery in an appropriate docket, although it is not at all clear whether these dozens of requests are relevant to any issue. According to ComEd, there is no evidence justifying, or statute supporting, Staff's onerous request that the Commission order these reports here, especially where no other party seeks them. To the contrary, NRDC similarly opposes this waste of portfolio resources – the magnitude of which Staff has not event attempted to estimate.

2. NRDC

NRDC urges the Commission to reject Staff's recommendation that ComEd be required to provide cost effective screening results for all new measures and to limit participation in new measures that fail those screenings to levels proposed in this plan. NRDC believes this proposal is an attempt by the Staff to micro-manage ComEd's efficiency planning that would increase administrative costs and inhibit ComEd from obtaining effective long-term results. NRDC notes that there are several potential reasons why a utility may need to include a measure or program in its portfolio even if it fails a cost effectiveness test such as addressing health and safety issues; addressing other customer needs; helping to get the utility's "foot in the door" with individual customers and/or trade allies; and the fact that the current TRC test does not account for non-energy benefits like increased comfort, building durability, and health.

3. Staff

Staff notes that ComEd included some measures that do not pass the TRC test in its Plan, but all proposed programs pass the TRC test, once the costs and benefits of the gas component of certain joint programs are also considered, and the planned portfolio also passes the TRC test. ComEd Ex. 1.0, 26; ComEd Ex. 1.0 App. A, 6-11; ComEd Ex. 2.0, 30-31, 33-42; ComEd's Resp. to Staff DR JLH 2.09 SUPP. Including cost-ineffective measures within EE programs increases the risk that the entire portfolio may become cost-ineffective. Staff Ex. 1.0, 20. The addition of a cost-ineffective measure serves to reduce net benefits to ratepayers and this makes it more difficult for the policy objectives set forth in the EE statutes to be realized (i.e., direct and indirect costs to consumers shall be reduced through investment in cost-effective EE measures). Staff Ex. 1.0, 20-21. Even if the addition of cost-ineffective measures during the Plan implementation does not make the entire portfolio cost-ineffective, the implementation of cost-ineffective measures still serves to erode net benefits to ratepayers. Staff acknowledges that there may be certain extenuating circumstances in which it makes sense to offer a cost-ineffective measure, however, Staff believes ComEd should make that case in this Plan filing and not simply add cost-ineffective measures to the Plan after Commission approval.

ComEd's request for flexibility includes the ability to add new measures to the Plan during implementation, yet ComEd declines to provide the cost-effectiveness screening results for such new measures in its reports filed with the Commission. The Commission should order ComEd to provide the TRC cost-effectiveness screening results for any new measures ComEd decides to add to its Plan during implementation. Staff Ex. 1.0, 21. This straightforward proposal is necessary in order to ensure the Commission is informed of the TRC results for measures that are not forecasted to be implemented during Plan 3. The Commission requires that a utility indicate the forecasted TRC of all measures and programs that are to be implemented under its proposed Plan. Logically, it follows that in exercising the flexibility the Commission grants to it, a utility should also apprise the Commission of the TRC values of measures that it implements in the future which are not indicated in this Plan filing. If ComEd is allowed to implement new measures without providing the Commission this information, the Commission's authority in approving the Plan may be undermined. Staff is surprised that ComEd's request for flexibility is accompanied by an unwillingness to provide the Commission with transparency and insight into its decision-making process. Id. Staff's recommendation that TRC values should be included for new measures is not any more burdensome upon the Company than the Commission's requirement that the TRC values be provided for review of the Plan filing. In light of the vast flexibility that the Company is requesting the Commission grant it, Staff's recommendation is certainly reasonable, and should be adopted.

While ComEd states that past Commission Orders direct evaluating the TRC test at the portfolio level, it is important to note that the Commission has also seen the merit in evaluating the TRC test at other levels, and in fact the Commission never prohibited evaluating the TRC test at the measure or program level and explicitly found that "the utilities and DCEO are not precluded from applying the TRC test at the 'measure' or program level[.]" Plan 1 Order at 28. ComEd's Plan 2 Order states: "The Commission further agrees with Staff that ComEd should continue to implement cost-effective measures in its programs, and directs ComEd to do so[.]" Plan 2 Order at 42. Indeed, in relatively recent Commission Orders, the Commission directed that a utility in its plan filing "must demonstrate at least a reasonable probability that [a program] will be cost-effective in the future and any proposal will be scrutinized carefully by the Commission." Order, Docket 12-0132 at 12 (Oct. 17, 2012). The Commission did not approve ratepayer funding for the CUB Energy Saver Program through the IPA's procurement because the proposed EE program was projected to be cost-ineffective. Order, Docket 12-0544 at 270-271 (Dec. 19, 2012). The Commission previously directed a utility not implement certain measures projected to be cost-ineffective in the Plan filing and the Commission agreed with Staff's proposal to require the utility to monitor projected benefits and costs of certain specific efficiency measures and to only market those specific measures if and when projected benefits exceed projected costs, when they are cost-effective. Docket 08-0104 Order at 11 (Oct. 15, 2008).

In Docket 10-0564, the Commission recognized that Section 8-104 does not require each measure to be cost-effective, rather it requires the entire portfolio to be cost-effective, excluding low income programs, in order to be approved by the Commission: "The Commission agrees with the Utilities that Section 8-104 does not require each measure to meet the TRC test, but it does require the portfolio (except for the low income portion) to meet the TRC test." Order, Docket 10-0564 at 92 (May 24, 2011). Staff is not questioning the Commission's finding in this regard and agrees that Section 8-103(f)(5) of the Act clearly specifies the "portfolio" must be cost-effective in order for the Commission to approve the Plan. 220 ILCS 5/8-103(f)(5). That being said, this minimum requirement for Plan approval does not prohibit the Commission from imposing more stringent requirements if they serve the public interest. Indeed, in Docket 12-0132, the Commission, despite Section 8-408 of the Act specifying a minimum requirement of approval is for each "program" to be cost-effective, nevertheless imposed a more stringent requirement that the utility in future Plan filings "should only include measures shown to be cost-effective for Illinois ratepayers … unless extenuating circumstances are shown that would argue for inclusion of such measures or programs." Order, Docket 12-0132 at 17-18 (Oct. 17, 2012). It serves the public interest to impose such limitations.

In particular, Staff asserts that the Commission should order ComEd to closely monitor and report to the Commission for the RCx Program ex post cost-effectiveness results along with program modifications and updated cost-effectiveness projections. According to Staff, ComEd's Retro-Commissioning ("RCx") Program has continuously produced negative net benefits to ratepayers since ComEd began implementing the program. Staff Ex. 1.0, 23. Based on this, it is critical for the Commission to impose certain limitations on ComEd's flexibility to ensure ratepayers receive the net benefits they deserve. In order to ensure ratepayers do not continue to suffer significant economic losses from this program, Staff believes a Commission directive to ComEd is necessary if ComEd is allowed to continue to offer this program in Plan 3. The Commission should direct that ComEd should closely monitor and report to the

Commission for the RCx Program ex post cost-effectiveness results along with program modifications and updated cost-effectiveness projections. Staff Ex. 1.0, 23.

Also, Staff notes that ComEd specifies that the "[p]rojects must be cost-effective on [a] TRC basis" for the proposed Large C&I Pilot Program. ComEd Ex. 1.0, 82. Given this assertion, it would be inappropriate and unreasonable for ComEd to start funding projects projected to be cost-ineffective as part of the Large C&I Pilot Program after Commission approval of the Plan. Given the parties are relying upon ComEd's proposed project-level cost-effectiveness requirements when reviewing the merits of the Large C&I Pilot Program as part of this Plan filing (and for which the Commission presumably would also be relying upon when determining whether to approve the Large C&I Pilot Program in this Plan filing), it would be unreasonable for ComEd to drastically change this critical element of the program after Commission approval of the Plan on the basis the Commission grants ComEd's request for flexibility. Staff Ex. 1.0, 21-22. This further demonstrates why a Commission directive to ComEd to limit participation levels of cost-ineffective measures in its Plan is necessary.

ComEd screened 2,173 measures, and found that 581 measures were cost-ineffective, and 1,592 measures were cost-effective. It is reasonable for the Commission to impose certain limitations on cost-ineffective measures in order to encourage ComEd to promote the 1,592 cost-effective measures with which it would have virtually unlimited flexibility in order to increase net benefits for Illinois consumers. ComEd Ex. 1.0 App. A, 7.

4. Commission Analysis and Conclusion

Staff's proposal that ComEd must receive Commission approval before including any cost-ineffective measure is not adopted. The Commission accepts ComEd's explanation regarding the possible need for including cost-ineffective measures within its programs. This level of oversight is not necessary nor is it administratively practical. Although the Commission does not want to intrude at that level of decision, the Commission does agree that reporting TRC results for new measures is appropriate.

With respect to Staff's specific concern regarding the RCx Program, the Commission agrees that past performance warrants the additional oversight proposed by Staff witness Hinman.

G. Spend All Funding

1. ComEd

Finally, while ComEd does not take issue with Staff's and CUB/City's recommendation that ComEd should spend the entire budget during Plan 3 given the severe budget limitations and modified goals, ComEd disagrees with Staff's and CUB/City's complaints that ComEd should have spent the entire budget in each of Plan Years 1 through 5. To date, ComEd observes that it has been able to achieve the statutory savings goals under budget for each of Plan Years 1 through 5. CUB/City Ex. 1.0 at 13-14; Staff Ex. 1.0 at 13. Section 8-103 requires that ComEd achieve the Commission-approved energy savings goals through cost-effective measures (220 ILCS 5/8-103(b)), and establishes a maximum – not a minimum – spending level to achieve those goals (220 ILCS 5/8-103(d)). According to ComEd, the goal of Section 8-103 is decidedly not to maximize spending; rather, Section 8-103 requires the implementation of programs (and expenditures of funds in support thereof) for the purpose of achieving the applicable energy savings goals. Staff's and CUB/City's proposal that spending should be maximized is not supported by Section 8-103 and perverts its plain intent and goals.

2. CUB/City

ComEd has only been spending 86-90% of program budgets, while it has also consistently exceeded savings goals. This fact demonstrates that the savings goals for previous PYs were unnecessarily low. CUB-City Ex. 1.0 at 13-14. ComEd's performance indicates that the Company is sufficiently committed to meeting its savings goals, but the Company is clearly capable of achieving greater savings, especially considering that the Company has not spent its entire program budget. Id. ComEd's repeated failure to spend the entire program budget and its ability to achieve savings beyond the targets illustrates that there is room for improvement. Id.

ComEd should be spending the entire program budget, which excludes marketing, administrative, and EM&V costs. The goal of the EEPS is to maximize energy efficiency in Illinois while minimizing the impact program costs have on consumers' bills. 220 ILCS 8/103(a-d). The spending screen ensures that customers will not see increases of more than 2.015% as a result of these programs. Under the spending screen, utilities should spend money on energy efficiency programs, not limit how much they spend by proposing low goals.

3. Staff

It may not be possible for ComEd to spend all funding for two reasons. First, it seems unreasonable to expect ComEd to have the exact knowledge before the end of the program year concerning which EE projects will be completed in time. Staff Ex. 1.0, 13-14. Second, it is not possible for ComEd to know early enough in the program year the realized gross savings verified by the Evaluators that is necessary to calculate the exact payment to the implementers for certain of ComEd's pay-for-performance contracts with its implementers, and such realization rates are not part of ComEd's Realization Rate Framework in any event. Staff Ex. 1.0, 14. Nevertheless, the Commission should encourage ComEd to use leftover money to implement cost-effective EE measures rather than shut down the EE programs which could have a chilling effect on customer participation and enrollment. See, e.g., Plan 2 Order at 54. This approach would support banking and the steady flow of EE programs. Customers will benefit by ComEd exceeding the modified energy savings goals by pursuing additional cost-effective measures. A Commission directive to this effect is necessary as ComEd has consistently spent less than the spending screen amount despite Commission approval of this maximum amount in past Plans. See, e.g., ComEd Ex. 1.0, 109; ComEd Ex. 2.0, 2:40-43, 24:520-526, Docket 13-0529. For example, during PY5, ComEd underspent by $16.9 million. Staff Ex. 1.0, 14.

The Commission has previously stated that "[a]s 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." Order on Rehearing, Docket 13-0077 at 18

(Oct. 2, 2013). Staff's recommendation is consistent with this directive and should be adopted.

4. Commission Analysis and Conclusion

The Commission directs ComEd, to the extent possible, to spend the entire proposed budget for PYs 7-9. The Commission's hope is to see the statutory goal achieved. So although a lower goal is approved herein, the Company should continue program operation and spending funds up to the budgetary cap even after its modified goals are met. The statutory goals are the ultimate goal and the modified goals are adopted to set a level at which penalties can be imposed.

H. Programs

1. Commission Authority

a) ComEd

ComEd points out that Staff and virtually all intervenors agree with the core assumption that the energy savings goals for Plan Years 7 through 9 must be adjusted downward because of the severe budget constraints and other programmatic limitations applicable to the portfolio. Although several parties have presented proposals to increase ComEd's proposed goals, these parties' proposals generally have not been submitted to and vetted by the SAG, lack specificity regarding their budgets and the savings that they might produce, are unsupported by evidence, and cannot statutorily or practically be considered in this docket. ComEd further observes that some of these proposals indeed were offered and rejected in connection with Plan 2 for the same reasons and have not been significantly developed since then. For these reasons, all of these proposals should be rejected.

b) CUB/City

Several parties – REACT, the AG, ELPC, NRDC, the MCA, and CUB – have proposed modifications to ComEd's Plan. ComEd's Initial Brief requests that the Commission dismiss nearly all of the consumer and environmental groups' recommendations because the Company claims these recommendations are based on assumptions or positions whose consideration is beyond the scope of this docket. ComEd IB at 20, 27. This interpretation of the law would mean the Commission can only examine what assumptions and positions ComEd puts forth, unless such a topic has been discussed through the SAG. CUB-City agree with ComEd that the original purpose of the SAG – to comment and review on proposed utility portfolios for meeting the EEPS – should be adopted again by the Commission. See ComEd IB at 12. However, the informal nature of the SAG means that there will be no official records or minutes from SAG meetings. It is the Commission, and the Commission alone, that operates as the final decision making body on ComEd's EEPS Plan. 220 ILCS 5/8-103(f).

Intervenors have asked the Commission to order ComEd to revise its Plan to reflect increased savings targets and to consider a number of new proposals that will require further study and submission to the Commission over a period of the next several months. ComEd argues that these requests go beyond the Commission's authority, stating that to litigate these one-off issues following approval of Plan 3 misunderstands the nature and complexity of this docket and Plan 3, which require "a careful balancing of energy savings goals, budgets and program offerings." ComEd IB at 12. ComEd also maintains that any direction from the Commission to file a Revised Plan violates the current statutory framework for the evaluation of the EEPS Plans found in Section 8-103 of the PUA. ComEd IB at 12 (citing 220 ILCS 5/8-103(f)).

While ComEd raises legitimate concerns regarding adjustments to the Plan down the road, ComEd's interpretation of 8-103(f) does not accurately reflect the options open to the Commission. The Commission has the authority to modify ComEd's Plan since the Commission has the inherent authority from the PUA to direct utilities as necessary to accomplish the goals of a statute – in this case the EEPS lays out clear statutory goals, and the Commission has the authority to modify the Plan as it sees fit to accomplish those goals. *Abbott Lab. Inc. v. Ill. Commerce Comm'n*, 289 Ill.App.3d 705, 712, 682 N.E.2d 340, 347-348 (1st Dist.1997) (citing *Lake County Bd. of Review v. Prop. Tax Appeal Bd.*, 119 Ill.2d 419, 427, N.E.2d 459 (1988)). To that end, the Commission has previously directed utilities to file a revised EEPS plan. See In Re Ameren Illinois Companies, Verified Petition for Approval of Integrated Electric and Natural Gas Energy Efficiency Plan, Docket 10-0568, Final Order at 108 (Dec. 21, 2010). If no change could be made to ComEd's Plan, it hardly seems necessary to provide in the statute for a 90-day Commission proceeding to take comment on the Plan, something expressly provided for by statute: The Commission shall seek public comment on the utility's plan and shall issue an order approving or disapproving each plan within 5 months after its submission. 220 ILCS 5/8-103(f); see also *City of Chicago v. Ill. Commerce Comm'n*, 233 Ill.App.3d 992, 1001, 599 NE 2d 991, 997 (1992) (citing *In re Application of County Collector*,132 Ill.2d 64, 72, 547 N.E.2d 107, 997 (1989)) (no part of a statute should be rendered superfluous or meaningless). The PUA expressly provides for the modification of ComEd's EEPS plan. If the Plan were as set in stone as ComEd argues, then that would prohibit ComEd from exercising the flexibility it proposes to have in the Plan, particularly the ability to shift funds around during the course of the programs. ComEd argues:

To ensure that ComEd can respond to such changes, "it must retain sufficient flexibility to reallocate funds across program elements, including the ability to modify, discontinue and add program elements within approved programs based on subsequent market research and actual implementation experience." ComEd IB at 91 (quoting ComEd Ex. 3.0 at 58).

ComEd's emphasis on the importance of flexibility in how it runs its programs when it wants to make changes, coupled with its desire to work on issues through the SAG is not consistent with its position on the Commission's authority to order any additional analysis that would affect programs or any additional review by the SAG of the proposals Intervenors have made in this docket. The Commission should reject this narrow and unfounded view in favor of a policy that allows the Commission to exercise the power given to it by the General Assembly to modify ComEd's Plan.

c) ELPC

ComEd's Initial Brief requests that the Commission dismiss nearly all of the consumer and environmental groups' recommendations, which is certainly ComEd's right to do. However, in terms of its argument regarding the Commission's limits in amending the programs, ComEd goes well beyond the parameters of the law. ELPC and other intervenors ask the Commission to order ComEd to revise its programs to reflect increased savings targets and to consider a number of new proposals that will require further study and submission to the Commission over a period of the next several months. ComEd argues that these requests go beyond the Commission's authority, but review of 220 ILCS 5/8-103 and the Commission Order in Docket 10-0568 (Ameren's 2010 Efficiency Plan) reflect that the Commission has authority to reject a utility filing and order further evaluation of issues. ComEd further argues that "to litigate one-off issues following approval of Plan 3 misunderstands the nature and complexity of this docket and Plan 3, which require a careful balancing of energy savings goals, budgets and program offerings." Id. While ComEd raises legitimate concerns regarding adjustments to the Plan down the road, ComEd's interpretation of 8-103(f) does not accurately reflect the options open to the Commission.

ELPC also notes that the Commission has the inherent authority of the PUA to direct utilities as necessary to accomplish the goals of a statute – in this case the EEPS lays out clear statutory goals, and the Commission has the authority to modify the Plan as it sees fit to accomplish those goals. Illinois law gives the Commission authority to direct the utility to do what is reasonably necessary to accomplish the legislature's objective. *Abbott Lab. Inc. v. Illinois Commerce Comm'n*, 289 Ill.App.3d 705, 712, 682 N.E.2d 340, 347-348 (1 Dist.1997), citing *Lake County Bd. of Review v. Prop. Tax Appeal Board*, 119 Ill.2d 419, 427, N.E.2d 459 (1988).

The Commission should also note that in the settlement of the last ComEd Efficiency Plan in Docket 10-0570, the stipulation ComEd agreed to contained a number of provisions that would require future action within the context of the plan.

In its Order, the Commission should reject ComEd's argument that, "While ELPC suggests that the Commission direct ComEd to revise Plan 3 or prepare a supplement within 6 months of the Plan 3 order addressing a list of 'solutions/partial solutions,' Section 8-103 forecloses this option." ComEd Brief at 37. Review of the parties' initial briefs does in fact reflect numerous requests for follow up items related to the Plan. ELPC understands that when the Commission adds up the requests requiring additional action, there are too many to possibly grant them all. However, that does not mean that the Commission should deny all of the requests, rather it should judge each proposed change on its merits.

d) Commission Analysis and Conclusion

The Commission finds ComEd's argument to be incorrect. There is nothing within the statute or the cooperative SAG framework that prohibits the Commission from ordering changes to ComEd's plan even if further refinement is necessary. Indeed, mid-plan corrections are encouraged and ideas that will improve ComEd's performance, whether proposed by ComEd or an intervenor, should be brought to SAG. The Commission finds that programs that are eligible for inclusion in ComEd's energy efficiency program - even if not specifically enumerated in the Plan - may be initiated so long as the plan remains diverse and cost-effective. Indeed, this is consistent with the Company's request for flexibility. Limitations on R&D budget and generally insufficient funds may delay any of the following proposed beneficial programs from inclusion in ComEd's Plan 3.

2. Electric Self Direct Pilot Large C&I

a) ComEd

For Plan 3, ComEd proposed a Large C&I Pilot program ("Pilot" or "Pilot program") to directly address the unique characteristics and needs of its largest customers. As explained further below, this program would provide pilot participants with unprecedented access to their Rider EDA contributions while also setting the co-funding requirement at the lowest level in the Plan. Since the filing of Plan 3, ComEd has worked with REACT to further refine the Pilot and respond to concerns of REACT and its members. These discussions culminated in a refined Pilot ("Modified Pilot") that is set forth in App. A to ComEd's Initial Brief. Because Section 8-103 does not authorize a "self-direct" program for large electric customers, ComEd believes that the proposed Modified Pilot program reflects the maximum flexibility permitted by law and should be adopted. For this reason, the self-direct programs proposed in this docket must be rejected. While REACT and IIEC have proposed self-direct programs, REACT now supports the Modified Pilot program.

On April 30, 2013, REACT member FutureMark made a presentation to the SAG regarding its frustrations in attempting to participate in the Request for Incentive ("RFI") program offered under Plan 2, and recommended that a self-direct program be offered to large customers instead. REACT Ex. 2.0 at 5-6; REACT Ex. 4.0 at 7. In his rebuttal testimony, Mr. Brandt explained that ComEd had to sunset the RFI program due to various implementation issues, and attempted to transfer existing projects to the Custom program, including FutureMark's project. ComEd Ex. 3.0 at 52-53. Mr. Brandt acknowledged that FutureMark's transition was less than ideal, and this experience, coupled with FutureMark's SAG presentation, provided ComEd with the impetus to quickly pull together a proposed pilot program for the soon-to-be filed Plan 3. Id. at 42-43, 52-53. Despite repeated claims in REACT witness Fults' testimony that large C&I customers are dissatisfied with ComEd's portfolio, ComEd noted that it is not aware of any other large C&I customers that have had a negative experience participating in the portfolio. In fact, in response to data requests from both ComEd and ELPC, REACT was unable to identify any other large C&I customer that was dissatisfied with the portfolio. In response to REACT's and IIEC's characterizations of the portfolio in their Initial Briefs as providing only "off-the-shelf" or "cookie cutter" programs (IIEC IB at 2; REACT IB at 10-11), ComEd observes that they may be unaware of the Custom program, which by definition is neither off-the-shelf nor cookie cutter.

Because Section 8-103 governs the energy savings goals, budgets and timeframe of each triennial plan filing, ComEd embarked on a pilot design that would respond to the concerns expressed by FutureMark while also complying with the complex statutory framework and energy savings goals for the three-year period. According to ComEd, this meant that ComEd could not pursue the development and offering of a “self-direct program” under Section 8-103 because the General Assembly did not authorize an electric self-direct program in the same way it did under Section 8-104 for large gas customers.

Faced with the constraints of Section 8-103 and the goal of granting large C&I customers more flexibility and access to their Rider EDA contributions, ComEd explains that it moved quickly to develop a program template for a pilot program that could be implemented under Plan 3. While ComEd had very little time to develop the Large C&I Pilot, the program template included in the Plan sets forth many of the key requirements and features of the contemplated pilot. Specifically, ComEd notes that the Pilot would allow participants to enroll for the three-year Plan cycle that would continue through the end of PY9. See ComEd Ex. 1.0 at 82. Projects must be completed by the end of PY9, which directly ties the Plan dollars associated with the projects to the Plan kWh savings achieved by the projects. ComEd Ex. 3.0 at 43. While ComEd would continue to collect Rider EDA charges from Pilot participants, ComEd would begin tracking the specific amounts paid by the participants during PY7 through PY9. See ComEd Ex. 1.0 at 82. Subject to the restrictions described below, a participant would be permitted to apply a pre-specified percentage of the EDA charges that it has paid as a credit to the cost of implementing energy efficiency measures. Any unused funds at the end of the three-year pilot would be returned to the general Rider EDA pool of funds. Id. According to ComEd, these key features continue to be reflected in the Modified Pilot program now proposed by ComEd and REACT. ComEd IB at 53-54; App. A to ComEd’s IB.

As part of the Pilot development, ComEd also articulated a series of necessary restrictions to ensure that the Pilot operates within the legal confines of Section 8-103 and promotes the goals of the State’s energy efficiency framework. Based on the refinements to the Pilot agreed to by ComEd and REACT, ComEd states that the proposed Modified Pilot program includes the following restrictions:

> Projects must be cost-effective on a TRC basis. ComEd will review the project application and, working with the pilot participant, will determine the project’s cost effectiveness. ComEd and the pilot participant will integrate the independent evaluator in the review process and will defer to them for final acceptance of savings methodology, savings estimates, and evaluation procedures. The parties will develop an agreed upon project review process and will make best effort[s] to abide by this timeline.
>
> Identified potential participants should submit notice of intent to participate in this pilot within the first three months of the plan cycle. Once accepted, tracking of participants’ Rider EDA fund contributions will commence, and participant will no longer be eligible to participate in any other Smart Ideas programs funded under Rider EDA. A participant may withdraw from the pilot at any time, at which time the participant’s funds will revert to the applicable EDA pool and the participant will regain eligibility to participate in other Smart Ideas program. Reapplying for the pilot will not be allowed.
>
> Participants further acknowledge that 40% of their Rider EDA contribution shall be used to fund portfolio costs, including DCEO programs (25%), M&V (3%) and program administration (12%). A key component of this

pilot will be to monitor and track program administration costs so that the cost allocation can be recalculated based on actual results for future implementation of this program.

The final number of participants shall be limited to ensure that total project incentive disbursements during the pilot do not exceed the Plan 3 budget over the three-year pilot window.

Participants may submit a project at any time within the 3 year planning period, provided that the project will be completed within the 3-year planning period. Upon submission of a project application, ComEd and its independent evaluator shall review the application to ensure it satisfies regulatory and statutory requirements. Best efforts shall be used to complete the review within 30 business days, subject to complete and sufficient data being provided by the participant on a timely basis. Funds associated with the proposed project shall be reserved upon the approval of a project application by ComEd.

Participants must co-fund projects at a minimum of 33% of total project costs. However, operational optimization projects may not require any co-funding by the participant, which is consistent with current Smart Ideas programs. This determination will be up to the discretion of ComEd.

Project funding comes from the tracked amount of EDA charges paid by the participant to date. Additionally, advanced funding may occur under the "grant" approach outlined in ComEd's Rebuttal Testimony (ComEd Ex. 3.0 at 51). In no event will actual cash disbursement exceed the cumulative tracked EDA charges for the participant.

No more than 20% of funds will be spent on non-project costs (e.g., engineering studies, design work).

Progress payments will be allowed with sufficient support documentation.

Approved projects must be completed by May 31, 2017.

Project savings are subject to ComEd’s normal EM&V process that is lead by the independent evaluation.

Any changes to the scope of a project shall be brought to ComEd’s attention immediately. Participants acknowledge that any scope change that would render a project as non-qualifying under the original scope approval criteria may result in a forfeiture of any incentives and repayment to ComEd of any progress payments already issued.

Unused funds at end of three-year pilot are returned to the general pool.

ComEd IB at 54-56; App. A to ComEd’s IB.

According to ComEd, while REACT had been critical of the originally proposed Pilot and what it perceived to be a lack of development, ComEd defined the key features in a very compressed timeframe, and expected that the additional details of the Pilot would be developed after the Commission approves the Pilot during the final program design phase. In fact, because pilots have typically fallen under the R&D umbrella of the portfolio, ComEd notes that it has not previously proposed program templates for pilot programs in past Plans. Given the interest in this pilot program, however, ComEd believed that it was important for parties to review and comment on the overall framework and for the Commission to review and approve the concept. To that end, ComEd and REACT, joined by other interested stakeholders, entered into discussions regarding the proposed Pilot. These discussions culminated in the Modified Pilot framework, which was agreed to by ComEd and REACT and is reflected in Joint Ex. 1.

ComEd also highlights that this revised framework proposes an upfront payment – or grant – option in response to REACT's and IIEC's comments that participants in the Large C&I Pilot would "pay twice" before receiving reimbursement. Although Section 8-103 currently authorizes a grant payment option only for DCEO (220 ILCS 5/8-103(e)), ComEd would be willing to implement an upfront payment option for Pilot participants if the Commission were to approve this feature of Joint Ex. 1. ComEd Ex. 3.0 at 51. With respect to implementing a grant concept within the Pilot, ComEd explains that the participant's application would first have to be approved. This would include demonstration that the project is cost effective under the TRC test. Id. Subsequent to that approval, the participant would receive – in the form of an upfront grant – an appropriate amount of funding for the proposed project. Id. Depending on the scope, duration, cost and payment terms of the project, grants might be made once or in increments. The terms set forth in the modified Pilot program would otherwise apply.

Following Commission approval of the Modified Pilot program, ComEd would work with interested stakeholders during the final program design phase to button down details such as the delivery strategy, market strategy, and program targets. In their Initial Briefs, ComEd and REACT confirmed their agreement that the Commission should adopt the Modified Large C&I Pilot program (Joint Ex. 1.0) in lieu of ComEd's originally proposed Large C&I Pilot program and REACT's proposed Self-Direct program. See ComEd IB at 50-51; REACT IB at 11-12. While ComEd noted in Joint Ex. 1.0 and its Initial Brief that the details of the Modified Pilot program would be worked out with stakeholders following Commission approval of the Pilot (e.g., through the SAG), REACT's Initial Brief requests that "the Commission also should direct the initiation of a stakeholder-driven process to formulate the implementation details of that Program." REACT IB at 12. Because the Commission has already established the SAG, however, ComEd does not believe a separately initiated "stakeholder-driven process" is needed, and stakeholders can work within the existing SAG framework to "formulate the implementation details of [the] Program." ComEd RB at 24-25.

ComEd notes that both the AG and NRDC recommend that ComEd allocate kWh savings to the Large C&I Pilot program. AG Ex. 1.0C at 11-12; NRDC Ex. 1.0 at 11. In fact, of the several adjustments that NRDC recommends, this proposal accounts for an additional 75,000 MWh being added to the goals, or approximately 40% of its entire three-year adjustment. NRDC Ex. 1.0 at 12. However, while Plan 3 could have been clearer on this issue, an estimate of kWh savings for the Large C&I Pilot program is already included within the projected kWh savings for the C&I Incentives program. ComEd Ex. 3.0 at 15-16.

ComEd clarifies that it did include the budget and kWh savings for the Large C&I Pilot in the C&I Incentives program for Plan 3. ComEd Ex. 3.0 at 15-16. Plan 3 states that "[t]he Total Budget for C&I Incentives includes the costs associated with the Large C&I Pilot." ComEd Ex. 1.0 at 68. While the Plan should have explicitly provided the same clarification regarding the kWh savings, they are in fact included. ComEd Ex. 3.0 at 15. Moreover, the program cost per lifetime kWh, as well as the TRC test results, include the costs associated with the Pilot. Id. While ComEd has not yet developed a specific savings estimate for the Large C&I Pilot program, it has assumed for planning purposes that energy efficiency projects that occur within the Pilot program are projects that could have occurred within the C&I Incentive program. Id. at 15-16. As a result, ComEd is assuming that the Pilot projects would likely achieve savings at the same cost as those achieved in the larger C&I Incentive program. Id. at 16. To add additional savings to the modified goals based on the Large C&I Pilot would be double-counting these savings. Id. Based on this clarification, the recommendations to add kWh savings based on the Large C&I Pilot program are incorrect and should be rejected.

b) REACT

REACT explained that ComEd's energy efficiency programs to date have been ineffective in terms of assisting the largest energy users -- such as REACT members -- with implementing energy efficiency projects. REACT Ex. 1.0 at 13; REACT Ex. 2.0 at 12-13. Yet, those are precisely the types of customers that, if given an appropriate level of flexibility, can have a material impact -- a real "bang for the buck" impact -- on energy savings. REACT Ex. 1.0 at 13. REACT explained that, in Plan Years 1-6, the offered programs lacked the features to allow straightforward access for the largest customers. REACT Ex. 1.0 at 13.

As a result of an agreement reached between REACT and ComEd, a modified Large C&I Pilot Program is now before the Commission for approval. REACT explained that ComEd supported the modified version of the ComEd Large C&I Pilot Program, as reflected in ComEd/REACT Joint Ex. 1. REACT observed that ComEd correctly noted that the modified form of the ComEd Large C&I Pilot incorporates advanced funding through a "grant" concept that was first identified by ComEd witness Mr. Brandt in his Rebuttal Testimony.

REACT is requesting that the Commission order stakeholders to engage in a collaborative process to formulate the details of the Pilot Program. REACT further explained that, unlike NRDC, REACT does not believe that Commission-ordered collaborative process should preclude Commission approval of the modified Pilot Program framework. REACT stated that it and ComEd jointly request that the Commission approve the modified Program in this docket, and simultaneously order that the details of the Program must be refined through a stakeholder-driven process prior to program implementation.

REACT notes that IIEC further recommended that certain modifications be made to the Pilot Program to improve its "operation and effectiveness." REACT expressed its appreciation for IIEC's recognition of REACT's efforts to advance an agreed-upon Pilot Program that is intended to stimulate the implementation of large-scale energy efficiency projects by increasing large customer access to energy efficiency dollars.

REACT stated that, with respect to IIEC's suggested modifications to the negotiated ComEd Large C&I Pilot Program, REACT believed that some of IIEC's concerns could be addressed within the confines of the current, modified form of the Pilot Program framework. REACT further stated that, if the Commission orders a post-proceeding, stakeholder-driven process to formulate the implementation details of the modified ComEd Large C&I Pilot Program, as REACT and ComEd jointly request, REACT certainly would welcome IIEC's participation.

In response to Staff's concern that only cost-effective projects be included in the pilot, REACT maintains that it does not appear Staff concern should prevent a well-intended, well-designed pilot program to be approved by the Commission, with the details to be formulated through a stakeholder-driven collaborative process open to Staff.

c) IIEC

In this case, IIEC took the position that ComEd's Energy Efficiency and Demand Response programs could be improved as related to large industrial and commercial customers. IIEC states that large commercial and industrial customers have strong incentives to maximize their energy efficiency in order to save money and this incentive, coupled with each industrial customer's unique load profile and demand equates to each industrial customer's knowledge of what "works best" for them. IIEC opines that some of the "cookie cutter" approaches to the design of existing energy efficiency programs present a barrier to these customers' ability to implement a program that best suits their needs. The process could be improved and, if it is done correctly, could lead to greater energy efficiency and demand response, consistent with the overall goal of the process and in furtherance of the objective of achieving the statutory energy efficiency targets.

To this end, IIEC generally supports, subject to modification, ComEd and REACT's agreed large customer Modified Pilot program framework as a means of providing large commercial and industrial customers with added flexibility to develop energy efficiency projects that are tailored to their individual needs. IIEC believes that several modifications to the Pilot Program are required to improve the operation and effectiveness of the Pilot Program. IIEC respectfully requests that the Commission approve the ComEd/REACT Pilot Program after incorporating all of IIEC's modifications, which are set forth in detail in IIEC's initial and reply briefs. If the Commission does not approve IIEC's suggested modifications to the Pilot Program, IIEC recommends that the Commission reject the ComEd and REACT Pilot Program and instead direct ComEd to work with a broader stakeholder group that includes representatives of large industrial customers to develop an agreed self-directed Pilot Program structure for the next EE plan cycle, with such work being completed by the end of March 2014.

d) AG

ComEd has proposed offering a Large C&I Pilot program to its largest customers that would allow them to access the funds they have contributed specifically for their own projects. ComEd Ex. 2.0 at 50. In general, as noted by ComEd witness Brandt, the framework proposed allows program participants to access the funds they have submitted through Rider EDA, subject to a co-funding agreement. In light of the testimony provided by the REACT and ComEd witnesses, the AG supports ComEd trying this new approach that large customers have indicated they would prefer. ComEd's originally proposed design would ensure that large customers adopt cost-effective efficiency measures and also leverage some additional private funding, similar to programs targeted at smaller customers. AG Ex. 1.0 at 12.

That being said, the ICC should make clear that program administrators can and must work with all appropriate customers to commit to multi-year projects that span currently approved program or planning periods, particularly in light of the recent modification to Section 8-104(b) of the Act, which permits achievement of annual savings goals over a three-year period, and REACT witness Fults' stated concerns. ComEd's pilot proposal seems committed to do just that. Moreover, based on the submission of REACT/ComEd's Joint Motion for the Submission of Certain Data Request Responses, filed on December 11, 2013, the AG has reason to believe that REACT is willing to engage in such discussions with ComEd and SAG members to construct a pilot that both satisfies the needs of these large C&I customers, but does so in a way that is consistent with the requirements of Section 8-103, and in a way that maximizes energy savings.

Any pilot program approved by the Commission should not authorize customer retention of efficiency dollars for electric programs, given the existing statutory electric/gas framework outlined in Sections 8-103 and 8-104. The AG is happy to commit to working with the affected parties in the SAG to ensure that the Pilot furthers that goal.

The AG applauds both ComEd and the REACT customers for hammering out a framework over the course of this docket that attempts to satisfy the concerns of large C&I customers, while satisfying the dictates of Section 8-103. Yet, as revealed in Joint Ex. 1, some questions remain about the details of program delivery. Concerns regarding these unspecified components are as follows:

- Eligible measures are defined as any project that saves electricity and passes the TRC cost-effectiveness test. While this is not an unreasonable starting point, it is not sufficient by itself to protect ratepayers and these funds from inappropriate use. For example, a project that has very small ancillary electric savings but passes the TRC test because of fossil fuel, water, waste reduction, or other benefits could theoretically require the electric Section 8-103 funds to commit to pay 67% of the entire cost of the project even with virtually no electricity savings. This is clearly problematic and not intended by this program or in the interests of ratepayers or ComEd. SAG discussions could address this potential issue.
- The document proposes that participants may submit a project "at any time within the 3 year planning period." Joint Ex. 1. at 3. Once the project is approved the funds are "reserved." It further requires "projects must be completed by May 31, 2017." Finally, it says "unused funds at the end of the three-year pilot are returned to the general pool." Id. The intent is that if participants do not use their funds, those dollars are transferred into the general C&I pool of funds for ComEd to spend in other programs – a concept the AG supports. However, as written,

ComEd has no way to know until the end of Plan 3 whether any funds remain as unspent, and if so how much. This means ComEd will have no ability to spend these unused funds on other programs, and will simply have to return the funds to ratepayers after reconciliation rather than roll them over into the next plan as additional money. This is problematic, assuming the goal of these programs is to create and satisfy Commission-established energy savings goals. One possible solution is to require customers to submit applications no later than the end of PY8 to reserve funds to be used in PY9. That way, ComEd would at least have a year (PY9) to spend the unused funds elsewhere. SAG discussions could fine tune this point.

- The document states "project savings are subject to ComEd normal EM&V process that is lead [sic] by the independent evaluation." Joint Ex. 1 at 3. While the AG support this point, more clarification is needed as to how the EM&V process would be applied to this unusual, new program. For instance, if the project is determined later to not pass TRC, does the customer have to give money back? SAG discussions would explore this question.
- The document proposes that "co-funding from both this program and other natural gas programs is permitted." However, more details and rules on project funding should be spelled out in any final Pilot program. For example, if the combined gas and electric rebates would exceed 100% of the cost, there is no clarity as to which funding would be reduced, and how such reductions would be determined. Second, because the intent of the required 33% co-funding is to ensure that customers actually contribute something and were pursuing cost-effective projects, incentive limits of some kind – perhaps the remaining 67% -- should be incorporated in the program. Also, it is unclear how ComEd would know about any other incentives the customer is pursuing. SAG discussions could focus on ensuring that the pilot includes funding disclosure provisions.

All of these cited issues and questions could and should be resolved in the SAG process. Accordingly, AG recommends that the Commission approve ComEd's and REACT's proposed large C&I Pilot framework, with the caveat that further details be discussed and resolved though the SAG process.

e) NRDC

NRDC recommends the Commission approve the Modified Large C&I Pilot Program with a clear set of minimum requirements of the program. NRDC outlines four minimum requirements for the program: (1) a rigorous upfront review process to ensure projects will be cost-effective and, in aggregate, produce savings at a cost per kWh that is at least comparable to Company's other custom program offerings for business customers; (2) a mechanism built into the program, such as a minimum co-funding requirement for all projects, to discourage free ridership; (3) redirecting customer contributions to this program, if not used for customer initiated projects after a certain date, to the existing C&I programs or to a pool of funds that are competitively bid by industrial facilities who have proposed viable, cost-effective projects; (4) rigorous evaluation on the backend to properly account for the actual savings resulting from the program. NRDC also recommends the Commission set a savings goal for this program and ensure that the goal reflects a level of savings per dollar spent that is comparable to what ComEd is achieving through its other custom C&I offerings.

NRDC reviewed ComEd and REACT's Modified Program proposal and found it, for the most part, satisfactory but noted certain key features that were unclear or missing. Particularly, the program proposal requires that projects be cost-effective on the TRC basis, but NRDC notes that it is less clear if projects are required, in the aggregate, to produce savings at a cost per kWh that is at least comparable to ComEd's other custom program offerings for business customers. NRDC recommends addressing this by requiring each project to pass the utility cost test (UTC). NRDC supports the 33 percent co-funding requirement for customers but opposes the option for joint gas-electric programs to be entirely funded by incentives as this would encourage free ridership. NRDC recommends the Commission require some level of customer co-funding for all projects to minimize free ridership with the exact level for joint gas-electric projects addressed.

f) Commission Analysis and Conclusion

The Commission notes that a broad consensus has now developed in support of a modified Large C&I Pilot Program. The same can be said for the proposal to iron out the implementation details in a collaborative process -- this proposal has broad consensus support, and there is no objection from any party to that approach. Accordingly, the Commission conditionally approves the modified version of ComEd's Large C&I Pilot Program, the framework of which is reflected in ComEd/REACT Joint Ex. 1, and directs SAG to engage in its collaborative process to formulate the implementation details of the program.

The Commission agrees with the general idea and hopes that it will increase net energy efficiency investment for Large C&I customers. An emphasis on this goal is important and should be SAG's focus when working on the specifics of the pilot. The Commission's goal, which is consistent with the statutory goal, is distinct from REACT's goal of ensuring that its clients' Rider EDA funds are available to them. Indeed, the testimony made clear that these customers are already highly motivated and raises the concern that the pilot be designed to limit free riders. The requirement that 33% of project costs be funded by the customer is a good starting point to limit free-riders, subject to certain exceptions for operational optimization projects and combined gas and electric incentives, as set forth in the pilot framework (ComEd/REACT Joint Ex. 1).

Because there is a possibility that the final pilot will be different after collaboration at SAG, the Commission orders that the pilot specifics be filed in this docket. After collaboration at SAG, if the final pilot design complies with the following specifications, the pilot can be filed and no further action will be required. The Commission finds that any Large C&I Pilot must: 1) be cost-effective and any measure must pass the TRC, 2) be subject to EM&V, 3) require that customers pay all Rider EDA charges, with 40% supporting the EE plan in general and the remaining available to be refunded back to the participating customer, 4) 33% of project costs must be funded by the customer, 5) projects must be completed within the three year planning period, and 6) unused funds will be returned to the general pool of funds.

Although IIEC complains about several of these requirements, the Commission finds them necessary to ensure that the proposed pilot complies with Section 8-103. Specifically, IIEC complains that C&I pilot participants should not have to pay DCEO's 25% and that participants' share of overhead should be limited to ComEd's overhead for the C&I pilot. The Commission finds, however, that allowing this would be the same as allowing these customers to "opt-out", which has not been allowed for electric customers.

ComEd requests a specific finding that "grants" or "progress payments" are allowed. The Commission sees no apparent reason why this cannot be approved. In the Commission's view, this is just another form of an energy efficiency incentive. As long as the incentive results in cost-effective TRC compliant energy efficiency measures, the Commission can approve it.

Although REACT is correct that nothing specifically requires that funds be spent within the 3 year plan period, it is a reasonable limitation and consistent with the statutory planning period. The AG's proposal to require a date certain for reserving funds to preserve ComEd's ability to redirect the finds is reasonable and can be finalized in SAG.

As to REACT's request that the Commission rule on its original proposal, the Commission declines to rule on a withdrawn proposal. Also, in its BOE, REACT requests that large C&I customers that are covered under DCEO's plan be allowed to participate in the ComEd Modified Pilot. The Commission rejects this proposal because these customers are statutorily covered under DCEO's energy efficiency plan and REACT does not explain how this barrier can be overcome.

3. Demand Response

a) ComEd

Under the Plan 1 AC Cycling program (then known as "Nature First"), ComEd offered residential customers a financial incentive if they allowed ComEd to install a direct load switch on their central air conditioner, which allows ComEd to cycle off the air conditioner on key usage days. ComEd Ex. 3.0 at 40. This program predates Plan 1, but was transferred to that Plan in order to achieve the demand response goal. Id.; Plan 1 Order at 14, 46-49. In order to free up additional funds to achieve increased kWh savings within limited budgets during Plan 2, ComEd proposed, and the Commission approved, achievement of the demand response goals through its energy efficiency programs. Plan 2 Order at 20.

Accordingly, ComEd no longer offered the AC Cycling program to new participants through Plan 2, but new customers could continue to sign up for the program outside of the portfolio. However, the costs of enrolling and servicing these customers are recovered through base rates rather than through Rider EDA. ComEd Ex. 3.0 at 40.

Under Plan 3, ComEd proposes to continue the AC Cycling program in "maintenance mode", meaning that it will continue the program but, like Plan 2, it will no longer accept or fund new customers under or through the Plan. See ComEd Ex. 1.0 at 59.

b) CUB/City

ComEd proposes to maintain the AC Cycling program and to meet the demand response goal through implementation of energy efficiency programs. ComEd Ex. 1.0 at 15. While the Commission did approve this proposal in ComEd's last plan filing, the Commission had reservations about the same approach in Ameren's filing. The Commission's directives in Ameren's last Plan filing suggest that the achievement of demand response goals is a priority for the Commission. The Commission weighed several parties' ideas for meeting the targets, including a Voltage Optimization Program, the PSP program, and the IPA's suggestion that the IPA acquire demand response. The Commission instructed Ameren to research cost-effective demand response measures for inclusion in its revised plan filing and for discussion with the SAG. The Commission then approved a Voltage Optimization Pilot for Ameren; the results of which were made available this fall. Docket 10-0568, Final Order at 27 (Dec. 21, 2010).

CUB-City recommend that the Commission order ComEd to investigate measures or programs specifically designed to meet the demand response goals. CUB-City Ex. 1.0 at 24. The General Assembly established an entirely separate demand response goal, unique from the energy efficiency requirements. 220 ILCS 5/8-103(c). ComEd will begin deploying advanced metering infrastructure ("AMI") technologies later this year, pursuant to ComEd's participation in the Energy Infrastructure and Modernization Act ("the EIMA"). Id. This deployment will provide additional opportunities for ComEd to invest in demand response measures that the Company did not have in previous plan filings. The Commission should order ComEd to investigate potential demand response programs that could meet the statutory requirements, especially those that relate to AMI deployment, discuss these programs with the SAG, and include these programs in a revised Plan the Company submits to the Commission for approval. Id.

c) ELPC

ComEd's current AC Cycling program allows customers to receive bill credits by allowing ComEd to cycle off their AC compressor during hot summer days. ELPC Ex. 2.0 at 26. However, ComEd has proposed to stop funding any new program participants through Plan 3, and to merely continue the program in maintenance mode. ELPC Witness Volkmann proposes adding Enhanced AC Cycling to the program: "Enhanced AC Cycling refers to utilizing the AMI two-way communication network to more efficiently and effectively manage the program." Id.

In addition to the proposed programs under Plan 3, ComEd is conducting a Direct Load Control ("DLC") pilot in conjunction with its Peak Time Savings program. Id at 27. As part of the pilot, ComEd will analyze DLC switches designed for AC units. Mr. Volkmann proposes that ComEd modify the pilot's objectives to "emphasize the need to find a more cost-effective and reliable way to communicate with the switches of current and future AC Cycling participants." Id. Furthermore, Mr. Volkmann recommends that ComEd "develop a plan for deploying the more efficient and effective AC switch communication technology to geographically follow the deployment of the AMI network." Id. As Mr. Volkmann explains, this may lead to a more cost-effective approach for managing the AC Cycling program, allow ComEd to expand the program and enroll new participants, and generate additional revenue for ComEd by bidding the additional demand reduction into the PJM capacity auctions. Id. at 27-28.

The Commission should order ComEd to revise its approach to the DLC pilot to prioritize the need to find a more cost-effective and reliable way to communicate with the switches of current and future AC Cycling participants. The Commission should also order ComEd to develop a plan for deploying the more efficient AMI-enabled AC switch communication technology to geographically follow the deployment of the AMI network, and to expand participation in its AC Cycling program.

d) Staff

Staff asserts that the Commission should reject CUB/City's proposal to include Demand Response programs. According to Staff, it is procedurally infeasible as it would have ComEd submitting a revised Plan that includes Demand Response programs that were not reviewed and vetted as a part of this proceeding. Staff Ex. 4.0, 2. ComEd is proposing budgets that reach the statutory spending limits. Including a Demand Response program as proposed by CUB-City is not merely supplementing ComEd's portfolio with an additional program, it requires funding to be diverted from other programs. Id.

e) Commission Analysis and Conclusion

The Commission declines to require that ComEd include a specific demand response program in this Plan. This finding does not preclude discussion at SAG. Nor does it preclude inclusion of a demand response program mid-plan if a cost effective program is developed. Moreover, the Company's next plan must include a specific demand response program consistent with the requirement made of Ameren and the statutory language.

4. Smart Devices

a) ComEd

ComEd explains that while ELPC has also proposed a smart device enablement program for inclusion in the portfolio (ELPC Ex. 2.0 at 14), it is unclear what is specifically being proposed around device enablement because it does not seem to be a fully-developed program. ComEd Ex. 3.0 at 38. ELPC's recommendations appear to be focused on AMI statutory provisions and Commission Orders unrelated to Section 8-103 and are therefore outside the scope of this docket. Id.

Because ComEd believes that AMI has the potential to offer new, innovative approaches to energy efficiency, ComEd is participating in the new provisions of the Act regarding the implementation of AMI in its service territory, which includes the filings of its AMI Plan under Section 16-108.6 of the Act and the filing of its Smart Grid Test Bed Plan under Section 16-108.8 of the Act. ComEd Ex. 3.0 at 39. However, in light of this statutory framework – which is entirely separate and apart from Section 8-103 at issue in this docket – ComEd concludes that any proposals to revisit or expand on certain AMI-related orders or statutory provisions in this docket are not legally permissible.

While ComEd intends to investigate the convergence of energy efficiency and AMI under the Emerging Technology / R&D budget, ComEd further observes that ELPC oddly recommends eliminating this budget from the portfolio. For these reasons, ELPC's proposals should not be adopted, and the Emerging Technology / R&D Budget should continue to be funded to support the proposed investigation.

b) CUB/City

In addition to the adjustments to the traditional types of energy efficiency programs, ELPC has proposed that ComEd "develop and implement a comprehensive plan involving manufacturers, retailers, and other third parties, to enable smart grid devices to interact with ComEd's smart meters." ELPC Ex. 2.0 at 34. CUB-City support this proposal, noting that AMI should be deployed in a manner that provides the greatest consumer benefits possible, including new energy efficiency and demand response programs enabled by the multi-billion dollar investments that ComEd will make in the coming years. See CUB-City Ex. 2.0 at 6.

ComEd disagrees, claiming that the Commission cannot consider EEPS programs related to AMI outside of a proceeding to consider ComEd's AMI Plan under Section 16-108.6 of the PUA. Not only is such an interpretation of the law incorrect, it is counter-productive to established Commission policy to maximize customer benefits from AMI deployment.

The General Assembly has made clear the deployment of "smart" technologies (real-time, automated, interactive technologies that optimize the physical operation of appliances and consumer devices) for metering, communications concerning grid operations and status, and distribution automation is a priority – indeed a required – aspect of ComEd's participation in the new formula rate scheme. See 220 ILCS 5/16-108.6. However, there is no statement within the PUA, including Section 16-108.6, that limits the Commission's review of how ComEd's AMI deployment will affect other state policy goals, including the EEPS, to any one particular AMI Plan update. Absent such an exclusivity provision in the law, the Commission can and should find that ComEd's Plan fails to take advantage of new energy efficiency opportunities enabled by AMI investments and order the Company to do so in a revised filing.

CUB-City agree with ELPC that the Commission must investigate and ensure that ComEd takes every advantage of new energy efficiency opportunities enabled by the Company's investment in AMI technologies. CUB-City Ex. 2.0 at 6. The Commission should reject ComEd's improper reading of the PUA and conclude that is not only appropriate but necessary to ensure ComEd's EEPS Plan uses these new technologies to maximize customer energy savings. CUB-City note that in Docket 13-0285, the Commission narrowly interpreted the scope of the proceeding as one that reviewed only whether or not the AMI Plan Implementation Report ("AIPR"): (1) describes the AMI investments for the previous 12 months and planned investments for the following 12 months, (2) provides sufficient detail to determine the utility's progress in meeting the metrics and milestones identified by the utility in its AMI Plan, and (3) identifies updates to the AMI Plan. In Re Commonwealth Edison Company, Investigation Regarding Progress in Implementing the Advanced Metering Infrastructure Deployment Plan, Docket 13-0285, Final Order at 6 (June 26, 2013) (citing 220 ILCS 5/16-108.6(e)(1)-(3)). The Commission rejected arguments by the parties raising other issues such as dynamic pricing, distributed generation, and interval data access as beyond the scope of that proceeding. Id. at 12-17. ComEd's position would effectively bar any public discussion at the Commission on how the AMI deployment, at a cost of $1.3 billion to ComEd's ratepayers, could be used to achieve state policy goals like the EEPS. See 220 ILCS 5/16-108.5.

c) ELPC

The Illinois EIMA requires ComEd to invest over $2.6 billion on AMI deployment, Smart Grid technologies, and grid modernization over the next 10 years. ELPC Ex. 2.0 at 2. ComEd plans to deploy more than 1.2 million smart meters and the associated two-way communications by PY9 and over 4 million meters by the end of 2021. Id. ComEd's smart meter deployment has the potential to provide significant energy efficiency and demand reductions for customers. ELPC witness Volkmann submits in this proceeding that ComEd should be taking steps to integrate its smart meter deployment with additional measures that produce energy efficiency savings for customers.

ELPC does not see anything in the Public Utilities Act that prohibits ComEd from investing in energy efficiency measures with energy efficiency funds, just because they relate in some way to AMI. From ELPC's perspective, where funding comes from, or how the utility makes investments that produce energy savings are far less important than ensuring that the Company makes the investments it should be making to produce these savings. ComEd fails to clarify where and when it plans to do anything to address Mr. Volkmann's recommendations, it merely says it cannot consider them in this proceeding.

Analysis of the law supports ELPC's position. The Illinois Public Utilities Act requires utilities to "use cost-effective energy efficiency and demand-response measures to reduce delivery load." 220 ILCS 5/8-103(a). The Illinois Power Agency Act defines energy efficiency to mean "measures that reduce the amount of electricity or natural gas required to achieve a given end use." 20 ILCS 3855/1-10. Mr. Volkmann's recommendations to apply AMI technology to achieve energy efficiency and demand reductions fit within the definitions in the statute. His recommendations are specific measures to reduce delivery load and should be considered and adopted by the Commission in this docket.

While Section 16-108.6 does discuss smart devices, it does so in a broad way that focuses on the grid, not the devices. Subsection (5) focuses on ComEd's "deployment of 'smart' technologies… interactive technologies that optimize the physical operation of appliances and consumer devices." The emphasis here is on the technologies related to the grid and the smart meters, not the appliances and consumer devices themselves – such as the smart thermostats that Mr. Volkmann emphasizes. There is a distinct difference between the two. Similarly, (6) discusses integration of smart appliances and consumer devices, which describes enablement of those devices to work with the smart grid, not promotion of the actual devices through discounts, rebates, public education, coordination with manufacturers, etc. that ELPC proposes for ComEd's EE Plan. Moreover, ComEd does not make the argument that the points Mr. Volkmann raises were litigated in the AMI docket (12-0298), and that the Commission decided the smart devices issues that ELPC raises in this proceeding.

ELPC witness Volkmann believes that enabling Smart Devices is "critical for fully realizing the benefits of AMI." ELPC Ex. 2.0 at 14. Examples of Smart Devices include, "smart thermostats, plugs, powers strips, switches, smart chargers for electric vehicles, gateways, and in-home displays that can communicate with the AMI network, can connect to a wireless home area network ("HAN"), and can be controlled with smart phones, tablets, and computers." Id. at 11. Smart devices allow ComEd customers with smart meters to take advantage of the AMI technology to save energy, but only if ComEd establishes an approach to make it easy for customers to purchase and use smart devices, particularly smart thermostats, with ComEd's smart meters.

Enabling smart devices using this approach offers benefits for ComEd as well. First, as Mr. Volkmann explains, this approach "allows ComEd to maintain visibility into the impacts of these devices through their AMI network that otherwise would not exist if customers purchased and installed the devices but did not register them." Id. at 24. Second, it can "help ComEd more efficiently monitor market demand for and technical potential of Smart Devices, which can inform future decisions on potential EE/DR programs." Id. at 25. Third, it "allows ComEd to directly market its own current or future EE/DR programs, such as Peak Time Savings, to customers with registered devices….[and] will increase the efficiency and effectiveness of its future EE/DR programs." Id. at 24. All of these benefits for consumers and ComEd help move Illinois forward in its effort to increase energy efficiency.

ELPC argues that the Commission can and should find that ComEd's Energy Efficiency Plan fails to take advantage of these energy efficiency opportunities and order it to do so. The Commission should order ComEd to develop and implement a comprehensive plan, involving manufacturers, retailers, and other third parties, to enable smart devices to interact with ComEd's smart meters and to make it easy for customers to identify and purchase these smart devices. In the alternative, the Commission should order ComEd to prepare a smart devices program in advance of its next April 1 AMI Plan update filing. Given the financial investment in AMI that ComEd has required from customers, it should be exploring every opportunity to take advantage of energy efficiency opportunities related to Smart Grid/AMI.

d) Commission Analysis and Conclusion

The Commission agrees with ELPC that nothing precludes consideration of Smart Devices in the context of a Section 8-103 EE plan. In fact, ignoring the potential benefits of such a program would be to deny the inherent link between AMI deployment and the energy efficiency potential that it brings.

As ELPC points out, the Illinois Energy Infrastructure Modernization Act requires ComEd to invest over $2.6 billion on AMI deployment, Smart Grid technologies, and grid modernization over the next 10 years. ComEd plans to deploy more than 1.2 million smart meters and the associated two-way communications by PY9 and over 4 million meters by the end of 2021. ComEd's smart meter deployment has the potential to enable significant energy efficiency and demand reduction by customers. The Commission believes it is important that ComEd take steps to integrate its smart meter deployment with additional measures that produce energy efficiency savings for customers.

Based on ELPC's testimony, the Commission orders ComEd to develop and implement a comprehensive plan, involving manufacturers, retailers, and other third parties, to enable smart devices to interact with ComEd's smart meters and to make it easy for customers to identify and purchase these smart devices. The Company should use funds from the R&D/Emerging Technologies budget to pay for this program. Some funding may also be allocated from Education/Outreach. The Company must seek input from the SAG to further develop this program and report back to the Commission within 6 months from the date of this order. Although the Commission believes this program is best funded with dollars from ComEd's AMI investments in accordance with EIMA, we are cognizant that the next AMI Plan will be filed April 1, which leaves little time for collaboration and program development. Thus, if this program is deemed successful and could benefit from further funding in future years, ComEd is encouraged to include it in its next AMI Plan filing or in its suite of proposed programs for funding by the IPA.

5. Street Lighting

a) ComEd

ComEd observes that ELPC vaguely proposes that ComEd either modify existing tariffs or propose new tariffs to offer light-emitting diode street lighting. However, no costs or energy savings projections are offered, much less any tariff language. ELPC IB at 9-10. ComEd therefore argues that the proposal is wholly undeveloped and must be rejected.

b) ELPC

ComEd currently does not offer company-owned LED lighting technologies to its customers. ComEd's current tariff provides only "mercury vapor and high-pressure sodium lighting." ELPC Ex. 1.0 at 23. These kinds of street lighting technologies are much less energy efficient than LED lighting, which offers significant savings potential and has been implemented successfully in other utilities' tariffs. ComEd should include LED lighting technologies in its existing tariff or in a new tariff.

Other utilities have had success with implementing LED lighting. For instance, Mr. Crandall notes, "On December 6, 2012, Interstate Power and Light Company (IPL) filed with the Iowa Utilities Board its revised LED street lighting tariff." ELPC Ex. 1.0 at 24. The tariff was approved and included the "expansion of IPL's 80-watt LED pilot program through the utility's service territory." Id. ComEd witness Brandt claims that Mr. Crandall's proposal that ComEd include LED street lighting in its tariff is "void of the support or specificity needed to consider it for adoption in this docket" and "there are far too many unknowns at this time." ComEd Ex. 3.0 at 34. However, Mr. Brandt overstates ELPC's burden. While ComEd might not have done any research on LED street lighting, other utilities such as IPL have studied LED street lighting, included it in their energy efficiency portfolios, and modified their tariffs and services to include LED technologies. The success in IPL's territory indicates that LED street lighting is an achievable, cost effective method to create significant energy savings.

The Commission should order ComEd to submit a request to modify its tariff to include LED street lighting as soon as possible.

c) Commission Analysis and Conclusion

The Commission sees that ELPC requests that the Commission direct ComEd to modify its tariff without any specificity. The Commission cannot adopt tariff changes without a specific proposal.

6. Capture of Waste Energy

a) ComEd

ComEd notes ELPC's proposal to capture waste energy and notes that by ELPC's own admission, this "program," which is essentially another study, itself requires further study by the SAG. According to ComEd, ELPC also has neither estimated the cost of this program nor indicated the source of the funding for it. According to ComEd, this program is beyond the scope of this docket because it is not capable of being proposed, much less adopted, before the February 1, 2014 deadline for this docket.

b) ELPC

ELPC asserts that sufficient energy efficiency potential, especially in the area of energy waste, exists to allow ComEd to move further towards meeting the statutory savings goal. ELPC witness Crandall defines waste as "opportunities for improved efficiency of energy use." ELPC Ex. 1.0 at 10. Waste includes technology waste and behavioral waste. Id. An example of technology waste would include using incandescent bulbs rather than the more efficient CFLs or LEDs. Id. Behavioral waste, on the other hand, would include leaving on the lights when they are not needed. Id. ComEd has focused on technology, or what Mr. Crandall refers to as a "technology efficiencies bottom-up approach" while neglecting the behavioral waste component. Id. at 11-12. As Mr. Crandall explains, "the identification of behavioral waste, and the development of programs to address it would tap into a much larger energy efficiency resource than was contemplated by ComEd with its technology efficiencies bottom-up approach." Id. at 12. In effect, focusing on behavioral waste in conjunction with technology waste would present sufficient energy efficiency potential to help ComEd increase its energy savings.

The study indicated enormous potential related to behavioral waste, as much as 30% in the residential sector and 44% in the commercial sector. Id. at 11-12, citing ComEd Ex. 1.0 App. E at 8 and App. F at 9. This waste is above and beyond what we typically consider as the technical potential in ComEd's service territory.

Mr. Crandall points out that ComEd completed the wasted energy analysis, which he believes is the first of its kind in the nation, well into the Plan 3 planning and program development process. Id. at 16. Thus, he makes the following recommendation:

> I recommend that ComEd (in conjunction with the SAG) explore and develop approaches to capture reduction of wasted energy potential that exists in its service territory. ComEd with extensive SAG input should issue an RFP to secure the services of marketing and energy awareness expertise to formulate proposals and strategies to capture wasted energy in ComEd's service territory. Those recommendations should be presented to the Commission

> within six months of the issuance of an order in this proceeding.

Id. at 17. ELPC asserts that, while it is never ideal to examine issues after the case ends, the Commission should not wait three years to focus on this opportunity.

c) Commission Analysis and Conclusion

The Commission recognizes ComEd's completion and inclusion of this study that identified opportunities to limit energy consumption. It is clear, however, that this idea is in its infancy and should be addressed through the SAG. The Commission's grant of flexibility allows new programs to be added and budgets shifted, so although the Commission declines to require that this be included now, there is nothing stopping this program from being implemented within the next three years if it complies with the statutory requirements and has worked through the SAG process.

7. Residential Lighting to IPA

a) ComEd

ComEd explains that the Residential Lighting program has been a part of the ComEd portfolio since its inception. ComEd Ex. 2.0 at 45-46. Under Plan 3, this program will continue to offer customers instant rebates when purchasing qualifying products such as CFLs and LED fixtures by targeting retailers and manufacturer/retailer partnerships. Id. The AG recommends that the Commission order ComEd to move the Residential Lighting program element from the Section 8-103 portfolio to the Section 16-111.5B IPA portfolio for PY8 and PY9. AG Ex. 1.0C at 9. The AG does not include PY7 because it is already too late in the process to make that change. Id. As the IPA programs are not subject to a statutory budget cap like those under Section 8-103, it appears that the AG's proposal is designed to move and retain the program under the IPA portfolio and thus free up funds for Plan 3. Id.

ComEd argues that the Act precludes consideration of the AG's proposal in this docket. Section 8-103 governs the scope of this docket. 220 ILCS 5/8-103. Section 8-103 limits this docket to review and approval of ComEd's energy efficiency plan. 220 ILCS 5/8-103. Section 16-111.5B, on the other hand, governs review and approval of additional energy efficiency in the context of ComEd's annual procurement process. 220 ILCS 5/16-111.5B. This process occurs pursuant to an entirely separate statutory framework and approval criteria. Neither Section 8-103 nor 16-111.5B includes a provision authorizing transfer of a particular program to the IPA as part of the consideration of an electric utility's energy efficiency plan pursuant to Section 8-103. Accordingly, if the Commission were to remove the Residential Lighting program from the Section 8-103 portfolio, it could not at the same time include it in the IPA portfolio, and instead would leave this important program stranded outside of either portfolio. Indeed, the analysis required to approve a program under Section 16-111.5B was not, and cannot be, presented or considered in this docket. See 220 ILCS 5/16-111.5B(a)(1)-(3). Sections 8-103 and 16-111.5B accordingly mandate rejection of the AG's proposal.

Notwithstanding that the AG's proposal is contrary to the law, ComEd contends that moving the program to the IPA would truly diminish the amount of energy efficiency being offered to the residential sector under Plan 3, especially when one considers that the HER program already has been moved to the IPA. ComEd Ex. 3.0 at 14. Section 8-103 requires that ComEd offer a diverse portfolio of programs across all customer classes. 220 ILCS 5/8-103(f)(5). If the Residential Lighting program were also moved to the IPA portfolio, residential customers' ability to participate in the portfolio would be severely constrained, with the main program offering being limited to the Appliance Recycling program. ComEd Ex. 3.0 at 14. ComEd IB at 21. In response to the AG's assertions that moving the program to the IPA would not diminish the amount of energy efficiency being offered to the residential sector (AG IB at 11-12), ComEd clarifies that the legal standard in this docket is not whether residential customers generally have access to energy efficiency measures. Rather, Section 8-103(f)(5) requires that Plan 3's measures "represent a diverse cross-section of opportunities for customers of all rate classes to participate in the programs." 220 ILCS 5/8-103(f)(5). While residential customers might be able to resume participation in the Residential Lighting program at some later date, that participation would not be under Plan 3.

Finally, ComEd notes that IIEC opposes the AG's proposal because it would further increase the portfolio costs paid by C&I customers. IIEC Ex. 2.0 at 3-4. IIEC's concerns are indeed valid – the AG's proposal, if adopted, would increase C&I customers' costs. ComEd Ex. 3.0 at 15. Accordingly, ComEd states that the proposal to transfer the Residential Lighting program element should be rejected as legally impermissible or, in the alternative, rejected on its merits.

b) AG

ComEd has proposed to retain its Residential CFL Lighting program within its Section 8-103 portfolio. AG witness Mosenthal recommended shifting this program to the IPA procurement mechanism, pursuant to Section 16-111.5B, similar to what ComEd has proposed in Docket 13-0546 related to its Residential Behavior Program, which was previously provided under the Section 8-103 efficiency portfolio. Since the IPA portfolio is not subject to the 2% budget cap of Section 8-103(d), this transfer would free up significant capital to enhance and deepen the other programs in ComEd's portfolio without sacrificing the CFL program or efficiency service to the residential sector.

Because of the existing schedule in the IPA procurement docket, it is too late to shift the CFL program into the IPA portfolio for PY7. However, shifting PY8 and PY9 CFL Lighting budgets to the IPA would free up $37,088,416, or about 10% of ComEd's total three-year budget, to capture additional savings in other programs. AG Ex. 1.0 at 9. Shifting this program to the IPA Portfolio makes sense for several reasons. First, there are no administrative concerns related to moving standard CFLs to the IPA portfolio. ComEd itself could bid this program into the IPA as it currently exists, and continue to administer and deliver it using its current contractors. Thus, administration of the program would remain exactly as it would under ComEd's proposed Plan in this docket.

Second, the AG states that no customer class equity concerns related to moving the Residential Lighting program to IPA exist. Consistent with the requirement in Section 8-103(f) that the entire portfolio includes "a diverse cross-section of opportunities for customers of all rate classes to participate in the program." 220 ILCS 5/8-103(f)(5). This is the case because the IPA efficiency programs are still funded by the same ratepayers using the same Section 8-103 rider mechanism, so this change does not significantly alter the overall split of investment by customer class. C&I customers would also benefit, since at least some of the savings from transferring the CFL program to the IPA could go to increased program budgets for these customer groups. Therefore, this proposal would significantly enhance the levels of cost-effective energy efficiency available to all customer classes. AG Ex. 1.0 at 9.

As an established program that has repeatedly proven successful and cost-effective, the Residential CFL program fits appropriately within the IPA procurement mechanism. The CFL Program can also be ramped up or down annually if necessary. In addition, CFL programs have undergone evaluations in Illinois, and many similar programs throughout the United States have been extensively evaluated. As noted above, they are also programs that would still be administered in the same fashion by ComEd and its contractors, so there is no reason similar independent evaluation procedures cannot be used in the future as have been used for the Section 8-103 programs. As a result, the lack of clear EM&V procedures of IPA programs is less of a concern for these programs than for some of the new and untried programs bid into the IPA's proposed portfolio by independent vendors.

AG witness Mosenthal recommends that the re-allocated funds from assigning the standard CFL program to the IPA portfolio be split among the three main, proposed C&I programs. There are a number of reasons why he proposed this shift of funds. First, C&I savings are significantly cheaper than most of the other residential program savings, and would consequently lead to the largest amount of additional savings captured. AG Ex. 1.0 at 10. Second, typically, there are far more cost-effective efficiency opportunities in the C&I sector as compared to the residential sector, and the potential to ramp up these programs is far higher and will dramatically increase the overall net benefits of the combined Section 8-103/IPA portfolio. Third, ComEd has indicated that it is somewhat constrained in spending electric budgets in some of the other residential programs because of the relatively lower gas budgets in these combined programs. Finally, while equity between sectors is important, the residential ratepayers still will benefit significantly from the IPA programs, so shifting these Section 8-103 funds to C&I will effectively maintain total residential contributions when considering both the Section 8-103 and IPA spending in total.

Another alternative involves a more balanced approach, whereby some funds are shifted to C&I programs and a portion is shifted to ramp up other residential programs, subject to any gas budget constraints for combined programs. Id. at 11. Of course, ComEd ratepayers would still achieve all of the savings planned from the CFL program, even though they were shifted to the IPA. In fact, because the IPA portfolio is not subject to the Section 8-103 spending cap, it is possible the CFL program could be ramped up further in future years through the IPA mechanism.

ComEd witness Brandt challenges the notion that annual savings would increase if the CFL program was shifted to the IPA portfolio. He notes ComEd's concern that if this program is not included within the Section 8-103 portfolio, a broad base of residential customers would not be able to participate in the Residential program, with the main program left being the Refrigerator Recycling program. ComEd Ex. 3.0 at 14-15. But this argument does not challenge Mr. Mosenthal's principal finding: that moving the CFL program into the IPA portfolio would increase both Residential and overall savings in years 8 and 9. The notion that ComEd has not yet developed additional Residential programs to supplant the CFL program is troubling, particularly given the fact that federal lighting standard changes will gradually diminish the amount of savings attributable to CFLs. Moreover, the facts in the record clearly contradict the notion that ComEd is doing all it can to achieve energy savings. The Company is requesting approval of diminished energy savings figures, in part due to the statutory cost cap, in part due to its selection of programs included in the 8-103 portfolio and in part due to its request for a lowered realization rate in order to reduce performance risk. In addition, ComEd's own energy savings potential study filed in the IPA Procurement docket, Docket 13-0546, clearly shows statutory goals are achievable, yet just require more revenues. Mr. Mosenthal's recommendations simply seek to increase ComEd's energy savings achievement without necessarily spending more money – a goal the Commission should embrace given the reduced goals ComEd proposes.

The Commission should order ComEd to refile its Plan under Section 8-103(f) and modify its portfolio offerings so that its Residential CFL program is included in the IPA efficiency portfolio in PYs 8 and 9. Savings created from this transfer should be re-allocated in accordance with the recommendations in this Brief.

In response to these points, ComEd argues that the Act precludes consideration of the AG proposal, because Section 16-111.5B governs the procurement process, Section 8-103 "limits this docket to review and approval of ComEd's efficiency plan", and neither section "includes a provision authorizing transfer of a particular program to the IPA as part of the consideration of an electric utility's energy efficiency plan pursuant to Section 8-103." ComEd IB at 20. ComEd then reaches to assert that these two statutory sections "mandate rejection of the AG's proposal." Id. at 21.

This argument, however, invokes no particular rule of statutory construction, and imagines prohibitions where none exist. First and foremost, the AG's recommendation that ComEd be directed to remove its CFL program from years 8 and 9 of its Plan is certainly within the Commission's right to order in this docket. The fact is, Mr. Mosenthal clearly demonstrated that doing so would still enable the program to be provided, albeit under Section 16-111.5B, while freeing up enough energy savings to increase total energy savings over the three-year portfolio by 2.2 MWh, or a 22% increase from ComEd's proposed three-year goals. AG Ex. 1.0 at 15. Directing ComEd not to offer a particular program under Section 8-103 certainly is within the Commission's authority in this docket.

Second, the General Assembly inextricably linked Section 8-103 programs and efficiency programs offered under Section 16-111.5B. Section 16-111.5B includes no fewer than eight references to Section 8-103 of the Act. The General Assembly clearly linked the programs to be provided under both sections of the Act in its reference to "expansions" of Section 8-103 programs, utilization of the Section 8-103 cost recovery rider, and satisfying identical definitions of cost-effectiveness for purposes of program approval. The notion that the Commission must somehow examine Section 8-103 programs in isolation of the IPA efficiency procurement provisions, accordingly, ignores the clear linkage of the programs referenced by the General Assembly.

The point is to highlight a glaring inefficiency in ComEd's selection of programs as presented to both the IPA under Section 16-111.5B and the ICC under Section 8-103, its failure to abide by the directive that IPA programs constitute expansions of Section 8-103 programs (220 ILCS 5/16-111.5B(a)(2), (a)(3)(C)), and to encourage the Commission to provide direction to ComEd for future procurement and 8-103 Plan presentations. Moreover, to be clear, residential customers must receive a proportionate share of programs commensurate with the amount of dollars collected from residential customers through the Section 8-103 rider. ComEd's CFL program would still be offered to residential customers – the only difference would be that it would be offered under a different statutory provision of the Act. The program itself and its delivery to residential customers would remain identical.

In its Initial Brief, ComEd suggests the AG seeks to interfere in IPA matters and the IPA procurement docket through this proceeding. ComEd Ex. 3.0 at 14. That assumption is simply wrong. To be clear, the AG seeks specific Commission direction in this Order for ComEd to bid its Residential CFL lighting program into the IPA portfolio, rather than include it in its Section 8-103 portfolio, in PYs 8 and 9. The AG is not seeking any ruling that imposes requirements to accept the program in its Procurement filing at this time. Indeed, the Company would have to demonstrate at that time that the program is still cost-effective. In this docket, however, the Commission has the authority to advise ComEd on its program selections to be included in its IPA portfolio. Mr. Mosenthal presented substantial evidence that shifting this program to the IPA portfolio will increase overall energy savings. That is a particularly important finding, given ComEd's request in this docket for the Commission to approve significantly modified energy savings goals and approve evaluation rules and assumptions that insulate the Company from any performance risk.

c) IIEC

IIEC opposes the AG's proposal to transfer the Standard CFL EE program from ComEd's Section 8-103 portfolio to the IPA EE portfolio and the resulting re-allocation of EE program costs among ComEd's residential and business customers. As an initial matter, IIEC asserts that AG witness Mosenthal's recommendation may be moot. IPA programs fall under a separate statute and generally are approved under a separate docket, and therefore are not appropriately at issue in this docket.

Even if one assumes, for the sake of argument, that the AG's recommendation is legally permissible, the recommendation should nevertheless be rejected because it would result in increased EE spending that would be inequitably allocated exclusively to C&I customers, yielding an unreasonably high allocation of energy efficiency spending, and associated charges, to such customers. IIEC further opines that Mr. Mosenthal's proposal would, in the aggregate, result in spending that would exceed the EE funding limits deemed acceptable by the Illinois General Assembly.

For the aforementioned reasons, IIEC recommends that the AG's proposal be denied. In the alternative, IIEC states that if the CFL program is nevertheless transferred to the IPA portfolio, the re-allocated energy efficiency funds resulting from such transfer should be assigned either to residential EE programs or to the Large C&I Pilot Program. Directing the funds to residential customers would give smaller customers additional opportunities to benefit from EE programs. Directing the additional funding to a properly designed Pilot Program would enable more customers to participate in the program and potentially result in greater EE savings, as the unique needs of industrial customers are most effectively met by allowing those customers to customize their own programs.

d) Commission Analysis and Conclusion

The Commission has reviewed the parties' positions and notes that it remains committed to the implementation of energy efficiency measures to the greatest extent possible at a reasonable cost. As the parties are well aware, there are arguably inconsistencies between the provisions of Sections 8-103 and 16-111.5B of the Act, which are intended to encourage cost-effective energy efficiency programs. Unfortunately, the Commission is not in a position to fully resolve all of the inconsistencies in those provisions.

As an initial matter, the Commission notes it is too late to consider transferring any programs to 2014 IPA Plan. With regard to subsequent transfers the Commission believes ComEd can and should effectuate the transfer of cost-effective energy efficiency programs and measures to the IPA to further expand those successful programs while staying within designated spending caps. The IPA must include cost-effective energy efficiency programs and measures and the associated annual energy savings goal in their Plan. 220 ILCS 5/16-111.5B(g). The Commission then must also approve the energy efficiency programs and measures included in the Plan “if the Commission determines they fully capture the potential for all achievable cost-effective savings, to the extent practicable, and otherwise satisfy the requirements of Section 8-103 of this Act.” *Id*. ComEd argues that the Act precludes consideration of the AG’s proposal to shift programs to the IPA in this proceeding because the Commission’s analysis of energy efficiency programs under Sections 8-103 and 16-111.5B are separate and apart from one another. The Commission disagrees. As the AG notes, Section 16-111.5B includes no fewer than eight references to Section 8-103 of the Act. The General Assembly clearly linked the programs to be provided under both sections of the Act in its reference to “expansions” of Section 8-103 programs, utilization of the Section 8-103 cost recovery rider, and satisfying identical definitions of cost-effectiveness for purposes of program approval. The notion that the Commission must somehow examine Section 8-103 programs in isolation of the IPA efficiency procurement provisions ignores the clear connection inherent in the provisions.

Thus, ComEd is directed to include the Residential CFL Lighting program in their package of programs presented to the IPA in years 8 and 9 of this three year plan in order to maximize all available funding for energy efficiency programs in Illinois. To the extent funds are freed up for investment in Section 8-103 programs, those funds should be spent on residential sector programs to maintain the “diverse cross-section of opportunities for customers of all rate classes to participate in the programs.” 220 ILCS 5/8-103(f).

Finally, the Commission rejects IIEC's argument that such transfers might result in ComEd spending more on energy efficiency plans than would otherwise be permitted under Section 8-103 of the Act. There is no discernible indication that the General Assembly intended to consider the funding provided for Section 8-103 programs and Section 16-111.5(B) programs in total when taking into account the spending caps imposed by Section 8-103(d).

8. Residential Lighting Education

a) ComEd

ComEd notes that while Staff observes that the light bulb market is evolving and expresses concerns in this regard, it is not clear to ComEd how these concerns relate to the Residential Lighting program or whether these are concerns with such program. As Mr. Brandt testified, ComEd monitors the implementation of EISA regulations and will modify its marketing if and when that is appropriate. ComEd Ex. 3.0 at 35. ComEd notes that while EISA regulations are law, their actual impact on the marketplace in the ComEd service territory has been minimal to date. Id.

b) Staff

Among the elements of ComEd's marketing of lighting is a comparison of electricity use between ENERGY STAR® CFLs to standard incandescent light bulbs. Staff Ex. 1.0, 42. As noted in the IL-TRM, "[f]ederal legislation stemming from the Energy Independence and Security Act of 2007 [("EISA")] will require all general-purpose light bulbs between 40 and 100W[atts] to be approximately 30% more energy efficient than current incandescent bulbs." ComEd Ex. 1.0, App. C, 424. EISA began phasing in new manufacturing requirements on January 1, 2012. ComEd Ex. 1.0, 14; ComEd Ex. 1.0 App. C, 424. As of January 1, 2013, light bulbs with lumen output previously associated with 100-Watt standard incandescent light bulbs required 72 Watts or fewer and bulbs previously associated with 75-Watt incandescent light bulbs required 53 Watts or fewer in order to be manufactured in the United States. On January 1, 2014, similar manufacturing requirements will go into effect for light bulbs that previously produced lumens associated with 60- and 40-Watt standard incandescent light bulbs.

ComEd's proposed customer education and marketing approach focuses on the savings (e.g., 75% less electricity) and benefits (e.g., bulbs last up to 10 times longer) customers purchasing CFLs achieve compared to non-EISA compliant incandescent bulbs. ComEd Ex. 1.0, 32. Since the phase-in of EISA, 72-Watt halogen light bulbs exist that look like standard incandescent light bulbs and have short lifetimes similar to that of incandescent light bulbs. Currently, manufacturers are advertising these halogen light bulbs as energy efficient. This characterization is misleading to customers given that wattages that exceed the halogen wattages violate the EISA standard law, so these halogen light bulbs are, in fact, the least efficient (or most energy consuming) compliant light bulbs. Staff Ex. 1.0, 43. In contrast, CFLs use less than a quarter as much power and generally last over five times as long as the halogen light bulbs. See, ComEd Ex. 1.0 App. C, 424-429; Staff Ex. 1.0, 43-44. The cost savings from purchasing a CFL instead of a halogen light bulb is significant, greater in fact than the savings from moving from an incandescent light bulb to a halogen. ComEd Ex. 1.0 App. C, 429.)

As a program administrator, ComEd should ensure proper customer education in the residential lighting market in its service territory as it relates to the impact of EISA and the energy savings associated with CFLs. It is Staff's understanding that the labels on the packages of CFLs already compare the cost savings of CFLs to traditional standard incandescent light bulbs. Given customers have access on the package to the benefits of CFLs over the standard incandescent light bulbs, ComEd's in-store marketing materials, point-of purchase communications, end-caps, and other displays should educate customers about the benefits and cost-savings of installing CFLs over the new EISA-compliant halogen light bulbs. Staff Ex. 1.0, 44.

c) Commission Analysis and Conclusion

Staff's proposal is hard to classify and appears to boil down to Staff's belief that ComEd should do a better job. Like the Commission, ComEd is unclear as to the nature of Staff's specific concerns with the Residential Lighting program. The Commission does not wish to be involved at such a detailed level in program administration. The Commission declines to take any action on Staff's recommendation.

9. CHP

a) ComEd

ComEd notes that Public Act 98-0090 ("P.A. 98-0090") became effective July 15, 2013 and changed the definition of "Energy Efficiency" to include "measures that reduce the total Btus of electricity and natural gas needed to meet the end use or uses." 20 ILCS 3855/1-10. In Plan 3, ComEd recognizes this new legislation, and confirms that, because of the definitional change, "certain technologies, such as ground source heat pumps that replace gas furnaces, as well as combined heat and power projects [now can] be included in an energy efficiency portfolio." ComEd Ex. 1.0 at 11. As the MCA explained, combined heat and power ("CHP") means a system that simultaneously produces thermal energy and electricity, and waste heat to power ("WHP") refers to a system that captures process waste heat and transfers or converts it to electrical or mechanical energy using no additional fuel. Although MCA commended ComEd for recognizing the change in legislation, it claims that Plan 3 should (1) explicitly include CHP projects as an allowable measure in its proposed Large C&I Program and its Custom Programs, and (2) include a separate pilot program similar to the one that DCEO has proposed in Docket 13-0499. MCA Ex. 1.0 at 2.

ComEd contends that because P.A. 98-0090 became law just a month prior to ComEd filing Plan 3, neither the SAG nor ComEd had an opportunity to evaluate CHP for inclusion in Plan 3. ComEd Ex. 3.0 at 54. Indeed, a DCEO-sponsored workshop (held prior to passage of PA 98-0090) identified critical policy issues that would first need to be addressed, not least of which are the measurement and allocation of energy savings between electric and gas utilities and whether there would be load building benefits to natural gas utilities. Id. As Mr. Brandt testified at the evidentiary hearing, ComEd is an electric-only utility, which presents policy issues that are not necessarily confronted by a combination utility that provides both electric and natural gas services. Tr. at 46 (Dec. 4, 2013). Furthermore, ComEd would need to examine and address issues such as the high potential for free ridership and a long project implementation life cycle. ComEd points out that none of these issues, however, are addressed, much less resolved, by MCA. In fact, MCA states in its Initial Brief that ComEd witness Brandt testified that “combined heat and power projects [“CHP”] are eligible for consideration” (Tr. at 36 (Dec. 4, 2013)), have not yet been evaluated (Tr. at 36 (Dec. 4, 2013)), and should be studied. Tr. at 45-46 (Dec. 4, 2013); MCA IB at 2-3. According to ComEd, these statements show that MCA’s CHP proposal is undeveloped, fails to address the complicated implementation and evaluation issues posed by this combined technology, and cannot yet be adopted.

Finally, although ComEd has objected to a CHP pilot under Plan 3, ComEd explains that individual CHP projects can be proposed under the Custom Incentive or Large C&I Pilot programs. ComEd Ex. 3.0 at 54-55; MCA Ex. 1.0 at 5-7. No party in this docket has taken issue with that proposition. Accordingly, the Commission should reject MCA’s proposal to include a separate pilot program for CHP and rather allow ComEd and stakeholders the opportunity to study this technology over the next three years to determine whether it should be or needs to be separately addressed in an energy efficiency plan.

b) MCA

The goal of the MCA in this proceeding has been to explain the energy efficiency benefits of CHP technologies, to underscore the unrealized potential for CHP project development in Illinois and the barriers it faces, and to suggest to the Commission how the programs within ComEd’s Energy Efficiency and Demand Response Plan for years 2014-2016 can be designed to incentivize CHP project development.

MCA summarizes that its position and the evidence in the record support a Commission Order which expressly acknowledges the eligibility of CHP projects for consideration in ComEd’s custom programs and orders ComEd to evaluate a targeted CHP Pilot Program in 2014 for proposal to the Commission as soon as possible. In addition, MCA requests a Commission Order that expressly requires ComEd to study the DCEO’s pilot program and other targeted CHP programs currently being implemented in other states and to affirmatively address ComEd’s stated issues with the gas utilities and other stakeholders and report back to the Commission with a proposal for such a program or the reason why it is not doing so.

c) Commission Analysis and Conclusion

All parties in this proceeding that have addressed CHP agree that it is a measure eligible for consideration under certain programs in ComEd’s Plan 3 portfolio. Based on the testimony provided by the parties, the Commission agrees with this conclusion. Specifically, it is clear that CHP projects are eligible for consideration in customized energy savings plans under ComEd’s Plan 3 custom programs.

The Commission agrees with MCA that a standalone CHP program should be evaluated within the stakeholder advisory group process and that such a stand-alone program might appropriately be incorporated in ComEd’s Plan 3 program offerings following that evaluation. Thus, the Commission directs ComEd to initiate a discussion at SAG to evaluate a stand-alone CHP Pilot Program. This does not require a new plan to be filed, but rather is consistent with the Commission’s grant of flexibility. The

Commission would encourage the Company to undertake this discussion as soon as possible in order to allow sufficient time to implement a CHP Pilot Program in this plan, should SAG find that it would be a beneficial addition to ComEd's energy efficiency offerings. If it requires a budget shift over 20%, then ComEd will need to report that to the Commission.

10. Voltage Optimization

a) ComEd

ELPC also proposes a voltage reduction program for eventual inclusion in the portfolio, although admits that the proposal cannot be adopted at this time. ComEd observes that like other ELPC proposals calling for further development following the close of this docket and the eventual filing of a "Revised Plan", this attempt to extend the docket is not lawful.

According to ELPC, this program, which is a combination of Conservation Voltage Reduction ("CVR") and Volt/VAR Optimization ("VVO"), would be designed to reduce end-use customer energy consumption and peak demand while also reducing utility line losses. ELPC Ex. 2.0 at 5. ELPC makes several recommendations regarding the program.

ComEd notes that similar to other ELPC proposals, this is the first time ELPC has presented this proposal to ComEd and stakeholders, and unfortunately, a proposal of this magnitude is being proposed too late and after months of SAG meetings regarding the proposed Plan 3. Indeed, even ELPC witness Volkmann admits that the proposal cannot be adopted at this time, but rather should be studied and then implemented, if appropriate, at a later date under a "revised" plan filing. ELPC Ex. 2.0 at 33. While ComEd is willing to investigate the voltage optimization ("VO") concept further through the SAG, ComEd again notes that a "revised" plan filing is not lawful under Section 8-103. Pursuant to Section 8-103(f), the Commission is required to issue an order approving or disapproving the plan within 5 months of its submission. 220 ILCS 5/8-103(f). Finally, while ComEd expresses a willingness to discuss the VO concepts further through the SAG, it notes that it has understood the concept to be more of a utility optimization measure rather than a "true" energy efficiency measure. If ComEd's understanding is correct, then it may not be appropriate to further discuss the concept in the SAG. ComEd Ex. 3.0 at 38.

In the event the Commission were to approve the proposed feasibility study, ComEd proposes that the study be funded through its Emerging Technology / R&D Budget, assuming it would cross both PY6 and PY7 in terms of expenses. However, this assumes that this Budget is not eliminated or reduced as others have proposed in this docket. Based on the results of the feasibility study, which are not known at this time, ComEd can work with the SAG to determine whether a pilot VO program should be developed within ComEd's service territory.

ComEd further notes that in their Initial Briefs, both ELPC and the AG concede that the proposed feasibility study should not be funded under Section 8-103. ELPC IB at 22; AG IB at 23. According to the AG, the VO program is not even an energy efficiency program. AG IB at 24-26. As such, ComEd recommends that this proposal not be entertained in this docket and be rejected.

b) ELPC

Voltage Optimization refers to "a combination of Conservation Voltage Reduction and Volt/Var Optimization, intended to primarily reduce end-use customer energy consumption and peak demand, and secondarily to reduce utility line losses." ELPC Ex. 2.0 at 5. As Mr. Volkmann explains, "CVR refers to maintaining voltage as close as possible to the lower end of the [American National Standards Institute] ANSI thresholds at all points on a feeder to reduce feeder line losses, reduce peak demand, and reduce customer energy consumption." Id. at 6. VVO, according to Mr. Volkmann, pertains to "the active management of reactive power at all points of a feeder to minimize losses and improve the voltage" Id. at 7. VO saves energy for the utility and end-use customers.

ELPC emphasizes the fact that the vast majority of energy savings from VO occur on the customer side of the meter. In fact, the Department of Energy's Pacific Northwest National Laboratory ("PNNL") found that "98-99% of the change in energy consumption from CVR occurs in the end-use loads, while only 1-2% of the reduction in the energy consumed can be attributed to line losses." Id. Voltage optimization reduces end-use loads, which matches precisely 8-103's requirement that utilities implement "cost-effective energy efficiency and demand-response measures to reduce delivery load." 220 ILCS 5/8-103(a).

As far back as the 1970s, utilities have deployed voltage optimization, which is considered to be a highly effective form of energy efficiency. Mr. Volkmann notes that in 1987, "[the California Public Utilities Commission] called [VO] one of the most effective electricity conservation programs in California." ELPC Ex. 2.0 at 8.

ComEd itself has experience with VO in the 1980s and "was able to achieve an average reduction of 1.6 volts and an estimated energy savings of 1% overall." Id. at 11. ComEd's sister company PECO included VO as one of the programs in its 2009-2012 EE/DR plan. The initial plan projected 110,000 MWh of annual energy savings from VO with a TRC test benefit-cost ratio of 26.7. According to PECO's May 2013 quarterly update, CVR has delivered 89.3 MW of demand reduction and 320,373 MWh per year of gross energy savings across all customer classes since program inception. Id. at 10.

The National Association of Regulatory Utility Commissions, in November 2012, issued a resolution encouraging states to "evaluate the efficiency and demand reduction opportunities that can be achieved with the deployment of [VO]" and "certify energy efficiency and demand reductions associated with grid modernization efforts, including, but not limited to, the deployment of [VO] technologies as qualified resources in meeting legislative or regulatory Energy Efficiency Resource Standards" and "avoid implementing policies that result in unnecessary barriers to the deployment of [VO] technologies." ELPC Ex. 2.1 at 2-3.

Mr. Volkmann recommends that the Commission formally recognize the energy efficiency and demand reductions associated with VO. ELPC Ex. 2.0 at 33. Furthermore, Mr. Volkmann recommends that the Commission order ComEd to conduct a feasibility/potential study to determine the impact and costs of VO, reprioritize the program under Plan 3, work with PJM to allow bidding both the energy efficiency and demand reduction achieved by VO into capacity auctions, and work with SAG and SGAC to develop an appropriate measurement and verification methodology. Id. at 33-34.

In his rebuttal testimony, ComEd witness Brandt states that the Commission can conduct a study but that a revised plan filing based on the study's results is not lawful under Section 8-103. ComEd Ex. 3.0 at 37-38. Some parties have expressed concern about spending 8-103 energy efficiency funds on implementing VO, and ELPC supports the position that the VO implementation funds should come from other sources. The most important thing is that VO is implemented by ComEd through some means and that the significant energy savings from VO not get lost between dockets. See ELPC Ex. 2.0 at 37. Regardless of how VO is funded, however, ELPC believes that the energy efficiency savings from VO should be included in ComEd's energy efficiency plan so that it can come closer to achieving the 8-103 statutory targets.

a) CUB/City

CUB-City agree it is important to create efficiencies and generate customer benefits by integrating energy efficiency and AMI objectives. As a result, the Commission should order ComEd to adopt the recommendations ELPC made in direct testimony related to the implementation of a voltage optimization program. ELPC Ex. 2.0 at 2-13.

CUB-City support ELPC's recommendations for ComEd to explore offering a voltage optimization program that could generate customer energy and peak demand savings, thereby assisting ComEd in meeting both the energy efficiency and demand response statutory goals. ComEd should be directed to modify its Plan based upon the specific recommendations of ELPC.

b) AG

The AG notes that there appears to be some level of consensus between ComEd, ELPC, and the AG that the Commission should order a feasibility study of a VO program. See ComEd IB at 48; ELPC IB at 20-21; AG IB at 25-26; see also ComEd Ex. 3.0 at 38. However, ComEd continues to push for this study to be funded through limited Section 8-103 funds. The AG reiterates that it is inappropriate to pursue this measure with the very limited demand-side management funding resources in Illinois. AG Ex. 2.0 at 12. It should be noted that ELPC supports funding the proposed study through sources other than the limited efficiency funds. Therefore, the AG urges the Commission to order the feasibility study and allow ComEd to recover any costs associated with a study consistent with how it recovers other distribution system capital and maintenance costs, and not use the limited DSM funds established under Section 8-103 of the Act for this purpose.

The AG supports ELPC's originally proposed funding approach as outlined by Mr. Volkmann in his Direct Testimony. ELPC Ex. 2.0 at 37. In their Initial Brief, the AG noted that VO technology can be a cost-effective approach to better manage the electrical grid and it can achieve some reductions in energy demand. AG IB at 23, 24.

However, allowing VO to be funded through limited efficiency funds not only competes with many other cost-effective efficiency opportunities and programs that ComEd can offer its customers, it would diverge from the traditional utility responsibility of managing its distribution system in such a way as to minimize ratepayer costs subject to appropriate standards of reliability and safety. Adopting VO is a supply-side solution to efficiency that is completely under the control of the utilities, is invisible to customers, and does not require any customer action to be successful, unlike efficiency and demand response programs created under Section 8-103 of the Act, which were established to work with customers to assist them in investing in improving the efficiency of their facilities. The efficiency and demand response programs enabled by Section 8-103 of the Act are designed to engage customers – which is not an express goal of VO. Finally, the AG also noted that the utilities have separate obligations to build and maintain efficient and effective distribution systems for which they can recover costs (and frequently earn a return) through various statutory and regulatory vehicles. The Commission should therefore order ComEd to perform the study using the funds as described in ELPC's proposal.

The AG also notes that they oppose ELPC's alternative proposals to certify VO as a qualified resource in meeting efficiency standards or reprioritize the Plan 3 programs. AG IB at 25-26. In summary, the AG noted that these alternatives were not feasible, produced contradictory results, and were not reasonable. AG IB at 25-26. Therefore, the AG urges the Commission to reject ELPC's alternative proposals.

The AG urges the Commission to order ComEd to undertake the VO feasibility/ potential study described by ELPC witness Volkmann. Any costs associated with this study should be recovered through the normal delivery service charges and not recovered from the limited Section 8-103 funds. The Commission should also make it clear to ComEd that implementation of VO should occur when it is best estimated to be a least-cost solution for ratepayers and the Commission should also identify an appropriate cost recovery mechanism separate from the Section 8-103 programs and funding mechanism to facilitate a VO program.

c) Commission Analysis and Conclusion

A review of the record leads the Commission to believe that a VO feasibility study should be pursued and could in fact result in many direct and indirect benefits. The Commission agrees that it would qualify as a Section 8-103 energy efficiency measure because it could result in lowered end-use electricity, but it appears that it should be incorporated into the Company's smart grid plan. This is the appropriate route not only because of the budget constraints for EE plans, but also because it is made possible by the grid upgrades being rolled out by the Company and it would ensure that the supply side is managed efficiently. The record is also not clear whether there is already a budget earmarked for voltage optimization in ComEd's Smart Grid plan. If there is already, it should go forward; if not the Company is directed to include it with the next AMI plan filing.

V. EM&V

A. Spillover

1. ComEd

ComEd explains that the independent evaluator calculates NTG values by taking into account the impacts of free ridership and spillover. To date, the NTG Ratio has always been calculated by including an analysis of free ridership, which takes into account (and excludes) those kWh savings associated with program participants who would have installed the measure even in the absence of the program. However, ComEd observes that the spillover impact, which considers (and includes) the kWh savings associated with those who were motivated by a program to install a measure but did not take advantage of the program's incentive, has only been included in the NTG Ratio infrequently and treated as a low-priority item. ComEd Ex. 3.0 at 68. This means that energy savings have likely been underreported to the utility's and customers' detriment. Id. at 69. As a result, ComEd proposed the following approach to the calculation of free ridership and spillover during Plan 3:

> Starting with Plan 3, ComEd proposes that all program evaluations must address, in addition to free ridership, spillover from both the participant and non-participant perspectives. Without these perspectives, the evaluation is unduly reducing the net program impacts that should be realized by a program. We propose that if an evaluation does not account for spillover, then the free rider effect should also be ignored.

ComEd Ex. 2.0 at 66.

In response to ComEd's proposal, ComEd observes that Staff and intervenors generally acknowledged that spillover impacts have been neglected to date and that more could be done in the future to incorporate these impacts. ComEd Ex. 3.0 at 69. Because Staff and some intervenors misinterpreted ComEd's proposal as requiring that every evaluation report calculate new free ridership and spillover values, they accepted the proposal to varying degrees.

To incorporate spillover impacts for a program where a study failed to do so, ComEd notes that both the AG and NRDC recommend proposals that would direct the evaluator to estimate the spillover impacts for the program. NRDC Ex. 2.0 at 19; AG Ex. 1.0C at 41-42. ComEd notes the agreement among ComEd, NRDC, AG and others that the NTG ratios for each Plan year should take into account the impacts of both free ridership and spillover, and further agreed that the independent evaluator should estimate an appropriate spillover impact where the complexity of the spillover measurement precludes its calculation due to evaluation budget constraints (or for some other reason). ComEd Ex. 3.0 at 71. In short, ComEd clarifies that it was not proposing that free ridership must be ignored if spillover is not specifically calculated in a given study. Rather, ComEd simply seeks to ensure that the spillover impact is taken into consideration by the independent evaluator in all cases and, where a program-specific value cannot be calculated for a given Plan year, an estimate of spillover should be calculated as a proxy. Id.

ComEd understands that the spillover effect can be much more difficult to measure than free ridership, and agrees that a separate study might be required to address spillover properly. Moreover, ComEd agrees that these studies can be expensive, and it may not always be possible to undertake this research given the limited evaluation budget. While ComEd would prefer that spillover be analyzed and calculated for every program in every Plan year, ComEd recognizes that this is unlikely. Yet, these practical challenges do not mean that spillover should continue to be ignored. ComEd states that its goal in this docket is to ensure that evaluations – not necessarily each evaluation study – account for both free ridership and spillover when calculating the NTG ratio. ComEd believes this approach will result in the most accurate reflection of the program's impact. The spillover effect is obviously a positive impact to the program savings, and any spillover impact will increase the kWh savings. While certain spillover studies may prove costly or difficult, ComEd notes that this is not a reason to exclude a key input to the NTG ratio calculation. It is important to all stakeholders, including customers, that the best estimates of program impacts are made, which is the only way we can know the true impact and value of the energy efficiency portfolio. ComEd Ex. 3.0 at 70-71.

Indeed, ComEd observes that no stakeholder is in a better position to make this estimate than the independent evaluators, who can rely on their knowledge of the program, the marketplace and their past evaluation work for both ComEd and other utilities across the country that are running similar programs. ComEd Ex. 3.0 at 71. Of course, this task is also consistent with one of the evaluators' key objectives – to determine the impacts of ComEd's portfolio. See 220 ILCS 5/8-103(f)(7); ComEd Ex. 3.0 at 71. Only Staff takes issue with the agreed to approach, and bases its argument solely on the unfounded claims that "a utility has an incentive to find as high a spillover estimate as possible as it increases the calculated savings." Staff IB at 11. Yet, ComEd explains that it is the independent evaluator, not the utility, that conducts the study and establishes the spillover estimate. With respect to Staff's proposal that the evaluator conduct a spillover analysis across the entire portfolio, ComEd believes the issue should be taken up in the SAG and the independent evaluator for further review and discussion.

1. NRDC

NRDC recommends that the Commission find that every NTG factor must reflect expected free ridership and spillover effects. This would allow, for example, the evaluation contractors to occasionally rely upon the experience in other jurisdictions with free ridership or spillover in instances where one or both have not yet been studied in ComEd's territory.

2. CUB/City

CUB-City agree with ComEd that spillover should be included in NTG estimates, but agree with intervenors that spillover should not be a prerequisite for NTG estimates to be applied to programs. CUB-City Ex. 2.0 at 16. As Staff illustrates, there may be circumstances where evaluating spillover is expensive and the impact of including spillover would be minimal. Staff Ex. 2.0 at 6-8. If the Commission adopts NRDC and the AG's proposal to use EM&V results from other states to estimate spillover, this would mean that NTG estimates could become more accurate while not increasing the EMV budget. CUB-City recommend that the Commission adopt the recommendations made by the AG, NRDC, and Staff related to estimating spillover.

3. ELPC

Regarding NTG methodology, ComEd has proposed that a spillover assessment be required prior to including any free ridership impacts. ComEd Ex. 2.0 at 66. More specifically, ComEd proposes that NTG ratios should reflect both free ridership and spillover effects, and that every evaluation should attempt to address both factors. NRDC witness Neme, as well as ELPC and Staff, objected to ComEd's proposal. Mr. Neme explained that NTG adjustments should include the net effects of both free ridership and spillover in order to avoid underestimation of savings. NRDC Ex. 1.0 at 26. Mr. Neme then noted, "However, that is not the same thing as saying that every NTG study should address both effects, or that the results of the studies that examined only one effect…should be ignored." Id. Staff witness Brightwell pointed out that "measurement and quantification of spillover is much more difficult and expensive than that of free ridership, and, as a result, spillover might not be quantified. Staff Ex. 2.0 at 3. In his rebuttal, ComEd witness Brandt clarified that ComEd does not intend to suggest that free ridership must be ignored if spillover is not calculated in a given study but that ComEd "simply wants to ensure that the spillover impact is taken into consideration by an independent evaluator." ComEd Ex. 3.0 at 72. Yet ComEd's proposal, in effect, suggests exactly that: every NTG evaluation must address both spillover and free ridership or ignore free ridership if spillover is not calculated. ComEd's proposal appears to be an effort to eliminate free ridership from NTG analysis. ELPC requests that the Commission reject ComEd's proposal that a spillover analysis be required prior to including any free ridership impacts.

4. AG

ComEd has proposed that all program evaluations must address, in addition to free ridership, spillover from both the participant and non-participant perspectives. ComEd points out that without these perspectives, the evaluation is unduly reducing the net program impacts that should be realized by a program. ComEd then reasons that "if an evaluation does not account for spillover, then the free rider effect should also be ignored." ComEd Ex. 2.0 at 66.

While AG witness Mosenthal agrees that both free ridership and spillover should apply to NTG ratio estimation, omitting an examination of free ridership "would be a mistake, could unreasonably prevent parties from considering valuable and relevant information when estimating reasonable NTG values to deem, and ignores the significant role ComEd and other stakeholders play in establishing evaluation plans." AG Ex. 1.0 at 41.

Mr. Mosenthal noted that ComEd has a great deal of involvement in development and approval of evaluation plans for its programs. As a result, where appropriate they can ensure that spillover is indeed estimated along with free ridership. That being said, there are some instances where all stakeholders might agree that spillover is likely to be very de minimis and not worth expending EM&V resources to try to estimate. In these cases, completely eliminating any free ridership adjustments simply because the SAG agreed not to spend resources estimating de minimis spillover would be tantamount to "throwing the baby out with the bathwater." Id. Rather, Mr. Mosenthal proposed that, consistent with his recommendations related to a new NTG framework, that the SAG, in consultation with EM&V consultants, can agree to deem a spillover assumption regardless of whether there is any formal EM&V study tied to it. These can be based on research outside of Illinois and professional judgment, and could be selected as zero or any other number. Id. at 41-42.

There is precedent for the SAG adopting spillover factors when they were not explicitly evaluated. In the latest SAG process of attempting to reach consensus on NTG ratios for EPY5 & 6 and GPY 2 & 3, all parties reached consensus to explicitly add an estimate of spillover to the evaluated free ridership results for some programs for some selected utilities whose evaluations had not included spillover. This occurred, Mr. Mosenthal testified, because only one utility's evaluation explicitly estimated spillover for a particular program. As a result, stakeholders agreed to allow this same amount of spillover to be assumed for the other program administrators for this program. There simply is no reason why the SAG cannot still operate in this way, and deem values while carefully allocating limited EM&V resources.

In fact, as AG Exhibit 1.1 shows, the intent of deeming NTG values for prospective application is not simply to formulaically adopt any evaluation result, but rather to agree on what all parties think is the best reasonable estimate of likely NTG in the future, given whatever past evaluation results and known program and market changes exist. This also allows for much greater consistency between program administrator values for similar programs and recognizes that any single evaluation can suffer from a wide uncertainty band.

In Rebuttal testimony, ComEd witness Brandt clarified that the Company is not saying that free ridership must be ignored if spillover is not specifically calculated in a study. ComEd Ex. 3.0 at 72. He concurred that where a program-specific value cannot be calculated for a given Plan year, an estimate of spillover should be calculated as a proxy. This position appears to be consistent with Mr. Mosenthal's recommendation, and should be adopted by the Commission.

It appears that the AG and ComEd are in agreement that evaluators should estimate spillover impacts when no study exists or it is impractical to quantify spillover. ComEd IB at 78-81; AG IB at 49-51. For its part, Staff argues that spillover should be considered, "although it may not always be included in estimates." Staff IB at 10. Staff's proposal would leave exclusion of spillover to evaluators. Id.

The AG urges the Commission to reject this Staff proposal. Spillover, as noted in the AG Initial Brief, constitutes an important aspect of the calculation of energy savings and has been deemed in past evaluations. AG IB at 50. Deeming spillover based on prior fact-based evaluations fairly credits the spread of efficiency, while also preserving limited evaluation dollars. The AG's proposal to deem spillover when such assessments are not practical should be adopted.

5. Staff

The Commission should reject ComEd's proposal to exclude free ridership whenever spillover is excluded. Instead, Staff recommends that the Commission direct ComEd to require the independent Evaluators to make reasonable efforts to calculate both free ridership rates and spillover rates while being mindful of: (1) the costs of such evaluations, (2) the likely magnitudes of spillover and free ridership rates within a program, and (3) the significance of the program to the overall portfolio savings.

The Commission should direct ComEd to require its Evaluators work with interested parties to study the feasibility of performing an annual, biannual, or even triennial non-participant spillover assessment across the portfolio, and if practical, at least one should be conducted over the course of Plan 3.

Although the Staff proposal may not lead to the inclusion of spillover in some cases, those cases would be at the discretion of the evaluators, such as: cases where the evaluators felt that it would be too costly, the savings were not likely to materially affect the portfolio, or there wasn't likely to be much spillover from the programs.

CUB, AG and NRDC also agree that it is reasonable to consider spillover. NRDC witness Neme argues that spillover does not need to be considered in every study but that "every NTG factor must reflect expected free ridership and spillover effects." NRDC Ex. 1.0, 27. Mr. Neme states in rebuttal testimony that "[i]f a local study of spillover effects is not available, evaluators can recommend one from another jurisdiction or – if necessary – based on their own professional judgment, informed by expertise and experience from SAG stakeholders." NRDC Ex. 2.0, 19.

The application of spillover effects from other jurisdictions is problematic. Among the problems is that a utility has an incentive to find as high a spillover estimate as possible as it increases the calculated savings. In order to verify that the interests of ratepayers are considered, parties would be burdened to survey and verify all potential estimates of spillover from the other jurisdictions to determine whether the methodologies are applicable to the programs in Illinois. Among the reasons a methodology may not be applicable are that the program being evaluated measured multi-year spillover (Illinois has annual goals) or that the value was deemed as part of a negotiation process where the nature of the negotiations are unknown. Staff Ex. 4.0, 6.

Staff further argued that an alternative approach that considers spillover without requiring the inclusion of factors that are determined from external sources is to conduct a spillover survey across a utility territory either annually or once per three-year plan period. Id. at 8. Advantages would be that such a survey is less costly than attempting to measure spillover program-by-program and that it may more accurately reflect how spillover occurs than by attempting to attribute spillover to a particular program or measure. Id. at 7.

Staff recommends that the Commission reject ComEd's proposal. The Commission should instead instruct the independent evaluators to make reasonable efforts to calculate both free ridership rates and spillover rates while being mindful of: (1) the costs of such evaluations, (2) the likely magnitudes of spillover and free ridership rates within a program, and (3) the significance of the program to the overall portfolio savings. If the Commission adopts ComEd's proposal, Staff would urge the Commission to require consistent NTG methodologies for measuring free ridership and spillover as discussed in Staff's IB. If the Commission adopts ComEd's proposal, which it should not, Staff would urge the Commission to make it clear that deeming a zero value for spillover is perfectly reasonable.

6. Commission Analysis and Conclusion

The Commission finds that excluding spillover from the NTG calculations is likely to unfairly reduce a program administrator's calculated savings, but because it can be costly to determine spillover, the Commission cannot at this time require that it always be included. Thus, the Commission directs evaluators to consider spillover while being mindful of any excessive costs to measure spillover in relation to the predicted impacts of such measurements.

Staff's proposal to consider a program-wide spillover survey is worthwhile and can be taken to SAG for further development. The survey has the potential to provide a cost-efficient and more accurate measurement for accounting for spillover. The Commission notes that it would benefit all parties to determine the feasibility of such a survey in a timely fashion if the intent is, as Staff suggests, to conduct the first analysis over the course of this Plan 3.

B. NTG Framework

1. ComEd

ComEd observes that to date, the Commission has considered the NTG ratios and frameworks proposed in each utility docket, and, consistent with Section 10-101 of the Act, has approved proposals on a case-by-case basis based on the unique evidence and arguments in those dockets. ComEd Ex. 3.0 at 67. In this docket, however, the AG proposed that a single, statewide NTG framework should be applied to all utilities, which presumably means electric and gas utilities. AG Ex. 1.0C at 30. Notwithstanding the lack of evidence to support a single NTG framework applicable to all Illinois gas and electric utilities, ComEd notes that the AG provides no real reasons why each utility should not have its own framework. ComEd Ex. 3.0 at 67. While adoption of different NTG frameworks will impact the way in which the independent evaluator conducts evaluations, there is no evidence in this docket that this would impose any hardship or inconvenience on the independent evaluator. Id.

Indeed, Staff witness Hinman notes that the efficiency statutes "also recognize that each utility's plan will likely not be consistent with other utilities' plans. Instead, it would be more appropriate to tailor each utility's plan to the characteristics of its specific service territory." Staff Ex. 3.0 at 27; see also, Plan 1 Order at 54 ("There are obvious differences in the territories of the two utilities regarding many items, including, but not limited to, labor costs, housing structure, population density, and, even topography."). Indeed, ComEd believes that these observations also apply to the evaluation portion of Plan 3, and the Commission should approve ComEd's NTG framework based on the facts and legal argument of this case. ComEd Ex. 3.0 at 68.

ComEd observes that in the Plan 1 Order, the Commission established the SAG as a group of stakeholders that would review and report on utilities' energy efficiency portfolios in an advisory (non-binding) capacity. Plan 1 Order at 32-33. Consistent with the SAG's Commission-stated purpose, ComEd engaged the SAG during the development of Plan 3, and the SAG has played an important advisory role in the development of the Plan and its portfolio of programs. Through the SAG process, ComEd solicited and addressed stakeholder comments and concerns regarding the portfolio's design. ComEd Ex. 3.0 at 32.

ComEd contends that the success of this collaborative process is perhaps best summarized by SAG participants who filed testimony in this docket. Staff witness Hinman commented that the portfolio reflected in Plan 3 "includes a diverse cross-section of opportunities for customers of all rate classes to participate in the programs," and CUB/City witness Devens observed that the portfolio reflects "a wide range of energy efficiency programs that reach all customer classes that fund the EEPS." Staff Ex. 1.0 at 19; CUB/City Ex. 1.0 at 5.

Yet, ComEd notes that certain proposals in this docket seek to fundamentally transform the SAG from an advisory and collaborative process to a decision-making body, most notably in connection with the modified NTG Framework proposals. These proposals to delegate decision-making authority to the SAG are directly contrary to the Commission decisions that established the SAG and expressly declined to grant it decision-making authority. See Plan 1 Order at 32-33; Central Illinois Light Co. d/b/a Ameren CILCO, Docket 10-0568, Order (Dec. 21, 2010) at 86. Fundamental principles, moreover, bar the Commission from delegating its decision-making authority. See generally, *Union Electric Co. v. Ill. Commerce Comm'n*, 77 Ill. 2d 364, 383 (1979) (barring the Commission from delegating its decision-making authority).

ComEd states that Staff acknowledges in rebuttal testimony that "[t]he Commission has repeatedly declined to give the SAG decision-making authority," and expresses concern "that the development of voting parties [through the AG's proposed NTG framework] in this proceeding would be the first step toward such a structure." Staff Ex. 3.0 at 8. ComEd claims that Staff then ignores that its own proposal similarly would delegate decision-making authority to the SAG.

For Plan 3, ComEd has proposed a continuation of the NTG framework approved in the Plan 2 Order (Plan 2 Order at 46-47), and included refinements to the process based on stakeholders' experiences in implementing the framework over the past three years. As set forth in the following bullets and discussed further below, ComEd's proposal appoints the independent evaluator as the key decision-maker consistent with Section 8-103, and also responds to concerns raised by Staff and intervenors in testimony to include a role for the SAG:

- For existing programs, when a ComEd evaluation of a program has identified an estimated NTG ratio, that ratio will be used prospectively until a new ComEd evaluation estimates a new NTG ratio. The prevailing NTG ratio provided by the EM&V contractor by March 1 of any Plan year is the NTG ratio value to be applied to the next Plan year beginning June 1.

- For new programs, planning NTG ratio values that have been provided by the EM&V contractors by March 1 of any Plan year, will be applied prospectively to the next Plan year beginning June 1. These values will be used until a ComEd evaluation estimates a revised NTG ratio. If the revised NTG ratio is provided by the EM&V contractor by March 1, then the ratio will be applied to the next Plan year beginning June 1. Thereafter, NTG ratios shall be revised according to the framework for existing program described above.
- Prior to March 1st of each year, the independent evaluator will present its proposed NTG values for each program to the SAG. The purpose of this meeting will be for the independent evaluator to present its rationale for each value and provide the SAG, in their advisory role, with an opportunity to question, challenge and suggest modifications to the independent evaluator's values. The independent evaluator will then review this feedback and make the final determination of values to be used for the upcoming year.

ComEd Ex. 2.0 at 64-65; ComEd Ex. 3.0 at 67.

ComEd notes, as an initial matter, that a NTG framework is designed to address – or provide the "rules" for – how and when the NTG values determined by the independent evaluator will be applied within the portfolio. In brief, the evaluator determines a NTG value for each program, which ultimately determines the kWh savings from the program. ComEd Ex. 3.0 at 56. Accordingly, the NTG values typically take into account the impact of "free riders" (e.g., program participants who would have taken the same action in the absence of the program) and the "spillover" impact (e.g., program participants and non-participants who are impacted by the presence of the program but did not participate). Id. Multiplying this NTG value by the gross kWh savings for the program determines the net kWh savings, or the "actual" program impacts. Id. at 57. As a result, ComEd states that the NTG value represents one of the biggest risks to the utility – the value can dramatically alter the program's kWh savings and, as the NTG value is not determined until well after the program year has ended, can result in substantial changes in results without the utility having any chances to respond or react. Id.

ComEd explains that because the risk imposed by this hindsight review is unmanageable, an NTG framework adds some certainty as to what values will be used and when, which reduces the risk to the utility and makes the portfolio much more manageable. ComEd Ex. 3.0 at 57. ComEd notes that its proposed NTG framework carries forward the Plan 2 framework's emphasis on prospective application of new NTG ratios while also addressing certain issues that proved incapable of resolution in the SAG. For example, under the Plan 2 NTG framework, "market change" was a criterion that was supposed to determine whether a new NTG ratio would apply retrospectively or prospectively (i.e., NTG ratios that were revised due to a market change were to be applied retrospectively). ComEd Ex. 2.0 at 64. In practice, however, ComEd explains that it quickly became clear that the term "market change" meant different things to different stakeholders, which led to confusion and a lack of direction in the implementation of the NTG framework. Id.

To address these shortcomings, ComEd states that its proposal places the statutorily-appointed independent evaluator and its findings as the central reference point for setting the NTG values for the upcoming Plan year. See 220 ILCS 5/8-103(f)(7). Based on past and current work on ComEd evaluations and on numerous similar programs across the country, ComEd confirms that it has every confidence that the independent evaluator is in the best position to make the determination or projection of the NTG values going forward. Indeed, NRDC witness Neme appears to take a similar view, and also suggests that the independent evaluator should be the "final arbiter." NRDC Ex. 2.0 at 26. As "independent" evaluators, they are beholden to no utility or stakeholder.

ComEd observes that Staff and intervenors share the basic view that an NTG framework should again be approved in this docket, and they further agree that prospective application of revised NTG ratios should continue to varying degrees. According to ComEd, however, each of the proposed NTG frameworks – one advanced by Staff and the other proposed by the AG – seeks to elevate the role of the SAG to a decision-maker rather than advisor, which the Commission has expressly prohibited in prior orders. Staff would grant every attendee at a SAG meeting a vote on the NTG values, while the AG would divide up the SAG into certain voting parties, which would not be open to all SAG participants. Staff Ex. 1.1; AG Ex. 1.0C at 36-38; AG Ex. 1.1. ComEd notes that each of these proposals requires absolute consensus in order to approve an NTG value, and each provides a separate, burdensome, and unworkable process for attempting to resolve a lack of consensus, which ultimately results in the unacceptable practice of partial retroactive application of NTG values. Moreover, ComEd observes that the sharp conflict that has arisen between Staff and the AG regarding their competing frameworks only further underscores that the SAG was never intended to be a decision-making body, and is quite ill-suited for this role.

ComEd observes that the AG's NTG framework is very close to the final version of the framework that had been under consideration in the SAG, but the SAG could not reach consensus regarding its adoption. In brief, the AG's framework proposes, among other things, the following: (i) the evaluators collaborate and propose NTG values for all programs; (ii) these proposed values are submitted to the SAG for a vote, but only "voting parties" can vote (i.e., the only SAG participants who have a vote are program administrators, Staff, and other parties that have traditionally intervened in efficiency dockets and consistently participated in the SAG); (iii) in the event consensus is reached regarding a value and it is filed by program administrators by March 1, then that NTG ratio value is the deemed value for the following year; and (iv) if there is no consensus for a given NTG ratio value, then the value shall be the average of the last two years' evaluation results. AG Ex. 1.1.

ComEd notes that the illegality of the SAG voting process was first raised by Staff witness Hinman in her rebuttal testimony, where she devotes approximately 17 pages to criticizing AG witness Mosenthal's proposed framework. Staff Ex. 3.0 at 4-21. Although Staff's own proposal also includes a SAG voting process requiring absolute consensus of NTG values, ComEd observes that Ms. Hinman oddly attacks the AG's proposal for bearing essentially the same feature.

Ms. Hinman further observes that the AG's attempt to create "voting parties" would be virtually impossible to implement. She notes, for example, that "Mr. Mosenthal does not set forth a process where the Commission would approve the addition of new voting parties. Presumably, a Commission determination that the party does not have any obvious conflicts would be necessary…. It is also not clear how exactly the voting process would work if certain voting parties are unavailable to participate during NTG discussions." Staff Ex. 3.0 at 11-12. Finally, Ms. Hinman also identifies a handful of timing issues with Mr. Mosenthal's proposal that further make it unworkable. According to ComEd, Ms. Hinman's proposal suffers from the same defects, and the procedural and implementation concerns she identifies only further underscore why the Commission has declined to grant the SAG a decision-making role. ComEd concludes that it is simply impossible, as well as unlawful, for the Commission to delegate its authority to, and impose a quasi-legal/adjudicatory process upon, a voluntary and collaborative grouping of stakeholders. The AG's (and Staff's) attempts to establish the SAG as the forum in which these values will be adjudicated is unworkable precisely because this informal, advisory body was never intended to make binding decisions.

Because the AG adopts Staff's proposal to average the last year's (i.e., prospective application) and current year's (i.e., retrospective application) NTG ratio values in the event there is no consensus, ComEd observes that Staff does not take on this proposal. ComEd Ex. 3.0 at 61. However, ComEd urges that this proposal must be rejected because it actually increases ComEd's risk when compared to the Plan 2 NTG framework, and thus undermines the entire purpose of the framework to increase certainty and decrease risk. Id. Indeed, ComEd notes that the more certainty the utility has at the start of a Plan year regarding inputs such as the NTG values, the better the utility can manage the portfolio toward a defined goal. Id. However, Staff's and the AG's proposal to average the past two years when there is no consensus admittedly adds a retrospective application risk to the NTG framework. Staff Ex. 1.1; AG Ex. 1.1. Indeed, ComEd observes that any of these voting parties could, at any time, "force" retrospective application of a value by simply refusing to agree to a value.

Accordingly, ComEd strongly objects to both the retroactive application component of the non-consensus calculation, as well as the overly simplistic way in which a voting party could require that this calculation to be applied. ComEd Ex. 3.0 at 61. Any such party could demand the partial retrospective implementation of the NTG value for any program, even if the party does not understand the program or, in a worst case scenario, is doing so for some untoward purpose. Id. at 61-62. ComEd states that this introduces unmanageable risk for ComEd and goes a long way toward dismantling all of the progress stakeholders have made over the last several years to better manage the NTG risk. Id. at 62. Indeed, this is one of the key reasons why ComEd believes the independent evaluator should be the central decision-maker, as ComEd's NTG framework proposes.

ComEd notes that Staff's framework was never introduced to the SAG and it appears for the first time in this docket. While at some level it bears many similarities to the AG's proposal because the AG accepted certain features of Staff's proposals, ComEd observes that Staff's proposal is riddled with the addition of numerous steps and procedural requirements that are summed up into a complicated 11-step process. In short, these steps include, inter alia, the following: (i) the evaluators submit their proposed NTG ratio values to the SAG by November 1 for residential programs and by December 1 for non-residential programs; (ii) every SAG meeting attendee is permitted to vote, but only non-evaluators may oppose a proposed value; (iii) in the event consensus is not reached, then the value shall be the average of the last available NTG value and the next calculated NTG value (i.e., one prospective value and one retrospective value); however, in some instances the issue may be brought before the Commission. Staff Ex. 1.1.

ComEd states that, similar to Staff's attack of the AG's proposal, the AG takes issue with Staff's approach to SAG voting. In his direct testimony, AG witness Mosenthal correctly observes that "Staff's approach in practice could allow literally anyone to attend a SAG meeting and refuse to agree to an NTG consensus position regardless of whether that party has any particular knowledge or expertise on the issue, or whether they have ever intervened or otherwise been involved in energy policy in Illinois." AG Ex. 1.0C at 37. ComEd agrees with these concerns, and again notes that the voting issue only further underscores that the SAG was never intended by the Commission to be a decision-making body.

Relatedly, ComEd explains that Ms. Hinman's proposal that every single SAG attendee must reach consensus on various NTG issues is implausible, as demonstrated by the fact that Staff and intervenors cannot reach consensus on the framework that is to govern the deeming of the NTG values. Moreover, because Staff's framework would give every SAG participant a vote and require consensus, ComEd observes that just one participant out of dozens could undo the entire process and trigger Ms. Hinman's non-consensus contingency. While ComEd would like to think that all participants would act in good faith, ComEd notes that it is impossible to control such broad participation or ascertain the motives of each participant.

ComEd further contends that steps 2 through 7 of Staff's proposed framework would effectively turn the evaluators' role into mediators of non-consensus NTG issues, which the evaluators have neither the time nor resources to facilitate. ComEd Ex. 3.0 at 64. Moreover, because Ms. Hinman proposes that the Commission review and resolve non-consensus NTG values for new programs through a "rocket docket", ComEd notes that the Commission would be further encumbered to review and resolve these issues through what could very well be protracted litigation. Id. at 64.

ComEd reiterates that the concerns previously articulated regarding the retroactive application of values in the context of non-consensus values are further exacerbated under Staff's proposal where every single SAG meeting attendee can force this non-consensus calculation of an NTG ratio value.

As a final matter, ComEd notes that it is troubled by unfounded claims by the AG and Staff questioning the independence of the evaluator and ComEd's motives. AG IB at 57; Staff IB at 12, 14. Having worked collaboratively with ComEd through the SAG for the past five years, ComEd is surprised that the AG and Staff would now rely on these baseless insinuations in an attempt to prop up their proposals.

2. NRDC

NRDC believes that the SAG should be more involved in the process of establishing prospective NTGs than suggested by ComEd. NRDC disagrees with ComEd's recommendation that the independent evaluator is the key decision maker on this topic. NRDC believes it is appropriate for the SAG to play a more significant role than suggested by ComEd. Specifically, the SAG should have the opportunity to reach consensus on a prospective NTG value first. If the SAG reaches consensus in a timely manner, that consensus value should be adopted. ComEd's proposal appears to leave the door open for the evaluators to over-rule a SAG consensus, which NRDC believes is inappropriate. In cases in which the SAG cannot reach consensus, NRDC would support ComEd's proposal that the evaluators should make the final determination of prospective NTG values.

Relatedly, NRDC recommends the Commission reject Staff's suggestion that, in the event of non-consensus at the SAG on an NTG value, that the NTG that would go into effect would be the average of the two previous years' evaluated NTGs.

3. AG

There are a few reasons why the Commission should reject ComEd's proposed NTG framework. First, under ComEd's proposal, the Company's proposal would inappropriately limit the amount of factual data and input needed to establish reliable NTG values. Specifically, ComEd's approach would automatically use the most recent completed ComEd evaluator's NTG result for each existing program. But Mr. Mosenthal characterized this approach as "too restrictive, creates too much burden on limited EM&V resources, and may not result in the best estimates of future NTG." AG Ex. 1.0 at 30. He noted, for example, that there are often multiple sources of information on NTG for a particular program, even within Illinois. For example, Ameren Illinois Company may also be offering a virtually identical program. Because of the uncertainty inherent in any single NTG estimation method, it can be valuable to use professional judgment and consider multiple studies over multiple years to best estimate a single future NTG value. Id. at 30-31.

Indeed, under ComEd's approach, the NTG value could potentially vary significantly from one year to the next even with very stable programs and markets. For example, the values applied to ComEd and Ameren for a virtually identical program could be very different. That very phenomenon occurred after the first year of efficiency programs, with ComEd's evaluator and Ameren's evaluator coming up with very different NTG values, and consequently, very different savings values related to both companies' CFL lighting program. Ensuring that multiple sources of information are included within a NTG assessment, not just a utility evaluator's sometimes very different assessments, is consistent with best practices in establishing net savings values.

Second, Mr. Mosenthal stated that ComEd's approach would result in excessive pressure on EM&V resources, and also create some potential perverse incentives. For example, it seems that ComEd's intent may be to evaluate NTG ratios each year for any programs that comprise a significant part of its portfolio savings. That may not be the best use of limited EM&V resources, according to Mr. Mosenthal. Id. at 31. Further, the ComEd approach sets up a situation where parties will potentially have strong and inappropriate incentives to either conduct studies that are not necessary or to forego studies that would be useful.

For example, under ComEd's proposal, if no new NTG study is done then ComEd knows with certainty exactly what NTG it will claim in the future. Therefore, if

ComEd perceives that the last evaluation result was higher than it expects, it will have a strong incentive to avoid any future NTG studies for that program. Similarly, if ComEd believes a past evaluation result was lower than it expected, it will have a strong incentive to do a new evaluation in hopes of getting a better result. Because ComEd's approach only allows for any modifications based on actual ComEd evaluations, these perverse incentives can be problematic. Id.

Finally, Mr. Mosenthal pointed out that efficiency programs can and do change over time, with markets, baselines, incentive levels and eligibility requirements in flux. As a result, if ComEd modifies a program design, it would be better to estimate a likely NTG value going forward than to simply always use a prior evaluation of a different program design or market. Both the AG Exhibit Modified NTG framework (AG Ex. 1.1) and Staff's modified NTG framework allow for these kinds of changes by simply suggesting that SAG parties reach consensus on their best estimate of the most appropriate NTG value to apply, regardless of whether it came out of a single study or not. Id. at 31-32.

While the AG is sympathetic to ComEd's desire to ensure with certainty exactly what every deemed NTG value will be by March 1 of each year, that is also what the AG, other Intervenors and Staff seek as well with their proposals. In Direct testimony, AG witness Mosenthal presented AG Exhibit 1.1, which shows the latest draft proposed NTG framework upon which SAG has been working to develop and reach consensus. AG Ex. 1.1. Mr. Mosenthal noted that this framework also achieves certainty by allowing for deemed NTG values to be established in a timely fashion each year. Staff witness Hinman also submitted a proposed NTG framework that is very similar to Mr. Mosenthal's with a few critical differences.

The intent of both AG Exhibit 1.1 and the Staff-proposed modified NTG framework is to provide the utility's certainty by March 1 through reaching consensus on a set of deemed values that would then be filed with the Commission by March 1. While there is still some uncertainty in the event complete consensus is not reached by March 1, the framework itself is designed to encourage consensus building, and there are clear default provisions for resolving non-consensus.

There are three primary differences between the AG NTG framework and Staff's proposed NTG framework. One amounts to a slight variation in the proposed schedule. Staff has proposed two schedule tracks—one for the residential sector and a separate but parallel schedule for the commercial and industrial sectors. This is because the evaluators have informed Staff that typically residential evaluations are completed about one month prior to the C&I evaluations. Staff's schedule allows slightly more time for the residential sector by acknowledging the timing of evaluations. The AG supports this minor change. What is important about the schedule is simply that the process be completed in time for program administrators to file the NTG values with the Commission by March 1 of each year. AG Ex. 1.0 at 34.

The second difference between the AG and Staff NTG proposals relates to the process to be used when consensus on a NTG value is not reached by March 1 in a year. In AG Exhibit 1.1, Mr. Mosenthal proposed that if consensus on an existing program NTG is not reached, then the past two prior and already available evaluation

NTG estimates would be averaged, and used prospectively for the following program year. AG Ex. 1.0 at 34. Staff has proposed a slightly different approach that provides the utilities with slightly less certainty. Specifically, Staff's proposal is that the last two years' evaluation NTG estimates be averaged. The distinction is that, at the time of filing with the ICC, the evaluations for the immediately prior program year are generally not yet available. As a result, Staff is proposing averaging one, known NTG estimate (PYt-1) with one, as-yet-unknown-NTG estimate (PYt). This provides less certainty to the utilities than my proposal, but allows use of more current evaluations that in general should better reflect the likely current and future performance of the program. The AG supports that approach. Id.

The Staff approach is a reasonable compromise that still significantly limits the risk to program administrators. That's the case because one of the two values that would be averaged is already known. Therefore, even if a future evaluation estimates a surprising NTG value, the impact on the program administrators is diluted because it is averaged with the one already known and certain. This is a reasonable compromise that significantly diminishes program administrators' risk and, importantly, likely results in a somewhat more current and better estimate of the actual NTG ratio that would result in the next program year. This methodology also serves to avoid perverse incentives that discourage parties to work together in good faith to achieve consensus. It is important to note that if parties achieve consensus, then all NTG values are certain, which is the intent of the new framework. Id. at 36.

The AG agrees with ComEd that one of the underlying disputes among parties that caused delays was disagreement about how to define whether a program or market has changed significantly. ComEd Ex. 2.0 at 64. This was necessary because the original NTG framework approved by the Commission called for retroactive application of NTG when programs or markets have changed. The new Staff and AG recommended modified frameworks, however, allow for deeming NTG values in all cases, and simply requires that EM&V consultants work jointly to recommend a single comprehensive set of best-estimate NTG values to use for each program, even when there is no historic Illinois evaluation to rely on or whether or not a program or market is undergoing significant change. This is a key difference in the competing approaches: the Staff/Intervenor approach incorporates many sources of data – not just a single Program Administrator's evaluator's report – for establishing NTG values that can be equitably applied statewide. Further, they establish a schedule that, if kept to, resolves concerns about not having certainty by March 1.

Finally, the Staff approach provides clear procedures if for some reason a utility fails to file the NTG values in the TRM docket in a timely fashion by March 1, so that even in this event all parties will have certainty on how to proceed and what NTG values to use, albeit delayed few months.

ComEd falsely claims that the Staff/AG proposal elevates the SAG to decision-maker, a role that ComEd says is inconsistent with its advisory function. ComEd IB at 69. That argument falls flat upon any kind of reflection, however. The SAG, under the Staff/AG proposals, would operate as it always has: as an advisory, collaborative body that has reached consensus on many matters, including the development of the Commission-approved TRM. That TRM, once created, was presented to the

Commission for its approval in Dockets 12-0528 and 13-0077. In this docket, the Staff-proposed modified NTG framework present a roadmap for consensus building and next steps when consensus cannot be achieved. The AG- and Staff-proposed frameworks in no way usurp Commission authority.

For all of the reasons stated above and in the AG Initial Brief, the Commission should adopt the Staff-proposed NTG framework, for ComEd (and other utility Program Administrators) with the voting limitations recommended by AG witness Mosenthal.

4. Staff

The Commission should adopt in its entirety the Modified Illinois NTG Framework set forth in Staff Exhibit 1.1 as it resolves certain shortcomings, as discussed below, of the previously adopted NTG Framework while still providing the utilities with the incentives to prudently manage their EE programs in a manner that serves the public interest. Staff proposes the following:

> In order to provide the proper incentives to encourage a Utility to make appropriate program changes to ensure against high free-ridership in the following program year (PYt+1), the basis of deeming a specific net-to-gross ratio ("NTGR") value shall be that it represents the best estimate of what the evaluated NTGR value would reasonably be expected to be in the following program year (PYt+1) taking into consideration the best information available about the measure, program design, incentive levels, market, energy codes, and any other factors that could influence the level of free-ridership and spillover in the following program year (PYt+1). The following eleven steps set forth the Modified Illinois Net-To-Gross Framework:

(1) Each Evaluator shall submit to the Utility, ICC Staff, Illinois Energy Efficiency Stakeholder Advisory Group ("SAG") Facilitator, and/or the SAG a memorandum documenting the NTGR values, showing both free-ridership and spillover components, that it proposes to deem for the following program year (PYt+1) (hereinafter, "Evaluator's Memo on Proposed NTGRs for PYt+1"). The basis of the Evaluator's proposed NTGR values shall be its best estimate of what the evaluated NTGR would reasonably be expected to be in the following program year (PYt+1) based on the best information available about factors that could influence the level of free-ridership and spillover in the following program year (PYt+1).

   a. Each Evaluator's Memo on Proposed NTGRs for PYt+1 shall include the following information:

      i. the scope of what each proposed NTGR value would be applicable to (e.g., specific measure technology, IL-TRM measure name and code, measure type, program element, program, fuel type savings);

      ii. the previously evaluated NTGR values (including draft evaluation results when final evaluation results are not available), showing both free-ridership and spillover components, along with NTGR methodology type, sample size, references, and other relevant information;

      iii. the Evaluator's proposed NTGR values showing both free-ridership and spillover components; or if retroactive application is preferred for the free-ridership and/or spillover components, then the proposed evaluation approach for estimating the NTGR component for PYt+1;

iv. the rationale for why the proposed NTGR value is the best estimate of what the evaluated NTGR would reasonably be expected to be in the following program year (PYt+1) after taking into consideration the best information available to the Evaluator from primary or secondary evaluation research about the measure, program design, incentive levels, market, energy codes, and any other factors that could influence the level of free-ridership and spillover in the following program year (PYt+1);

v. if evaluations from other jurisdictions are relied upon, relevance to the Illinois energy efficiency program in question shall be demonstrated and the NTGR methodology type, sample size, references, and other relevant information shall be provided;

vi. a table identifying the NTGR values proposed for deeming for PYt+1.

(2) Utilities host a teleconference meeting for SAG participants to discuss Evaluator's Memo on Proposed NTGRs for PYt+1 (allows for questions from all parties, clarifications, discussion of rationale, raise concerns, etc.).

(3) All non-evaluator parties (jointly or individually) can submit Party's Memo on Proposed NTGRs for PYt+1 – Response to Evaluator.

(4) Utilities host a teleconference meeting for SAG participants to discuss NTGR values and Party's Memo(s) on Proposed NTGRs for PYt+1 – Response to Evaluator and attempt to reach consensus. Evaluators distribute detailed meeting notes no later than three days after the meeting.

(5) Evaluator's Revised Memo on Proposed NTGRs for PYt+1 incorporating consensus items and their proposed resolution for any non-consensus items.

(6) All non-evaluator parties (jointly or individually) may submit Party's NTGR Objection Memo clarifying any remaining non-consensus positions, if any. A Party's NTGR Objection Memo shall be submitted to the Utility, SAG Facilitator, ICC Staff, and/or the SAG that documents any objections to the proposed NTGR values contained in the Evaluator's Revised Memo on Proposed NTGRs for PYt+1. Failure of a party to submit a Party's NTGR Objection Memo by the deadline specified shall be construed as concurrence with deeming the NTGR values proposed in the Evaluator's Revised Memo on Proposed NTGRs for PYt+1. If no Party's NTGR Objection Memo is submitted on a particular proposed NTGR value by the deadline specified, then the Evaluator's proposed NTGR value contained in the Evaluator's Revised Memo on Proposed NTGRs for PYt+1 is considered to be "consensus" and shall be effectively deemed for the next program year (PYt+1).

(7) Utilities host a teleconference meeting(s) for SAG participants to discuss the Evaluator's Revised Memo on Proposed NTGRs for PYt+1 and any Party's NTGR Objection Memo(s), and attempt to reach consensus. Evaluators distribute detailed meeting notes no later than three days after the meeting(s).

(8) In cases where consensus is not reached on an individual NTGR value by February 20 (i.e., a Party's NTGR Objection Memo is received regarding an individual NTGR value and is not resolved by February 20), the non-consensus individual NTGR value for the applicable program year (PYt+1) shall be deemed at the average of the evaluated NTGR values from PYt and PYt-1. In the event there is non-consensus on an individual NTGR value and there are no Illinois evaluations available, an explanation of the non-consensus issue may be filed with the Commission with a request for resolution prior to June 1.

(9) Evaluator's Memo on Deemed NTGRs for PYt+1 should reflect the final consensus NTGR values and non-consensus deemed NTGR formulas with NTGR values where available that are applicable to PYt+1.

(10) Utilities shall file in the initial TRM approval docket 12-0528 a list of the consensus NTGR values and non-consensus deemed NTGR formulas with NTGR values where available that are applicable to PYt+1 and supporting work papers (i.e., Evaluator's Memo on Proposed NTGRs for PYt+1, Party's Memo(s) on Proposed NTGRs for PYt+1 – Response to Evaluator, Evaluator's Revised Memo on Proposed NTGRs for PYt+1, Evaluator's Memo on Deemed NTGRs for PYt+1). Supporting work papers help ensure compliance with the NTG Framework process. In the event that consensus is not reached on a new program NTGR value, then the respective Utility may file a petition requesting the Commission establish a deemed NTGR value. The filing will articulate the Evaluator's and the Utility's positions and rationale for deeming specific NTGR values. Failure of a Utility to file consensus and non-consensus deemed NTGR values with supporting work papers by March 5 (PYt) results in retroactive application of NTGR values for that upcoming program year (PYt+1).

(11) While deemed NTGR values are not subject to retroactive adjustments based on new evaluation findings, the evaluation reports will show both deemed savings (based on deemed NTGRs for purposes of crediting Utility savings) as well the actual estimated NTGR value and net savings for that program year. While the deemed values will be the official claimed savings, and filed by each Utility in its respective compliance with energy savings goal docket, the information will provide straightforward and transparent data on the Evaluators' best estimates of net savings, as well as a comparison of how close the deemed NTGR values are to the final evaluation results.

Staff Ex. 1.1.

Staff notes that the NTG Framework approved by the Commission in 2010 largely allowed for prospective determination of NTGR values. Staff Ex. 1.0, 32. Some of the areas where the framework set forth retrospective application of NTGR values involved new EE programs, those lacking previously evaluated NTGR values, or when the EE program experienced "significant changes" in program design or delivery or market conditions. Staff Ex. 2.0, 14. This framework proved to be problematic because the meaning of "significant change" was sufficiently vague that no agreement of its meaning could be reached. In other words, the Plan 2 NTG Framework was difficult to manage because it was unclear what constitutes a "significant change" in order to trigger retroactive NTGR application. Staff Ex. 2.0, 15.

ComEd's NTG proposal in this proceeding fails to resolve the problem of "significant changes" and instead chooses to simply ignore it. Staff Ex. 2.0, 17. Staff's NTG proposal resolves the problem of "significant changes" by requiring that the basis of deeming a specific NTGR value shall be that it represents the best estimate of what the evaluated NTGR value would reasonably be expected to be taking into consideration the best information available about changes to the measure, program design, incentive levels, market, energy codes, and any other factors that could influence the level of free-ridership and spillover. Staff Ex. 1.1, 1; Staff Ex. 2.0, 17.

NRDC recommends introducing retroactive NTGR application to ComEd's proposal in the event of significant program design changes since NTGRs are influenced by program design. NRDC Ex. 1.0, 23-25. Staff's proposal allows for deeming a best estimate of a likely NTGR value going forward which takes into consideration NRDC's concerns and adjusts for changes to program design, whereas ComEd's proposal simply always uses at least a two year old evaluation of a different program design or market. Additionally, the ComEd approach relies on planning NTGR values for new EE programs which may have little justification. Staff Ex. 2.0, 7. Staff's proposal includes a provision that would provide more certainty to the utilities than a fully retroactive NTGR application like under the Plan 2 NTG Framework, while acknowledging that new EE programs and EE programs undergoing major changes are inherently risky to both the utilities and the ratepayers who are paying for the EE programs. Staff Ex. 2.0, 18. Staff's proposal removes the ambiguous phrase "significant changes" and instead of a "significant change" triggering a retroactive NTGR application, there will be a potentially partially retroactive NTGR application at times when the parties cannot reach consensus on the best estimate of the NTGR value to deem for the applicable program year. Id.

It is important for the deemed NTGR to represent the best estimate of the likely NTGR for the applicable program year in which it is deemed in order to provide ComEd with the proper incentives to manage its EE programs in a prudent manner which serves the public interest. Staff's proposal accomplishes this objective.

Under Staff's proposal, in times when a consensus cannot be reached, the NTGR applied and deemed for a specific program year (PYt) would be the average of the evaluated NTGRs conducted in the previous two program years (PYt-1 and PYt-2). Staff Ex. 2.0, 19. For example, if parties cannot reach a consensus on a NTGR value for the upcoming PY7 that begins on June 1, 2014, then the average of the evaluated NTGR values from the PY5 and PY6 evaluation research findings would be applied. Id. Staff's proposal provides more certainty to the utilities than the current approach of a fully retroactive NTGR application for EE programs undergoing "significant changes" because the evaluated NTGR value from at least one of the two program years that will be averaged will be known at the time that planning for the applicable program year takes place. Staff Ex. 2.0, 18.

Staff's process for resolving non-consensus NTGRs is preferable because it will likely result in better estimates of actual future NTGRs because the most recent evaluations will be incorporated and thus best reflect the current status of the program and market. AG Ex. 1.0C, 35. Since evaluation reports are not completed until about November of the following program year, there is a two-year lag between the time the NTGR values go into effect for prospective application under ComEd's proposal. Staff Ex. 2.0, 15. That is, the PY1 evaluations were not complete until midway through PY2 and would not apply for prospective application until PY3. Id. As a result, prospective application estimates savings based on conditions that are about two program years old at the time the NTGR values are being applied. Id. When the market is stable, this may be a reasonable approach. Staff Ex. 2.0, 16. When the market or program is changing, a NTGR value that is two program years out of date by the time it is applied is problematic because it requires utility ratepayers to bear all of the risks in times of uncertain market conditions. Id.

The AG claims that ComEd's proposal should be rejected because it automatically uses a NTGR value that is at least two program years old. This approach is too restrictive and may not result in the best estimates of future NTGR values. (AG Ex. 1.0C, 30.) Staff agrees that it is important for the deemed NTGR to represent the best estimate of the likely future NTGR for the program year in which it is deemed in order to provide ComEd with the proper incentives to manage its programs in a manner which serves the public interest.

ComEd argues that because there is not 100% consensus regarding every aspect associated with the NTG framework policy proposals in this docket, that this non-consensus policy issue implies/foreshadows that it will be unlikely for the parties to reach consensus on the actual NTGR values to deem. ComEd Ex. 3.0, 3, 5-6. ComEd's assertion in this regard should be rejected as it is inconsistent with ComEd's actual experience with deeming consensus values. For example, despite non-consensus regarding the IL-TRM policy in Docket 13-0077, the actual IL-TRM itself (ComEd Ex. 1.0 Appendix C), which consists of literally five to six hundred pages of deemed algorithms and values for specific EE measure savings, has been the subject of consensus by all interested parties. As evidenced by the consensus nature of both the initial and updated versions of the IL-TRM the Commission adopted in Dockets 12-0528 and 13-0437, disagreement among parties regarding a specific policy (Docket 13-0077) in a docket, provides no indication the parties will not reach consensus regarding the actual values to deem once that policy has been adopted and is implemented. The Commission should reject ComEd's simplistic argument that there will be non-consensus NTGRs values simply because there is non-consensus regarding the NTG policy in this proceeding.

If the Commission adopts Staff's recommendation to require consistent statewide NTG Methods, which is analogous to the Commission's policy requiring consistent gross savings methods set forth in the Commission-approved IL-TRM, then the Commission will have an opportunity to explicitly approve the net savings methodologies (i.e., IL-NTG Methods) used by the Evaluator. Thus, under Staff's NTG proposal, in the case of non-consensus, the methods upon which the deemed NTGRs (average of evaluated NTGRs) would be established would be based on such Commission-approved methodology that was previously vetted by all stakeholders instead of some “new” methodology that has no foundation and is subject to significant controversy which could result under ComEd’s proposal. AG Cross Ex. 3.

ComEd’s proposal would result in excessive pressure on the Evaluators and create perverse incentives in terms of evaluation planning. AG Ex. 1.0C, 31. Staff’s approach serves to avoid perverse incentives that discourage parties to work together in good faith to achieve consensus. AG Ex. 1.0C, 36; Staff Ex. 1.0, 37. If parties achieve consensus, then all NTGR values are certain. Under ComEd’s proposal, the deemed NTGR value for the current program year (PYt) would always be the evaluated NTGR from at least two program years ago (PYt-2). Under ComEd’s proposal, if no new NTG study is performed, then ComEd knows with certainty that the existing NTGR value would remain deemed for use in future program years. Therefore, if ComEd perceives that the last evaluated NTGR value was higher than it expects it to be in the next program year, it will have a strong incentive to avoid performing any future NTG studies for that program. Id. ComEd’s Retro-Commissioning Program provides a perfect example of this situation. Staff Ex. 1.0, 23. Further, there are no contractual provisions that require the Evaluator to take into consideration SAG recommendations when formulating the evaluation work plan to prevent such perverse result. Because ComEd’s proposal only allows for modifications based on ComEd evaluated NTGRs that are at least two program years old, these perverse incentives created under ComEd’s proposal are problematic and do not serve the public interest and should be rejected accordingly.

ComEd’s proposal should be rejected because it effectively eliminates interested parties’ rights to be heard. Under ComEd’s proposed NTG framework in this proceeding, the Evaluator is the decision-maker rather than the Commission, and the Evaluator has no obligation to incorporate otherwise consensus positions in its NTG determination based on input from interested parties. ComEd Ex. 1.0, 109-110. This proposal is contrary to the Commission’s previous two Plan Orders for ComEd which provided for input from all interested parties in determining the NTGR that would be used to assess compliance with the utility’s savings goals. It is also contrary to the policies adopted by the Commission in Docket 13-0077 which provide for modifications in the case of consensus. Staff Ex. 3.2, 8-11. Under Staff's proposal, any interested party can provide input, and only in the case of consensus is that NTG value deemed. In the case of non-consensus, two evaluated NTGRs are averaged, and if the Commission adopts Staff’s other proposal requiring consistent statewide IL-NTG Methods be established and adopted by the Commission as discussed herein, then the two evaluated NTGRs that are averaged would be derived from the Commission-adopted NTG method that was vetted by all interested parties.

The independent Evaluators have expertise about all aspects of NTGR values and familiarity with ComEd’s programs, thus having initial NTGR recommendations come from the independent Evaluators is efficient and appropriate as outlined in Staff’s Modified NTG Framework. Staff Ex. 1.1, 1. In order to help ensure the independence of the Evaluators is not being compromised by pressure from the utility, who desires to have high NTGR values and holds the contract with the Evaluators, it is necessary to take the decision concerning the final deemed NTGR values away from the Evaluators. Staff’s proposal provides for an opportunity for all interested parties to provide input, consistent with the NTG frameworks adopted during Plan 1 and Plan 2. Under Staff's Modified NTG Framework, there is value in the Evaluators estimating NTGR values using Commission-adopted methods because these estimated NTGR values can help inform future deemed NTGR values. It also provides parties with information concerning the impact of the EE program and can further help inform program design modifications. The Commission should adopt the Modified Illinois Net-To-Gross Framework (Staff Ex. 1.1) in its entirety as recommended by Staff and set forth below.

ComEd incorrectly argues that adoption of Staff's Modified Illinois NTG Framework proposal constitutes a prohibited delegation of Commission authority. Staff's NTG framework proposal, however, is clearly not a delegation of Commission authority to the SAG. Contrary to ComEd's allegations, Staff's proposal does not require the SAG to do anything, although interested SAG participants have the opportunity to participate if they so desire. This was one of the key features of Staff's NTG framework that would help ensure the framework process would actually work. Step (3) of Staff's framework states, "All non-evaluator parties (jointly or individually) can submit…" (Staff IB, 33 (emphasis added).) Step (6) states, "All non-evaluator parties (jointly or individually) may submit…" (Staff IB, 34.) All other steps listed in Staff's framework relate to ComEd or Evaluator responsibilities and they are not burdensome; the steps in Staff's NTG Framework proposal simply reflect the reality of what information, time commitments, and deadlines are needed based upon Staff's experience with the Plan 2 NTG Framework and evaluation report review cycles. Staff emphasizes that numerous comments and meetings already occur between ComEd and the Evaluator concerning evaluation and NTG-related issues, far more than those proposed in Staff's NTG Framework. ComEd Ex. 1.0, 111. The 11 steps in Staff's NTG Framework proposal simply result in greater transparency in the evaluation deliberations compared to what Staff currently believes exists. It is reasonable for the Commission to adopt Staff's Modified Illinois NTG Framework in the Section 8-103 and 8-104 EE Plan filing dockets.

ComEd argues that Staff and the AG seek to "elevate" the role of the SAG to decision-maker rather than advisor and the Commission has expressly prohibited such in prior Orders. What ComEd fails to mention is that its proposal to elevate the Evaluator's role to decision-maker rather than independent consultant has been expressly prohibited in prior Orders. Order Docket 07-0540 at 27 (Feb. 6, 2008) ("The Commission reviews of ComEd's plan to determine compliance with the energy efficiency goals is separate and apart from the independent evaluation required by Section 103(f)(7) of the statute.").

Staff has concerns that the AG's proposal constitutes a drastic shift in the SAG structure. When the Commission ordered the SAG's creation in Docket 07-0540, the Commission explicitly provided that the group include representation from a "variety of interests." Plan 1 Order at 24. The SAG is a voluntary group consisting of over thirty organizations, with new organizations requesting to participate in the SAG throughout the Plan. Staff Ex. 3.0, 10. The AG's proposal to create a voting structure that is limited to a small portion of SAG participants is contrary to the inclusiveness that the SAG has provided to date. Id. at 10-11. Indeed, this openness to all interested parties could likely be a reason why the participation in the SAG continues to grow. Id. at 11. Adoption of the AG's "voting structure" for NTG updates may serve to offend many SAG participants and discourage future participation by organizations. Id. The Commission should reject the proposal to significantly shift the structure of the SAG process to make certain SAG participants more equal than others.

The AG expresses concerns about allowing any SAG participant the right to refuse to agree to a NTG consensus position regardless of whether that party has any particular knowledge or expertise on the issue, yet the AG's creation of voting parties makes no assurances that such voting parties have any particular knowledge or expertise on the NTG issues for which they would be voting on. Id.

Without designating specific voting parties, it will be possible to determine whether consensus has been reached regarding updated NTGR values. Id. Indeed, this approach is consistent with the existing Commission-approved process for annually updating the IL-TRM. (Staff Ex. 3.2, 6, 8.) The Commission-adopted IL-TRM Policy Document states: "Through the annual TRM Update Process, SAG participants shall make good faith efforts to reach consensus on all TRM Updates. Once consensus develops at the SAG level, the TRM Administrator will include the changes in the Updated TRM that is submitted to the Commission for approval." (Staff Ex. 3.2, 8 (emphasis added).) The SAG is currently able to develop and reach consensus on IL-TRM Updates without modifying the SAG structure and without identifying specific voting parties, as evidenced by the Commission's approval of the IL-TRM Version 2.0, which was developed by consensus process. The Commission specifically found that the IL-TRM Version 2.0 "was arrived at using the Commission-mandated process, it is a consensus document, and it is consistent with the Commission's Orders and the TRM Policy Document adopted by the Commission." Order, Docket 13-0437 at 4 (Nov. 6, 2013) (footnote omitted). Staff's Modified Illinois NTG Framework includes a process where any interested party must dissent in writing by a specific date to indicate there are non-consensus updated NTGR values. Staff Ex. 3.1. Further, the independent Evaluators are tasked with providing meeting notes after the NTG update meetings which can clearly document consensus and non-consensus NTGR values, which is somewhat comparable to the role the TRM Administrator takes in the TRM Update Process.

For the foregoing reasons, the Commission should reject the AG's proposal to add a definition for "voting parties" to Staff's Modified Illinois NTG Framework.

The AG requests that the Commission direct ComEd to work with the SAG on "[i]mproving the evaluation, measurement and verification (EM&V) process so that [the Evaluators'] reports are produced in a timely fashion to inform [the Illinois Statewide Technical Reference Manual ("IL-TRM" or "TRM")] and NTG updates[.]" (AG Ex. 1.0C, 44.) Staff agrees with this concept, and in fact Staff has been working to encourage the Evaluators to deliver EM&V reports concerning IL-TRM and NTG updates in a more timely fashion. (Staff Ex. 3.0, 25.) Accordingly, rather than the Commission directing ComEd to work with the SAG concerning this evaluation timing issue as requested by the AG, the Commission should resolve the matter in this docket and adopt the workable timelines suggested by the Evaluators for IL-TRM and NTG updates such that ComEd can have those incorporated into its evaluation contracts after approval of the Plan. Staff Ex. 3.0, 26; Staff Ex. 1.2, 1.

One of the apparent drivers of the date the NTG results are produced is the date the Evaluators finally receive the final EE program tracking system information from the utilities after the program year has ended. Staff Ex. 3.0, 26; Staff Ex. 3.1, 1-2. Since the finalization of the tracking system for the non-residential programs apparently takes longer than for residential programs, producing the NTG results for the non-residential programs also takes longer, namely December 1 for non-residential programs and November 1 for residential programs. This is why Staff believes a two-track approach for the NTG updates is appropriate. Staff Ex. 1.0, 34; Staff Ex. 3.0, 26; Staff Ex. 3.1, 1-2. Indeed, the AG supports such an approach. AG Ex. 1.0C, 34. Because final tracking system information is not needed for updating the IL-TRM, the Evaluators suggest that the annual IL-TRM Update Process can begin much earlier (i.e., July 1, with much of the work due from the Evaluators on August 1 and October 1) than the process for updating NTG ratios (November 1 for residential NTG ratios and December 1 for non-residential NTG ratios). Staff Ex. 1.2, 1.

Importantly, all of the utilities' Evaluators have worked together and recently produced a single set of suggested timelines that could work well in updating the deemed values for both the IL-TRM and NTG ratios on an annual basis for Illinois. Staff Ex. 1.2, 1. DCEO's Evaluator has also agreed to these timelines. Staff Group Cross Ex. 2, 3, Docket 13-0499. Thus, for the sake of resolving the issue raised by the AG in this docket which would free up limited SAG resources for addressing unresolved matters that actually require SAG's attention, the Commission should adopt the Evaluators' suggested EM&V schedules for IL-TRM and NTG updates as set forth in Staff Exhibit 1.2.

The Commission should direct ComEd to work with the SAG to reach consensus on specific NTGR values to deem for program year 7 and include such NTGR values for program year 7 in the remodeling of ComEd's portfolio for its Revised Plan that it should file as a compliance filing in this docket.

Given the timeframe in Staff's Modified NTG Framework proposal has passed for the first program year of Plan 3, the Commission should direct ComEd to work with the SAG to reach consensus on specific NTGR values to deem for program year 7 and include such NTGR values for program year 7 in the remodeling of ComEd's portfolio for its Revised Plan that it should file as a compliance filing in this docket. The PY7 NTG discussion should initiate with a memorandum from ComEd's Evaluator containing its initial recommendations for deeming NTGR values for PY7; this approach is consistent with the first step in Staff's Modified Illinois NTG Framework. Staff Ex. 3.0, 21-22.

5. Commission Analysis and Conclusion

The Commission finds that the AG and Staff proposals elevate SAG's role and ComEd's proposal inappropriately constrains SAG. The Commission finds that the current NTG framework works well with some minor adjustments. Intervenors' points are well taken that SAG should have a role in determining NTG values. Thus, if consensus can be reached then SAG's decision should be adopted - even if it is different than the evaluator's original proposal. If consensus is not reached, the Commission agrees with ComEd that then the evaluator's NTG should be used.

In other words, for the most part, ComEd's proposal is adopted because it is not markedly different from the Plan 2 NTG framework and is an improvement because of the addition of dates. The difference that the Commission is ordering from ComEd's NTG framework is that SAG will review the evaluator's proposed NTG values and if consensus is reached, the SAG value will be used prospectively beginning June 1. Otherwise the evaluator's NTG value as of March 1 will be used going forward beginning June 1. This approach is consistent with SAG's consensus building role, but eliminates the steps in Staff's process that add complexity and might even result in Commission rocket dockets. For PY7 SAG should begin immediately to attempt to reach consensus for NTG values.

The Commission review at the end of Plan 3 to determine compliance with the energy efficiency goals is separate and apart from the independent evaluation required by Section 103(f)(7) of the statute. The Commission hopes that allowing for SAG consensus will result in significantly less litigation.

C. Realization Rate Framework

1. ComEd

ComEd proposes a framework similar to the NTG framework under which the realization rate would only apply prospectively. ComEd Ex. 3.0 at 73. As an initial matter, ComEd explains that a realization rate is the ratio of measured savings to projected savings. Id. Under ComEd's proposed framework, the newly calculated realization rates would not apply until the start of the next Plan year. Similar to the NTG framework, ComEd proposes the following:

> For existing programs, when a ComEd evaluation of a program has identified an estimated realization rate, that rate will be used prospectively until a new ComEd evaluation estimates a new realization rate. The prevailing realization rate provided by the EM&V contractor by March 1 of any Plan year is the realization rate to be applied to the next Plan year beginning June 1.
>
> For new programs, planning realization rates that have been provided by the EM&V contractors by March 1 of any Plan year, will be applied prospectively to the next Plan year beginning June 1. These rates will be used until a ComEd evaluation estimates a revised realization rate. If the revised realization rate is provided by the EM&V contractor by March 1, then the rate will be applied to the next Plan year beginning June 1. Thereafter, realization rates shall be revised according to the framework for existing program described above.

ComEd Ex. 2.0 at 65.

ComEd explains that its proposal is a continuation of the same RR framework approved by the Commission for Plan 2, which would again allow ComEd to prospectively apply a RR. ComEd Ex. 3.0 at 73; Plan 2 Order at 47-49. And, like Plan

2, the deemed RR only applies to those variables outside of ComEd's control. ComEd Ex. 3.0 at 73; Plan 2 Order at 47-49. ComEd confirms that it will continue to be accountable for all variables within its control. ComEd Ex. 3.0 at 73; Plan 2 Order at 47-49.

ComEd states that only Staff objects to the proposed RR framework, which is based on the mistaken belief that the Technical Reference Manual obviates the need for the RR framework approved in Docket 10-0570. Staff Ex. 1.0 at 40. Staff also claims that ComEd should be held accountable for errors within its control, and apparently ignores that any errors within ComEd's control are not included within the deeming proposal. According to ComEd, what Staff fails to recognize, is that the TRM, while a fairly comprehensive document, is not all-encompassing with respect to energy efficiency measures. ComEd Ex. 3.0 at 74. A number of measures offered in ComEd's residential and business programs are not currently addressed in the TRM. Id. For example, the current version of the TRM ("Version 2.0"), which was approved by the Commission on November 6, 2013 in Docket 13-0437, does not include an A-line LED replacement lamp as a residential measure. Id. ComEd points out that this measure is part of ComEd's Plan 3, however, and ComEd is forecasting 250,000 of these bulbs to be incented in the Residential Lighting program in PY7, increasing to 2 million bulbs in PY9. Id. While ComEd believes that this measure may be incorporated into the TRM in time for the next three-year plan, there is no assurance that this will be the case. Id. Accordingly, ComEd notes that the proposed RR framework is an appropriate back-stop for those measures.

Related to the RR framework, the AG also proposes that "realization rates going forward should be presumed for planning purposes to be 1.0" (AG Ex. 1.0C at 38), and then recommends that "the Commission should direct ComEd to recalculate its modified goals to reflect 1.0 realization rates for all programs" (id. at 40). ComEd urges the Commission to reject this proposal because it would artificially inflate ComEd's proposed modified goals. ComEd Ex. 3.0 at 75. As ComEd demonstrated in its Data Request Response to NRDC 2.16, ComEd's historic realization rates vary greatly by program, and it therefore makes the most sense to model a program based on the data we have available for a realization rate. Id. Indeed, ComEd has used this approach for Plan 1 and Plan 2 without issue. Mr. Mosenthal's proposal should be rejected, and, if anything, discussed further in the SAG. Id.

2. AG

ComEd proposes that realization rates should be deemed at values different than 1.0. The AG's position is that realization rates should be presumed to be 1.0. ComEd, however, argues that it provided historical rates as support for its proposal and that removing these would artificially inflate its goals. AG witness Mosenthal defines realization rates as the ratio of the evaluator-estimated savings to the utility-estimated savings. In simplest terms, it reflects the variance between what the utility initially claims to be savings and what the evaluators ultimately verify to be the final evaluated impacts. While plans and forecasts can be inaccurate, the realization rate reflects nothing more than an adjustment based on any inappropriate or incorrect counting of savings. Conceivably, gross savings variances could come from a number of factors over which ComEd has control, including utility errors in its database, failure to accurately apply the agreed upon TRM values, or other factors that are generally in control of the utilities and/or their contractors. AG Ex. 1.0C at 38-39. In other words, according to AG witness Mosenthal, from a planning perspective, one should assume the savings being tracked in the database are correct based on the established TRM rules and actual program activity and not allow a variance that would provide a "cushion" to ComEd to allow for error. According to the AG, realization rates going forward, for planning purposes, should be presumed to be 1.0. AG Ex. 1.0C at 40.

ComEd's primary complaint is that the AG's position would "artificially inflate" ComEd's proposed modified goals. The AG states that the converse of ComEd's statement could also be true – that the presence of its current realization rates less than 1.0 present an artificial deflation – or, rather, a cushion that ComEd is seeking to include to allow for error. The Commission should not allow ComEd this added cushion because it is part of an evaluator's job to determine if the savings were counted properly. AG Ex. 1.0 at 39. Because variances between tracked savings and final evaluation numbers can reflect adjustments for things within the utility's control, such as the errors or inappropriate application of the TRM, the utility should be held accountable for these realization rate adjustments.

ComEd also points to the historic realization rates it provided in response to NRDC 2.16, Attachment 1. ComEd IB at 84; see NRDC Ex. 1.0 at 27-28. First, these historical realization rates were taken from a time prior to adoption of the TRM. Now that the TRM exists, all parties and the Commission are in agreement that the TRM will dictate appropriate gross savings claims for all measures included within it. AG Ex. 2.0C at 18. Prior to the TRM, more variance could have been anticipated. This is no longer the case. While it is conceivable that some items may not be covered by the TRM, these items would be within the discretion of ComEd and its contractors to make a reasonable assumption. Clearly, ComEd has control over assumptions that ComEd has made. These factors outside the TRM would then, by definition, be under the control of the utility and outside of this discussion.

Effectively, by seeking to avoid accountability for factors within its control, ComEd is seeking to avoid bearing any of the risk associated with energy savings performance. According to Mr. Mosenthal, this is not only poor public policy but it also appears to contravene the legislature's intent in establishing Section 8-103 of the Act. Indeed, Section 8-103 explicitly established performance targets and assigns penalties to utilities for failing to meet these energy savings performance targets. 220 ILCS 5/8-103. To remove all risk from the utility would render null the inclusion of these penalties and run counter to the plain meaning of the statute. See *Kennedy v. Community Unit School District*, 23 Ill.App.3d 382, 384, 319 N.E.2d 243, 246 (1974) (statutes are to be construed to give full effect to each word, clause, and sentence, so that no word, clause, or sentence is surplusage or void). The AG states that it is important to remember that the utilities are using ratepayer money to implement programs for ratepayers. The utilities must remain accountable to ensure that they perform this statutory duty on behalf of ratepayers – not shareholders – in a prudent way, and in a way that maximizes energy savings while providing net benefits to the ratepayers.

Finally, the majority of the historic realization rates relied upon by ComEd are less than 1.0. To the extent that ComEd's assumed realization rates for planning purposes are similar, Mr. Mosenthal anticipates that the removal of these rates would raise ComEd's proposed goals. However, given the uncertainty that these could even exist, as discussed in greater detail in the AG's Initial Brief, it is important that the Commission prohibit ComEd from adjusting goals downward as they have based on planned realization rates that are different (and generally lower) than 1.0. See AG Ex. 2.0 at 17. The AG also notes that it is important that the utilities be held to an overall goal and are incented to make appropriate annual adjustments to ensure prudent programs. ComEd proposed a highly diverse portfolio that includes numerous programs and hundreds of measures and there is plenty of opportunity for ComEd to make appropriate adjustments and accommodate any annual changes to the TRM.

Essentially, the AG urges the Commission to recognize that providing ComEd with its requested "cushion for error" clearly does not work in the best interests of ratepayers. In light of the arguments presented here and in the AG's Initial Brief, the AG urges the Commission to enter an order directing ComEd to re-file its Plan, pursuant to Section 8-103(f) to revise its savings goals consistent with this recommendation.

3. ELPC

ComEd additionally proposes the creation of a realization rate framework that would apply prospectively to its programs, similar to the NTG framework and consistent with the newly developed SAT net-to-gross framework. Mr. Crandall defines a realization rate as "a comparison of observed, measured, or evaluated information to original estimated savings." Id. The realization rate is the ratio of measured energy reduction to the claimed energy reduction. Typically, program evaluators use realization rates to adjust Gross Savings to Adjusted Gross Savings. Id. ELPC recommends that the Commission conditionally approve the proposed realization rate framework, subject to a review and favorable recommendation by the SAG. As Mr. Crandall explains, this would allow SAG to review and examine the implications of the realization framework on the TRM and NTG framework.

4. Staff

The Commission should deny ComEd's request to deem realization rates because ComEd does not face unmanageable risk and adoption of ComEd's proposed Realization Rate Framework would circumvent Commission policy established for all Section 8-103 and 8-104 EE program administrators. Staff Ex. 1.0, 38-42; Staff Ex. 3.0, 21-23.)

Per the Commission-adopted IL-TRM Policy Document (Staff Ex. 3.2) in Docket 13-0077, as part of performing savings verification, the Evaluators apply and report realization rates in the evaluation reports for all utilities. Staff Ex. 3.2 (IL-TRM Policy Document), 11-12. The IL-TRM Policy Document specifies that these savings verification values shall be used to assess utility compliance with the statutory savings goals. Staff Ex. 1.0, 40-42; Staff Ex. 3.2, 11. The IL-TRM Policy Document explicitly provides that measures not covered by the IL-TRM shall be subject to retroactive evaluation adjustments. Staff Ex. 3.2, 11-12. ComEd should not be authorized to deem realization rates for measures not in the IL-TRM and custom measures for which the policy for all program administrators in the State of Illinois is to have retroactive adjustments to savings based on evaluation findings. Staff Ex. 1.0, 41. Indeed, the

Commission explicitly excluded the deeming of realization rates associated with custom engineering calculations in ComEd's last Plan filing. Plan 2 Order at 48-49. There is no compelling reason ComEd should not be held accountable for utility errors in its database, failure to accurately apply the Commission-adopted IL-TRM values, and other adjustments associated with performing savings verification. Staff Ex. 1.0, 42.

The Commission should reject ComEd's flawed argument that since the IL-TRM does not contain certain EE measures that ComEd plans to implement during Plan 3, such as an A-line LED replacement lamp measure, this is sufficient reason to deem realization rates. ComEd Ex. 3.0, 74. ComEd's reasoning contradicts Commission policy adopted for all program administrators in Illinois. The IL-TRM Policy Document clearly states that the utilities "are subject to retrospective evaluation risk (retroactive adjustments to savings based on evaluation findings) for any measures not included in the TRM, including custom measures, [and] prescriptive measures not yet incorporated into the TRM[.]" Staff Ex. 3.2, 11. Further, the IL-TRM Policy Document requires that the utilities "must submit these [new] measures [included in the utilities' Plan filings] to the TRM Update Process for possible inclusion in future TRM Updates as soon as practicable." Staff Ex. 3.2, 11. The Commission-adopted Policy Document also states that "[c]onsistent with Commission policy, the Program Administrators have the flexibility to add or retire measures from their programs unilaterally as markets, technology and evaluation results change. Therefore, Program Administrators are free to implement prescriptive measures that are not included in the TRM as long as such measures are submitted to the TRM Update Process as soon as practicable." Staff Ex. 3.2, 9. When prioritizing which measures will be included in the IL-TRM Update, the applicable principle is that the larger the forecasted participation and savings estimates for the new measure in the utilities' portfolio, the greater the chance the measure will be included in the Updated IL-TRM. In other words, high impact measures receive the most attention during the IL-TRM Update Process. ComEd Ex. 1.0 App. C, 25-26. Thus, under this principle, measures representing a relatively small percentage of the utilities' portfolio savings may not be incorporated into the Updated IL-TRM. There is little risk to the utility regarding retroactive adjustments to savings for measures representing a relatively small percentage of the utility's portfolio. Plus, the Company would have flexibility to size the new measure to limit its exposure to any perceived risk. Clearly, the Company does not face unmanageable realization rate risk for measures not yet incorporated in the IL-TRM considering the small participation estimates and associated savings for the measures relative to the entire portfolio. It should be noted that ComEd was able to effectively manage risk without any deeming of realization rates during Plan 1 and still able to far exceed its portion of the statutory savings goals. Now ComEd is asking for the relief of minimal risk associated with a likely small amount of savings for measures ComEd has not vetted through the established stakeholder process. Staff believes the Company is finding problems where none exist.

Staff further explains that the IL-TRM Policy Document provides a framework for mid-year review of new measure savings at the request of the utility. In the event participation of a measure not included in the IL-TRM greatly exceeds expectations, there is a Commission-adopted framework in place whereby ComEd can submit the measure characterization and savings and supporting work papers to the TAC in an effort to obtain a degree of certainty on the savings estimates from stakeholders. Staff believes if the Company provides the required documentation set forth in the quote above and the measure savings are reasonable and based on legitimate evaluations, then the measure could easily be incorporated into the Updated IL-TRM. The reason outstanding measure requests exist is because the proposing party of a new measure or measure change does not provide the necessary work papers and measure characterization to enable the measure to be easily incorporated into the IL-TRM.

Finally, ComEd can mitigate any perceived risk by assuming conservative realization rates of less than one in its internal tracking system estimates of program savings achieved during the program year. Staff Ex. 1.0, 42. There is nothing prohibiting ComEd from using this internal risk management strategy. Indeed, ComEd used this risk management strategy during Plan 1, and oddly ComEd uses this increased savings and spending that results from such strategy as a justification for approving the Realization Rate Framework. Staff Ex. 1.0, 42; ComEd Ex. 1.0, 110. The Commission has previously stated that “[a]s 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.” Order on Rehearing, Docket 13-0077 at 18 (Oct. 2, 2013). ComEd’s request to deem realization rates is inconsistent with the Commission’s directive quoted here as it can reduce savings and should be rejected accordingly.

ComEd argues that it is only requesting the deeming of realization rates with respect to factors that are “outside ComEd’s control.” ComEd IB, 82. As an initial matter, ComEd provides no explanation regarding what factors it considers to be “outside ComEd’s control.” The evidence that is in the record demonstrates that there are no such factors under Plan 3 that would be “outside ComEd’s control.” AG Ex. 2.0C, 18. The AG argues that any EE measures that are not included in the IL-TRM are left to ComEd to make reasonable assumptions concerning their savings, and clearly ComEd has control over the assumptions that ComEd makes in this regard. Staff agrees with the AG’s characterization that there are no such factors under Plan 3 that would be “outside ComEd’s control.” By definition the EE measures that are not included within the IL-TRM would be variables “within ComEd’s control.” Id. To the extent that evaluators believe that ComEd made an unreasonable assumption concerning the EE measure that is not within the IL-TRM, ComEd should be held accountable. Id. ComEd argues that Staff fails to recognize that a “number of measures offered in ComEd’s residential and business programs are not currently addressed in the TRM.” ComEd IB, 83. It appears that ComEd disagrees with Staff and the AG that there are no factors outside of the IL-TRM over which ComEd has no control.

The risk that ComEd asks relief from is minimal in that it will be associated with a small amount of savings for measures, if any, that ComEd has not vetted through the Commission-established stakeholder review and Commission approval process. In addition to representing a small amount of savings, such measures are often not incorporated into the IL-TRM because there is no adequate basis provided for the savings estimates or it is believed the measure should be implemented in a customized way. Cases where savings estimates have no firm basis or measures are implemented in a customized way are cases where there is generally no credible evidence upon which to deem realization rates. It would be inappropriate in such cases to treat ComEd's Realization Rate Framework proposal as a back-stop for measures excluded from the IL-TRM.

ComEd argues that "[b]ecause the TRM administrator … had a limited budget and resources, it was unable to incorporate all of the measure requests into the current TRM. While not the fault of [the TRM administrator], stakeholders must acknowledge that there will be measures offered in programs that are not also in the TRM." (ComEd Ex. 3.0, 74.) Staff has a simple solution for ComEd's alleged problem of getting measures into the IL-TRM as discussed further below. With respect to joint program evaluations, common evaluation costs are split across the utilities, but to the extent a utility wants a particular aspect addressed in the evaluation that a different utility does not want addressed, the utility that wants the aspect addressed would simply be billed for that analysis. ComEd Ex. 1.0, 41. Consistent with the process ComEd uses with its evaluator in conducting the joint program evaluations with the gas utilities, the Commission could direct ComEd to contract directly with the TRM Administrator to complete certain new measures that ComEd believes it needs to have deemed in the IL-TRM for the risk to be eliminated. If the Commission adopts this proposal, which Staff believes ComEd could still implement without a Commission directive, then ComEd's alleged problem in this regard should be eliminated.

Staff also believes adopting ComEd's Realization Rate Framework could complicate ComEd's cost allocation process for joint programs considering the gas utilities operate under the existing Commission-approved gross savings policies specified in the IL-TRM. Specifically, ComEd's Plan states that "[t]he utilities will determine a framework for cost allocation based on savings/benefits to each utility's customers." ComEd Ex. 1.0, 49. If ComEd's proposed Realization Rate Framework is adopted, it is not clear whether the savings/benefits would be accurately represented if savings are based on deemed realization rates for ComEd, while the gas utility savings are based on the Commission-approved gross savings policies adopted for all utilities and DCEO. Accordingly, the Commission should reject ComEd's attempt to adopt a gross savings framework different from that the Commission previously approved for all the utilities (including ComEd) and DCEO.

5. Commission Analysis and Conclusion

ComEd's proposed realization rate framework is not adopted. The Commission is persuaded by the arguments of the AG and Staff that the adoption of the IL TRM, since the last Plan docket, addresses most of the concerns regarding realization rates. ComEd has not identified with sufficient specificity the items that are out of its control. ComEd's proposal would undermine the process already adopted by the Commission for determining realization rates, which is applicable to all program administrators. The Company has not given the Commission a reason to overturn this decision.

D. Policy Manual

1. ComEd

ComEd notes in its Reply Brief that Staff flip-flops on the Illinois Energy Efficiency Policy Manual, and inappropriately seeks to create evidentiary support for the proposal in its Initial Brief. In short, in AG witness Mosenthal's direct testimony, he proposed that ComEd work with the SAG on a long list of tasks, one of which included the following:

> An Illinois Energy Efficiency Policy Manual, designed to streamline and encourage consistency on various program-related policies for review and approval by the Commission.

AG Ex. 1.0C at 45. Because Mr. Mosenthal did not expand on the concept further in rebuttal testimony, ComEd observes that these three lines reflect the entirety of the proposal. In rebuttal testimony, ComEd joined Staff's objection to the proposed Manual based on provisions of Section 8-103 and past Commission orders, which emphasize that each utility's implementation of energy efficiency will be unique to its service territory and customers. ComEd Ex. 3.0 at 68. According to ComEd, it is unclear why Staff claims that "ComEd did not object to" the development of the Illinois Energy Efficiency Manual as proposed by the AG. To the contrary, Mr. Brandt testified that he "believes that Ms. Hinman's objections to Mr. Mosenthal's proposal to create an Illinois Energy Efficiency Policy Manual (which ComEd also opposes for these same reasons) equally apply here." Id. at 68.

Yet, in Staff's Initial Brief, ComEd notes that they claim to have misunderstood these three lines of Mr. Mosenthal's testimony. Based on their review of an AG brief in another docket, Staff now claims to have an entirely different understanding of Mr. Mosenthal's testimony. In Dockets 13-0498 and 13-0499, the AG attempted to "clarify" in its briefs that the Manual would "ensure that evaluators and program administrators … for the various utility service territories and customer bases play by the same set of rules in terms of monitoring savings achieved and evaluation programs." See Staff IB at 13-14. Indeed, the AG's Initial Brief in this docket attempts to do the same thing. Yet, ComEd observes that these new claims about the Manual and its focus on "evaluations" are not in the record, and as a result parties were deprived of the opportunity to conduct discovery regarding the proposal.

Notwithstanding that the entirety of the AG's proposal is reflected in three lines of testimony that never mention "evaluation", ComEd notes that Staff attempts to backfill the evidentiary hole over the course of nearly 10 pages of its Initial Brief, and relies on 85 pages of documentation it produced to the AG on the morning of the evidentiary hearing in this case. As ComEd noted in its Response in Opposition to Staff's Motion to Admit, these kinds of games with the Rules of Evidence and Commission Rules of Practice should be rejected. See ComEd's Response in Opposition to Staff's Motion to Admit the Company's Response to Staff Data Request JLH 4.04 and Attachment Into Evidence (Dec. 5, 2013) at 3. According to ComEd, these documents were not previously issued data request responses being submitted in lieu of cross examination. Rather, it is now clear that these were self-serving data request responses that were served to supplement the evidentiary record at the last second. ComEd notes that this is highly inappropriate and unfair to the parties in this docket. Parties had no opportunity to review, much less determine, whether they had cross examination concerning Ms. Hinman's responses and the attached 85 pages of documentation.

ComEd further notes that even if this "evidence" is accorded some weight (and it should not be), it cannot overcome the statutory and Commission directives that a utility's plan is to be tailored to its unique service territory. 220 ILCS 5/8-103(f)(5); Plan 1 Order at 54. Moreover, ComEd does not understand how the Commission can "direct ComEd to require its Evaluators to collaborate with the other Illinois Evaluators to reach consensus on the best approaches and most defensible well-vetted approaches to assessing NTG." Staff IB at 12, 19-20, 21. For example, ComEd observes that Staff does not propose how the evaluators are supposed to take on this new task when the statutorily-limited 3% evaluation budget was already fully accounted for under Plan 3 based on existing evaluation activities. Further, ComEd states that the independent evaluator is not an agent of ComEd – ComEd cannot force the evaluator "to reach consensus" any more than Staff could. Indeed, "forced consensus" does not even make sense. ComEd further points out that none of these issues can be clarified because these proposals were made for the first time in Staff's Initial Brief. They are not in evidence.

2. AG

The AG supports continued operation of the SAG for the duties listed in Mr. Mosenthal's Direct Testimony. AG Ex. 1.0 at 43-44. To date, the SAG process has fostered dialog, collaboration, education on key issues relating to efficiency, and opportunities to comment upon and inquire about new and modified programs. The AG appreciates ComEd's constructive and open work with the SAG to date. That being said, the AG requests that the Commission order ComEd to continue participating in the SAG for the duties listed in Mr. Mosenthal's testimony, consistent with prior orders that established the SAG, and more recent orders that outline a clear role for SAG in the evaluation of utility programs through the TRM process. See, e.g. ICC Docket Nos. 12-0528, 13-0077, gen'ly. In addition, the AG requests that the Commission direct ComEd to work with the SAG on the following tasks:

- Considering other sources of funding that could be used to fund energy efficiency outside of ratepayer funds;
- Annually updating the Technical Reference Manual (TRM) jointly with the SAG and other utilities and providing annual TRM updates;
- Continuing to participate in a joint gas-electric SAG;
- Improving the evaluation, measurement and verification (EM&V) process so that reports are produced in a timely fashion to inform TRM and NTG updates;
- Providing SAG input to draft EM&V plans so that SAG participants can recommend information and data that is gather and produced through the EM&V process;
- Requiring ComEd evaluators to concurrently send draft EM&V reports to ComEd, the ICC and the SAG;

- Providing written quarterly reports to the SAG no later than forty-five (45) days after the close of the quarter that contain program and portfolio-level accomplishments (kWh, kW, therms) relative to goals, program and portfolio-level expenditures relative to budget forecasts, any fund shifts greater than 20% of program budgets, expenditures on administrative costs, EM&V costs and marketing and outreach costs;

- An Illinois Energy Efficiency Policy Manual, designed to streamline and encourage consistency on various program-related policies for review and approval by the Commission; and

- Identifying how Illinois exemplifies "best practices" programs, and identifying other "best practice" programs offered in other jurisdictions that could be brought to Illinois.

AG Ex. 1.0 at 44-45.

Although it does not directly respond to the AG's testimony on the topic, ComEd objects to the creation of such a manual for the same reasons that Staff originally noted. Staff, however, appears to have stepped away from its original concerns and has effectively endorsed the creation of an "evaluation-related" manual. In response to Staff's original concerns, the AG reiterated that a Policy Manual should be adopted to ensure that evaluators and program administrators for the various utility service territories and customer bases play by the same set of rules in terms of monitoring savings achieved and evaluating programs. Currently, the utility and DCEO Program Administrators and their individually selected evaluators at times play by different rules. For these reasons, the AG urges the Commission to include within its Order in this docket specific direction for the SAG to complete an Illinois Energy Efficiency Policy Manual to ensure that programs across the state and as delivered by various program administrators can be meaningfully and consistently evaluated.

3. Staff

As described in Staff's rebuttal testimony, Staff originally opposed the AG's proposal to create an EE Policy Manual "designed to streamline and encourage consistency on various program-related policies for review and approval by the Commission." AG Ex. 1.0C, 45; Staff Ex. 3.0, 26. Staff recommended that the Commission should decline to adopt the AG's proposal in this regard for each or all of the following reasons: (1) the phrase "various program-related policies" is sufficiently vague as to have potential for significant contention, (2) Section 8-103(f) requires the EE programs to be tailored to each utility's service territory, (3) each utility's plan filing docket provides sufficient guidance concerning how the utility should implement the EE programs in its service territory, (4) the creation of new program-related policies mid-Plan may serve to complicate and frustrate the utilities' existing EE program offerings to consumers, and (5) limited SAG resources should focus on its existing duties the Commission specified for SAG such as those related to the IL-TRM and NTGRs and reviewing utility quarterly reports and utility program changes. Staff Ex. 3.0, 26-29. ComEd concurred with Staff's position in this regard in rebuttal testimony. ComEd Ex. 3.0, 68.

In its Initial Briefs ("IBs") filed in the other Section 8-103 program administrators' EE plan filing dockets, the AG clarified that the EE Policy Manual that was proposed by the AG would address "evaluation-related" policies to ensure the EE programs are "evaluated" using a consistent set of "rules in terms of monitoring savings achieved and evaluating programs." AG IB, 51, Docket 13-0499; AG IB, 46, Docket 13-0498. Specifically the AG states:

> The goal of the establishment of a Policy Manual would be to ensure that evaluators and program administrators … for the various utility service territories and customer bases play by the same rules in terms of monitoring savings achieved and evaluating programs. Currently, the utility and DCEO Program Administrators and their individually selected evaluators at times play by different rules, as acknowledged by Ms. Hinman. For these reasons, the People urge the Commission to include within its Order in this docket specific direction for the SAG to complete an Illinois Energy Efficiency Policy Manual to ensure that programs across the state and as delivered by various program administrators can be meaningfully and consistently evaluated.

AG IB, 46, Docket 13-0498.

With that clarification, Staff supports the AG's proposal in concept as it relates to evaluation issues, and not policies concerning prudence and EE program implementation. Indeed, in direct testimony, on the basis of helping to ensure the independence of the Evaluators and to improve efficiency in the evaluation process, Staff recommends the Commission require consistent statewide NTG methodologies ("IL-NTG Methods") be used in the evaluations of comparable EE programs offered by different Illinois program administrators. Staff Ex. 1.0, 24-25. ComEd did not object to such requirement in rebuttal testimony, and in fact recommended that Staff's proposal concerning a statewide assessment for spillover "should be taken to the SAG and the independent evaluator for further review and discussion." ComEd Ex. 3.0, 72; Staff Ex. 1.0, 24-25; Staff Ex. 1.3, 67. With respect to creating standard protocols for evaluating NTG in Illinois, ComEd states that "[b]ecause the independent evaluator has presided over the measurement of free-ridership and spillover since Plan Year 1 consistent with Section 8-103 of the Public Utilities Act, ComEd believes that the evaluator should be a party to any discussions concerning new protocols for such measurement. ComEd would be open to participating in such discussions with Staff and the evaluator." Staff Ex. 1.3, 67. Staff agrees with ComEd and believes the current Section 8-103 EE program Evaluators should take the lead in compiling and formalizing standard protocols for NTG in Illinois. Given the existing Plan 2 Evaluators are under contract with the utilities for the evaluation of the PY6 EE programs, which have not yet started, it would be appropriate for these existing Evaluators to work on the IL-NTG Methods over the next year.

Staff recommends that the Commission direct ComEd to require its Evaluators to collaborate with the other Illinois Evaluators to reach consensus on the best and most defensible well-vetted approaches to assessing NTG in particular markets for both residential and non-residential EE programs in a manner consistent with the direction provided herein.

4. Commission Analysis and Conclusion

It appears to the Commission that Staff's initial objections to the development of an Energy Efficiency Policy Manual were due to the lack of specificity in the AG's proposal. This appears to have been a valid concern. The Commission believes that the AG's clarified proposal is specific, addresses an inconsistency between utilities in Illinois that may warrant attention, and is reasonable. As a result, to the extent possible, the Commission directs the SAG to complete an Illinois Energy Efficiency Policy Manual to ensure that programs across the state and as delivered by various program administrators can be meaningfully and consistently evaluated.

E. IL-TRM Measure Research

1. ComEd

In response to Staff's recommendation that the TRM measure-level research be a "high priority" in the evaluation process, (Staff Ex. 1.0 at 25), ComEd acknowledges the importance of updating the TRM with new information, and opines that most stakeholders would concur with that position. However ComEd notes that it is not clear how Staff's recommendation would be implemented. ComEd Ex. 3.0 at 86. Specifically, it is not evident how TRM updates would be prioritized with regard to other evaluation issues, and a general, vague rule would prove to be ineffective. ComEd takes the position that these issues need to be reviewed on a case-by-case basis, keeping in mind that the evaluation budget is limited by statute and that it is the evaluator that establishes the annual plan regarding how best to use these limited funds. Id. at 86-87. Indeed, ComEd points out that NRDC shares these same concerns. For the reasons articulated by ComEd and NRDC, Staff's recommendation should be rejected.

2. NRDC

NRDC recommends the Commission acknowledge that the importance of measure-level evaluation research to inform modifications to the TRM, in contrast to Staff's recommendation, will vary from program to program and from time to time. Which has a higher priority is a decision that should be informed by the independent evaluators with input from the utility and SAG stakeholders.

3. Staff

Section 8-103(f)(7) of the Act requires an annual independent evaluation of ComEd's EE portfolio. 220 ILCS 5/8-103(f)(7). To aid in determining whether ComEd reaches its statutory savings goal for a given program year, the Commission adopted a policy whereby the independent Evaluators hired pursuant to Section 8-103(f)(7) are required to perform savings verification using the Commission-approved IL-TRM, which is updated annually based in part on "[i]mproved TRM input values developed through evaluations[.]" Staff Ex. 3.2, 5. Because the measure-level savings estimates represented in the IL-TRM are used by the Commission to help determine whether

ComEd meets its statutory savings goals under Section 8-103, it is critical that the IL-TRM contains the best available most defensible information.

NRDC states that "TRM assumptions are an important component of efficiency program savings estimates and, as a result, should be updated periodically – particularly for measures that generate substantial amounts of savings and/or for which there are reasons to believe that current assumptions may be out of date." Staff Group Cross Ex. 2, 1. Staff agrees with NRDC in this regard. Further, the Commission-adopted IL-TRM Policy Document explicitly states that "[b]ecause technology is constantly improving, and markets are constantly changing, a TRM must be a living document to keep pace with change. Otherwise, the TRM will quickly become obsolete and the savings estimates may be perceived to be less reliable." Staff Ex. 3.2, 5. Because the IL-TRM forms the basis for savings that can be claimed to meet the statutory savings goals, ComEd has a natural incentive to avoid having the Evaluators conduct measure-level evaluation research to update the IL-TRM for measures or measure subcomponents (e.g., hours of operation) in which ComEd believes there is potential for the measure-level savings to be reduced in the IL-TRM as a result of the evaluation. If reduced savings are discovered through IL-TRM measure-level evaluation research and those findings get incorporated into the Updated IL-TRM, it would make it more challenging for ComEd to achieve its savings goals on paper. Indeed, experience to date demonstrates ComEd requests that the Evaluator perform measure-level evaluation research (e.g., refrigerator metering study, CFL hours-of-use logger study) only when it is needed to satisfy PJM requirements. ComEd Ex. 1.0 App. C, 327, 432. Without a Commission directive to ComEd to require the Evaluators to consider IL-TRM measure-level evaluation research when developing the evaluation plan, Staff is concerned ComEd's current approach and direction provided to the Evaluators will continue and the IL-TRM may become obsolete and the savings estimates unreliable.

NRDC states that "the relative importance of TRM assumption research – i.e. how it ranks relative to other priorities such as NTG research, process evaluation, program-level realization rate development and potentially other priorities – will vary from program to program and from time to time." Staff Group Cross Ex. 2, 1. Staff agrees with NRDC in this regard. Staff notes that ComEd does not even list IL-TRM measure-level evaluation research in the "Portfolio Evaluation" section of its filed Plan. ComEd Ex. 1.0, 108-111. Staff interprets this exclusion to mean ComEd will not direct its Evaluator to consider performing such IL-TRM measure-level evaluation research when developing the evaluation plan. While it is important to consider a variety of evaluation activities and prioritize them appropriately based on the needs of the EE portfolio within the 3% independent evaluation budget constraint, it should be noted that ComEd already commissions numerous process-related program evaluations and market research studies annually outside of the 3% independent evaluation limit. ComEd Ex. 1.0, 92-93. For example, during the discovery process in this proceeding, ComEd produced 36 documents consisting of 1,951 pages of evaluation and market research related studies that ComEd had commissioned in the past year or two, since PY4. Staff Group Cross Ex. 1. For example, Staff Group Cross Exhibit 1 contains two of those studies, "ComEd Appliance Recycling Evaluation" (Staff Group Cross Ex. 1, 2-52) and "ComEd Smart Ideas for Your Business: Key Driver Study" (Staff Group Cross

Ex. 1, 53-142). Staff Group Cross Ex. 1, 1. Staff believes the limited 3% independent evaluation funds should not be spent duplicating such efforts and rather it would be appropriate to focus these limited evaluation funds on impact evaluations, evaluating and verifying ComEd's savings, performing baseline studies, and measure-level evaluation research to improve the IL-TRM.

Staff does see benefit in having the Evaluators perform process evaluations, especially for the joint programs ComEd operates in conjunction with the gas utilities, and Staff understands there are important synergies in performing process and impact evaluations concurrently. But ComEd's existing program and market research evaluation activities and information should be taken into consideration when formulating where the limited 3% evaluation funds are directed. Further, to the extent ComEd's existing research would improve IL-TRM assumptions, ComEd should be required to provide it to the TAC, without regard for whether it would reduce savings or not. The Company should provide a list of the studies it is conducting and the main purpose of such studies in its reporting to the Commission.

ComEd recommends the Commission reject Staff's recommendation to consider IL-TRM measure-level evaluation research a high priority because: (1) a general, vague rule would prove to be ineffective; and (2) it is not clear to ComEd how it would be implemented and how TRM updates would be prioritized with regard to other evaluation issues. ComEd IB, 96-97.

With respect to ComEd's first concern regarding vagueness of the recommendation, Staff finds it peculiar that ComEd would oppose Staff's proposal if it really believed it would have no effect. With respect to ComEd's second concern regarding how the proposal would be implemented, both Staff's and ComEd's IBs actually explain exactly how such recommendation would be implemented. Staff IB, 46-48; ComEd IB, 97. ComEd states that "it is the evaluator that establishes the annual plan regarding how best to use limited evaluation funds." ComEd IB, 97. Staff states that "the Commission should order ComEd to require its Evaluator in developing evaluation plans to consider IL-TRM measure-level evaluation research a high priority at least on par with the other evaluation priorities listed in ComEd's Plan." Staff IB, 49. ComEd asserts that evaluation issues need to be reviewed on a case-by-case basis, keeping in mind that the evaluation budget is limited by statute. As described in detail in Staff's IB, Staff concurs with ComEd in this regard, but also notes that efforts should be taken to ensure these limited evaluation funds are not spent duplicating ComEd's ongoing market research and evaluation efforts and efforts should be taken to ensure the Evaluators understand that IL-TRM measure-level evaluation research is important to consider when developing their evaluation plans. Staff IB, 47-48. Thus, there is no basis in the record for the Commission to reject Staff's recommendation.

Despite ComEd's objection to Staff's recommendation, ComEd admits that nearly all parties agree that it is important to update the IL-TRM with new information, when it states that it "acknowledges the importance of updating the TRM with new information (and most stakeholders would likely concur)[.]" ComEd IB, 96. ComEd states that "[i]t is important to all stakeholders, including customers, that the best estimates of program impacts are made, which is the only way we can know the true impact and value of the energy efficiency portfolio." ComEd IB, 81. The evidence in the record and in prior

Commission Orders clearly demonstrate the importance of ensuring the IL-TRM reflects the best estimates of energy savings values. Staff IB, 45. ComEd has a natural incentive to avoid having the Evaluators conduct measure-level evaluation research to update the IL-TRM for EE measures in which ComEd believes there is potential for the measure-level savings to be reduced in the IL-TRM as a result of the evaluation. Staff IB, 46. As explained in the AG's IB, "ComEd has a great deal of involvement in development and approval of evaluation plans for its programs." AG IB, 50. Indeed, ComEd even contemplates providing input during the evaluation plan development. Staff Group Cross Ex. 1, 146. Thus, a Commission directive to require ComEd to direct its Evaluator to consider IL-TRM measure-level evaluation research important when developing the evaluation plan is necessary. The Commission should adopt Staff's recommendation in order to ensure the IL-TRM does not become obsolete.

The Commission should order ComEd to require its Evaluator in developing evaluation plans to consider IL-TRM measure-level evaluation research a high priority at least on par with the other evaluation priorities listed in ComEd's Plan.

4. Commission Analysis and Conclusion

The Commission shares Staff's concern that the IL-TRM not become obsolete. The use of TRM measure-level evaluations is a key component in determining the impacts of energy efficiency programs and in developing ongoing efficiency portfolios. The Commission sees that ComEd complains that Staff's proposal is vague, but offers no alternative to ensure that this critical evaluation research is a part of the evaluation process going forward, despite the Company's acknowledgement of the importance of an updated TRM to all of its stakeholders. The Commission notes that both Staff and ComEd have addressed the implementation of Staff's proposal in their IBs and that the parties agree on the importance of updating the IL-TRM with new information. The Commission agrees with Staff that the record evidence in this docket and in prior Commission Orders clearly illustrates the importance of preserving the IL-TRM and ensuring it can produce the most accurate estimates of energy savings possible. Thus, Staff's proposal is adopted.

F. Evaluation Proceeding

1. ComEd

ComEd proposes that the Commission conduct a single goal evaluation docket following PY9, which is designed to reflect the modifications to Section 8-103(b) permitting the utility to demonstrate compliance with each annual goal at the end of the three-year period. 220 ILCS 5/8-103(b). Because the Commission need not reach a final determination regarding annual goal compliance following each Plan year, ComEd states that its proposal is designed to eliminate inefficiencies and unnecessary litigation. ComEd Ex. 2.0 at 3, 60.

ComEd notes that Staff indicated that it does not oppose this proposal (provided that its proposed reporting requirements are approved), while NRDC rejected it. NRDC's concerns appear to focus on an assumption that there would be no reporting during the three-year period. NRDC Ex. 1.0 at 30-31. Contrary to this assumption, ComEd explains that its proposal assumes that the independent evaluators will still produce annual evaluation results and reports for each program, as well as the annual summary of ComEd's performance, and all current reporting will continue. ComEd Ex. 3.0 at 81. To be clear, ComEd's proposal would only have the Commission forego the annual docketed proceeding, and the Commission can otherwise stay apprised of ComEd's performance through the required reporting. Id. at 81.

2. NRDC

NRDC does not support ComEd's proposal for a single evaluation docket every three years. NRDC thinks waiting three years prevents a review of progress toward the goal and prevents updating savings assumptions and estimates based on on-going evaluation work.

3. Staff

NRDC does not support ComEd's suggestion that there be only one evaluation docket every three years. NRDC Ex. 1.0, 30. Mr. Neme suggests that it is important to be clear about what progress is being made towards the savings goals and that savings assumptions be updated over the course of the three-year plan based on on-going evaluation work. Mr. Neme states that "annual evaluation dockets during which savings achieved the previous year are 'nailed down' and evaluation results are used to adjust assumptions for the following year should remain important." NRDC Ex. 1.0, 30. Staff agrees with the reasoning behind Mr. Neme's concerns. Staff Ex. 3.0, 31.

It is important to note that the annual savings docket is not the forum where evaluation results are considered for adjusting savings assumptions for the following year. Staff Ex. 3.0, 31. Annual adjustments of savings assumptions occur as part of the annual IL-TRM Update Process and through the annual IL-TRM Update proceeding. Staff Ex. 3.2, 8.

With respect to reporting savings achievements and program adjustments made by the utilities, it would be addressed by the adoption of Staff's recommendation that the Commission should direct ComEd to provide specific information in its reports to the Commission in order to ensure the Commission would be kept apprised of this information. Staff Ex. 3.0, 32.

In the event Staff's recommendation that ComEd should provide specific information in its reports to the Commission is not adopted, then Staff would support Mr. Neme's proposal that annual evaluation dockets should continue. However, if Staff's recommendation that ComEd should provide specific information in its written reports to the Commission is adopted, then the Commission's additional review during an annual evaluation docket may not be necessary as the Commission can stay apprised of program adjustments through ComEd's written reports, annual reconciliation proceedings, and annual TRM Update proceedings. Staff Ex. 3.0, 32.

4. Commission Analysis and Conclusion

The Commission agrees with ComEd that the change in law removes the requirement of, and may even preclude, an annual evaluation proceeding. As stated elsewhere, many of Staff's reporting recommendations are adopted.

VI. Miscellaneous

A. Definition of Breakthrough Equipment and Devices

1. ComEd

ComEd recommends that the Commission reject Staff's request to provide a definition for "breakthrough equipment and technologies" out of concerns that the 3% budget limitation on these costs be maintained. Staff Ex. 1.0 at 26. As NRDC witness Mr. Neme testified, "it is not obvious why a 'clearer definition' is needed," and Staff "offers no evidence to suggest that this is … currently a problem or can be expected to be a problem in the future." NRDC Ex. 2.0 at 20. Indeed, Staff's proposal would appear "to open the door to inappropriate, after-the-fact challenges to cost-recovery for measures and/or programs that, in hindsight only, fail cost effectiveness screening." Id. In short, Staff's proposal is a solution in search of a problem, and should be rejected.

However, in the event that the Commission is inclined to establish a definition for this category, ComEd proposes the following: "technologies, measures or programs that are generally nascent nationally, for which energy savings have not been validated through robust evaluation, measurement and verification efforts, either in Illinois or elsewhere, and for which significant performance risk may exist that would otherwise deter utilities from offering such technologies, measures or programs in traditional programs." ComEd Ex. 3.0 at 24.

2. Staff

Staff recommends the Commission define breakthrough equipment and technologies as "measures or programs in their early stage of development that are subject to substantial uncertainty about their cost-effectiveness during the planning period." Staff Ex. 1.0, 26. ComEd agrees with NRDC that no definition is needed and no problem exists. NRDC Ex. 2.0, 20; ComEd Ex. 3.0, 23-24. ComEd states that Ms. Hinman's proposal appears to be a "solution in search of a problem" yet proposes an alternative definition. ComEd Ex. 3.0, 24. Staff disagrees with ComEd and NRDC that no definition is needed and continues to urge the Commission to adopt its proposed definition. Staff has concerns about the practice of splitting costs between this cost category and others in reconciliation proceedings. Staff Ex. 2.0, 14 (fn 31), Docket 10-0537; ComEd Ex. 2.0, 14 (fn 1), 15, 16-17, Docket 11-0646. If the cost can fall within the definition of breakthrough equipment and devices and some other cost category, then the entire cost should be classified under the category of breakthrough equipment and devices. Staff notes that DCEO accepted Staff's proposed definition in Docket 13-0499. Docket 13-0499, DCEO Draft Proposed Order, 26. For purposes of consistency, the Commission should adopt Staff's definition in all these EE Plan dockets.

3. NRDC

NRDC thinks that that no new definition of "breakthrough equipment and devices" is needed, but if the Commission finds that a definition is needed, NRDC asks that the Commission direct interested parties to engage in a SAG process to come to consensus on this matter.

4. Commission Analysis and Conclusion

The Commission does not see that a definition can be adopted at this time. Staff has proposed a definition, ComEd has proposed an alternate definition and, in Docket 13-0498, Ameren has proposed further discussion concerning Staff's definition through a workshop process before adoption. The Commission believes a consistent definition should be adopted across the state. A statewide definition for "breakthrough equipment and devices" should be addressed at the SAG and it can be presented to the Commission for approval. The Commission directs Staff to conduct a workshop with other SAG participants on a clear definition of breakthrough equipment and devices that could be applied during Plan 3.

B. Economically Efficient Potential

1. ComEd

ComEd explains that since the filing of Plan 2, the General Assembly enacted Public Act 97-0616, which, inter alia, added Section 8-103A to the Act. Section 8-103A requires that beginning in 2013, a utility must include with its energy efficiency and demand-response plan "an analysis of additional cost-effective energy efficiency measures that could be implemented, by customer class" absent the spending limits of Section 8-103. 220 ILCS 5/8-103A. ComEd states that it complied with this requirement by conducting a potential study of energy efficiency in the ComEd service territory. The potential study was conducted by ICF Consulting and covered the time period 2013 to 2018. The analysis is included in Appendix D to Plan 3.

Staff witness Brightwell proposes a change in the potential study methodology that would add a marginal analysis to how energy efficiency measures are analyzed. Staff Ex. 2.0 at 20-23. ComEd explains that while Mr. Brightwell's proposal is an interesting one, support for adopting such a methodology is lacking at this time. The proposal is also a bit premature because the potential study is conducted just once every three years, and one was recently completed. ComEd Ex. 1.0, App. D. As a result, ComEd and stakeholders have ample time to explore the novel approach that Mr. Brightwell advances. ComEd Ex. 3.0 at 86. ComEd notes that the methodology in the current potential study mirrors the standard employed by the industry and ComEd would like time to investigate why Mr. Brightwell's approach has not, to ComEd's knowledge, been implemented elsewhere. Id. Furthermore, ComEd observes that it needs to determine the magnitude of additional costs, if any, necessary to conduct this analysis. Id. Accordingly, ComEd concludes that the proposal raised by Mr. Brightwell relating to the potential study methodology is better suited for discussion and consideration by the SAG rather than the Commission's order in this docket.

2. Staff

The potential study presented by ComEd measures what it refers to as "economic potential." Economic potential, as used in the Potential Study, measures the amount of savings possible from using the most technologically efficient replacement equipment that has positive net benefits compared to a base level of equipment. ComEd Ex. 1.0 App. D at i. This definition of economic potential is equivalent to asking "What is the potential energy savings from replacing current equipment with the most energy efficient piece of equipment that provides net benefits to customers?" It does not answer the question "What is the potential energy savings if current equipment is replaced with the energy efficient equipment that maximizes net benefits to ratepayers?" The second question addresses the issue of which equipment efficiency would maximize the welfare of ratepayers by providing the economically efficient level of energy efficiency. The answer to this question is what economists typically consider to be economic efficiency.

The benefit of measuring economically efficient potential is that it informs the Commission and interested stakeholders about the maximum energy savings possible for a given budget. ComEd indicated interest in the proposal but requested more time to study the merits. Staff would prefer a stronger commitment and recommends that the Commission order the inclusion of economically efficient potential in future Potential Studies.

ComEd argues that the Potential Study methodology proposal raised by Dr. Brightwell is better suited for discussion and consideration by the SAG rather than the Commission's order in this docket. Staff disagrees. Staff raised concerns with the Potential Study methodologies over the past year at SAG meetings in an effort to help ensure the Commission had useful information regarding the potential energy savings that would maximize the welfare of ratepayers by providing the economically efficient level of energy efficiency. Nevertheless, despite raising this issue at SAG meetings, ComEd did not direct its consultant to implement such an analysis. Thus, it is Staff's opinion that a Commission directive is required to ensure this analysis takes place and is included in ComEd's next three-year Plan filing. The Commission has a complete record upon which to direct such analysis take place in this docket. Accordingly, the Commission should direct that future Potential Studies analyze economically efficient potential as described in Staff Exhibit 2.0.

3. Commission Analysis and Conclusion

ComEd has indicated it is willing to discuss this with SAG, but does not believe the Commission should order it to perform such an analysis at this time. The Commission agrees with ComEd and its suggestion is adopted. It is not clear that Staff's proposal is required by the statute. The Commission shares ComEd's concern regarding the additional cost such a study might require.

C. Filing Evaluation Contract

1. ComEd

ComEd proposes to continue the current process for selection of the evaluator and management of the independent evaluation contract. ComEd notes that no party disputes that the process has worked well. Staff, however, has proposed that ComEd file the contract with the independent evaluator within 14 days of its execution. Staff Ex. 1.0 at 25. Consistent with the Plan 1 Order, however, ComEd observes that Staff is thoroughly involved in overseeing the execution of the contract, and receives a copy of the contract along with ComEd. Given that no other party supports Staff's proposal, ComEd recommends that it should be rejected – Staff can achieve the result of its proposal without Commission intervention by filing the contract within 14 days of its execution.

2. Staff

ComEd argues that the Commission should reject Staff's proposal that ComEd file its evaluation contract within 14 days of its execution. The Company argues that Staff will receive a copy of the executed contract and no other party has requested that the Company provide the Commission with a copy. This argument should be rejected because limiting the availability of the contract is inconsistent with open and transparent implementation of the Plan.

Additionally, ComEd argues that the Commission need not intervene with respect to this matter because the Staff could, itself, file with the Commission the contract between ComEd and its independent evaluator. Because Staff is not a party to the contract, Staff cannot attest to its authenticity. The correct approach is for ComEd to file the contract. In the Plan 1 proceeding, the Commission ordered ComEd to submit its contract with its independent evaluator as a compliance filing within 10 days of its execution: "the Commonwealth Edison Company shall submit any contract with an independent evaluator as a compliance filing in this docket within ten days of its execution[.]" Commonwealth Edison Co., Order on Rehearing, Docket 07-0540, 4 (March 26, 2008).

The Company has not made any assertion that this requirement is unduly burdensome. The Company was able to comply with the Plan 1 Order's requirement to file the contract within 10 days of execution and, therefore, there is no question that it can do so within 14 days. Likewise, no argument has been made that the contract is materially confidential and proprietary; however, any such information may clearly be redacted under the Commission's Rules of Practice. ComEd has not provided any evidence tending to show or made any argument to indicate that a deviation from the Commission's Plan 1 Order is warranted. Accordingly, the Commission should adopt Staff's proposal to require the Company to file the evaluation contract and scope of work within 14 days of its execution.

3. Commission Analysis and Conclusion

Staff's request is not burdensome and supports open and transparent implementation of ComEd's EE plan. Thus, it is adopted and ComEd is ordered to file the contract within 14 days of execution.

VII. Findings and Ordering 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) Commonwealth Edison Company is an Illinois corporation engaged in the transmission, sale and distribution of electricity to the public in Illinois, and is a public utility as defined in Section 3-105 of the Public Utilities Act;

(2) the Commission has jurisdiction over Commonwealth Edison Company and the subject matter of this proceeding;

(3) the statements of fact set forth in the prefatory portion of this Order are supported by the evidence and the record and are hereby adopted as findings of fact;

(4) Commonwealth Edison Company should be ordered to include the IL-TRM measure codes in its Plan filing in the future for ease of review;

(5) Commonwealth Edison Company should be directed to require its Evaluator in developing evaluation plans to consider IL-TRM measure-level evaluation research a high priority;

(6) Commonwealth Edison Company should be ordered to file the evaluation contract within 14 days of execution.

(7) Commonwealth Edison Company should be directed to comply with the reporting requirements adopted herein;

(8) Commonwealth Edison Company's NTG Framework should be adopted as modified herein;

(9) Commonwealth Edison Company's proposed savings goals should be increased as adopted herein;

(10) the testimony and exhibits admitted into the record provide substantial evidence that the Energy Efficiency Plan filed by the Commonwealth Edison Company will meet the filing requirements of Section 8-103(f) and Section 8-104(f) of the Public Utilities Act, if Commonwealth Edison Company submits a revised Plan in a compliance filing within 30 days of the date of this Order that incorporates and is consistent with the conditions and requirements stated herein;

(11) Commonwealth Edison Company should be directed to file a petition for review of its achievement of the Plan 3 modified energy savings goals within 60 days of the close of Plan Year 9.

IT IS THEREFORE ORDERED by the Commission that the Petition filed by Commonwealth Edison Company requesting approval of its Energy Efficiency and Demand Response Plan is hereby conditionally approved, subject to Commonwealth Edison Company filing a compliance filing that incorporates the findings and conclusions herein and is consistent with the conclusions contained herein.

IT IS FURTHER ORDERED that Commonwealth Edison Company is hereby authorized to and directed to make a filing within 30 days of the date of this Order, such filing shall be a revised Energy Efficiency and Demand Response Plan pursuant to Section 8-103 and 8-104 of the Public Utilities Act containing terms and provisions consistent with, and reflective of, the findings and determinations made in this Order.

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 28th day of January, 2014.

(SIGNED) DOUGLAS P. SCOTT

Chairman