**Comments Submitted to SAG on IL-TRM Policy Issues**

**Compiled by Celia Johnson, SAG Facilitator**

**Background**

The IL-TRM Administrator requested that SAG address several policy issues that were raised during the Version 7.0 IL-TRM update process, related to water savings and codes.

SAG met by teleconference on June 21, 2018 to discuss these issues: <http://www.ilsag.info/mm_2018_6_21.html>

As follow-up from the June meeting, the draft Policy Proposal (below) was circulated to SAG for review and comment. The SAG Facilitator receive comments from seven SAG participants, including:

* Natural Resources Defense Council (NRDC)
* Environmental Law & Policy Center (ELPC)
* Illinois Attorney General’s Office
* ICC Staff
* Nicor Gas
* International Energy Conservation Consultants
* Midwest Energy Efficiency Alliance (MEEA)

SAG will hold a follow-up teleconference meeting on **Wednesday, September 26 (12:30 – 2:00 pm)** to discuss comments to the Policy Proposal. The goal will be to reach agreement on policies 2 – 6 and determine next steps.

Please note that the “secondary electricity savings from reduced water use” issue has already been addressed within the IL-TRM Technical Advisory Committee and added to IL-TRM Version 7.0.

**Policy Proposal – Circulated by SAG Facilitator to SAG on June 27**

**Policy Proposal**

1. **Secondary Electricity Savings from Reduced Water Use:** A “kWh per million-gallon” factor should be used to calculate secondary electricity savings from reduced water use. Specific details on the factor to be used and which measures it will apply to will be addressed by the TAC in the IL-TRM Version 7.0 process.
2. **Custom Measures:** For custom measures, the existing baseline could be used in savings calculations at the discretion of program administrators (for example, if the existing condition is not compliant with code and there is data to back that up, the existing condition can be used).
3. **Prescriptive Measures:** For prescriptive measures, code level will be assumed to be the baseline. Any adjustment should be made in the NTG ratio, not in TRM savings calculations.
4. **NTG Working Group Follow-Up:** The NTG Working Group will review how to make adjustments to NTG ratios for the below code baseline scenarios, for both prescriptive and custom measures.
5. **Seeking SAG Approval:** When a situation arises in the IL-TRM TAC where an efficient condition doesn’t meet code, the IL-TRM Administrator will seek SAG approval on a case by case basis before approving the measure.
6. **Memorializing Policy Agreements:** Policies should be included in either Policy Manual Version 2.0 or an updated version of the IL-TRM Policy Document. The SAG Facilitator will add this policy topic to tracking list.

**NRDC Comments from Chris Neme (July 12)**

See separate Word document for proposed edits.

This mostly looks good to NRDC.  However, we have one substantive issue which we think merits some additional language as well as some minor word edits to (hopefully) make this clearer.

The substantive issue is that the though the language in items 2 thru 5 below was written to address baseline issues for measures installed in specific buildings (and we are fine with it for that purpose), we fear it could be (mis-) interpreted to also apply to programs designed to change efficiency levels for entire populations of buildings, which would be problematic.  More specifically, we think it is important that we at least leave open the possibility that utilities propose and – if the evaluation approach is reasonable – begin to claim savings from programs designed to improve code compliance and/or to advance adoption of new, more aggressive codes and standards.  For any such programs, the baseline would, by definition, be “below code”.  To address this concern, the attached doc suggests putting items 2 thru 5 below under a sub-heading of something like “for measures for which savings are claimed for specific buildings” and add a second sub-section titled something like “for programs designed to improve efficiency – thru better or improved compliance with codes – across an entire population of buildings”.  We are open to edits to the language we offer in the attached, but think the concept is essential to keep.

Also, since items 1 and 6 address a different topic than items 2 thru 5, we suggest some slight, non-substantive refinements to how the items below are organized and presented.

**Response from Phil Mosenthal, Optimal Energy on behalf of IL Attorney General’s Office (July 16)**

Email from Phil Mosenthal:

I don’t have any conceptual disagreement with Chris’ addition (although I do not believe it is really necessary). However, if his rearrangement stays, I suggest modifying his proposed headings because #3 does in fact apply to a population and not a specific building. Perhaps just saying 2-5 apply to existing programs and then #6 under a heading for a potential new code compliance initiative.

**ICC Staff Comments from Jennifer Morris (July 17)**

See separate Word document.

**Environmental Law & Policy Center Comments from Rob Kelter (July 17)**

Email from Rob Kelter:

ELPC has a couple responses to this.  First, on Potential for “Below Code” Baselines if a customer retires something early the utility should get credit for the difference between the old and the new, based upon how “early” the retirement takes place.  However, the part here about “if the existing condition is not compliant with code and there are no plans to comply with code and there is data to back that up…” is objectionable.  Who can judge if there are “no plans to comply with code?”  Moreover, if there are no plans to comply with code then someone should address getting the code enforced rather than getting the utility involved.

As far as B:

**Programs Specifically Designed to Improve Code Compliance across an Entire Population of Buildings or Advance Adoption of New Codes (or Product Efficiency Standards) for Application to an Entire Population of Buildings:**

Nothing in the discussion of part A above shall preclude the utilities from proposing to claim savings from programs designed to improve code compliance and/or to advance adoption of new codes or product efficiency standards that will apply to an entire population of buildings.  Any such proposal shall include a proposed approach to estimating program savings from the applicable building population, including a method to establish the below code baseline from which savings would be estimated (e.g. a code compliance study), a method for estimating how that baseline has changed and a method for attributing the portion of such change attributable to the utility program(s).

We oppose this concept.  Going back several years now ELPC has argued against giving utilities credit for “improving code compliance.”  We don’t think that’s the utility’s job, and we think it’s impossible to measure performance/results.  We just have a difference of opinion on approach to codes issue.   If we lose on the issue we don’t see a problem with this language.

**Response from Chris Neme, Energy Futures Group, on behalf of NRDC (July 18)**

Email from Chris Neme:

I appreciate that you/ELPC oppose the concept.  I think ELPC and NRDC have different perspectives on this.  However, the language I proposed doesn’t guarantee that the concept is accepted.  It only states that the other discussion of baseline doesn’t apply to potential future programs to improve future code compliance, if such a program proposal should be developed.  If such a program is proposed, there would still be a discussion within the SAG – and potentially at the ICC – regarding whether it was appropriate and, if so, the EM&V required to claim savings.  In other words, the language I proposed was just intended to be clear that the discussion of baselines we have had to date does not close the door on a future discussion of a possible codes program; it only kicks that discussion down the road.

**Nicor Gas Comments from Ted Weaver, First Tracks Consulting (July 18)**

Email from Ted Weaver:

Nicor Gas has concerns about the policy recommendation to limit any consideration of baseline issue only to NTG analyses. These baseline issues have arisen to date only with a relatively few measures that produce relatively small savings per device and exhibit relatively small participation levels. In practice, it will be extremely difficult for NTG analyses to capture baseline issues for these minor measures. If the affected measures only reflect a few percent of the overall savings of a program, capturing baseline issues will only be a rounding error on the overall NTG ratio. If there are only a handful of participants installing these measures, it will be difficult to get a large enough sample to accurately assess the baseline impact for these individual measures.

For these reasons, we think it is best to treat these baseline issues directly in the TRM. Since TRM algorithms get applied to each and every measure installed, it is both more accurate and more practical to use this approach. We have proposed some alternative language in the attached markup, starting from Jennifer’s version.

Nicor’s proposed language also makes some additional changes to make sure the policy is more precise in its application:

* The original proposal covers custom and prescriptive measures, but conflates “prescriptive” with “in the TRM”. While it’s true that the vast majority of cases, prescriptive measures are covered in the TRM, it is also true that a utility may propose a prescriptive measure before it is included in the TRM, and a utility may also choose to have TRM measures evaluated on a custom basis. In those cases these measures are treated as “custom” measures by the Independent Evaluator, but  they are still delivered in a “prescriptive” manner (i.e., there is a fixed, predetermined rebate). Our markup now uses “custom” and “IL-TRM” to distinguish the policies, and makes it clear that some “prescriptive” measures are covered by the “custom” policy.
* The original proposal covers cases where the baseline is below code, but there are also cases where a measure itself might be below code. (This whole baseline issue arose around a ventilation control measure, where the measure would often be installed on facilities that were not meeting code requirements for constant ventilation.) In VEIC’s original memo on the topic, they raised this issue and recommended that the TRM address these situations on a case-by-case basis, and seek SAG approval when appropriate. We have added some language to address these cases as well.
* Also made it clear that the Independent Evaluator and the TRM Administrator are the ultimate deciders on how to address code issues.

Regarding some of the other issues:

* We like Chris Neme’s suggested language on code compliance issues.
* We added language on the Water Use Energy Savings to make it clear that a natural gas factor may also be used. (It’s looking like we won’t have data to support a gas factor in this round, but we should get the policy set now.)

**International Energy Conservation Consultants, LLC Comments from Darren Meyers (July 18):**

Email from Darren Meyers:

As we have communicated to TAG and VEIC TRM personnel, IECC\_LLC has expressed its interest in offering assistance to both TAG and TRM programs w.r.t. the Illinois Energy Conservation Code set forth in [(20 ILCS 3125/) Energy Efficient Building Act](http://www.ilga.gov/legislation/ilcs/ilcs3.asp?ActID=2614&ChapterID=5) (hereafter “the Act”).

We have ***concerns*** about the policy recommendations to:

1. Allow terms such as “code”, “below code,” “above or beyond code”, “baseline” and “retrofit” to remain ill- or un-defined …
2. Rely on dated “code” references for the savings determinations of IL-TRM measures (e.g., prescriptive, baseline, measure specifications and custom) without a nodding acquaintance to prevailing Illinois Compiled Statutes (the Act) …
3. Limit consideration and interpretations with respect to the Act (i.e., *code*) to the discretion of:
   * 1. a Program Administrator who may or may not have institutional knowledge of the *code* (as to when/where to deem a measure “custom”),
     2. an Independent Evaluator who may or may not have institutional knowledge of the *code* (as to judging compliance vs. non-compliance with the Act) or (whether an Applicant has plans/no plans to comply with the Act),
     3. the TAC or SAG without consultation of the agency(ies) and/or authority(ies) having jurisdiction and over code training, education and technical assistance programs with respect to the Act.
4. Suggest granting an IOU (the IOUs) the position to pass ultimate judgement on *code* issues.

For these, we think it is best to treat these baseline issues directly in the TRM through definitions and a complete and thorough contemporizing of the TRM w.r.t. the Act and its internal codes and standards citations therein. Since TRM algorithms get applied to each and every measure installed, it is both more accurate and more practical to use this approach.  We have proposed some alternative language in the attached markup, starting from Ted’s version sent this morning, Wednesday, July 18, 2018 8:01 AM

IECC\_LLC’s proposed language also makes additional suggestions to the policy doc suggesting the use of mandatory language, so as to alleviate the likelihood for interpretive latitude or confusion, adding to NiCOR’s intent on making the policy more precise for application:

* In furtherance of Ted’s (NiCOR’s) proposed revisions to address cases where the measure itself has been/is clearly below *code* (i.e., non-compliant with the Act), Illinois code enforcement (incl. Chicago DoB) has been approached (more than once) by Illinois PA’s seeking “favorable” determinations of non-compliance w.r.t. the implementation of DCV (demand control ventilation) where this has been code baseline since August 18, 2009 when the Illinois Energy Conservation Code in effect for all Commercial Buildings (New! and Existing!) in Illinois was the 2009 IECC with equivalent reference to ASHRAE 90.1-2007.
* Moreover, baseline provisions for retroactive installation of air-side economizer packages equipped with FDD (Fault-Detection & Diagnostic) package controls have been baseline since January 1, 2016 when the Illinois Energy Conservation Code in effect for all Commercial Buildings (New! and Existing!) in Illinois was the 2015 IECC with equivalent reference to ASHRAE 90.1-2013.

* While it is understood that VEIC’s memoranda on the aforementioned and various topics recommend that TRM address these and seek SAG approval where appropriate; based on experience, the TAG, TRM and SAG lack an institutional-level history for and appreciation of the contemporary enforcement actions and policies of the Illinois Code Enforcement community and the agencies (CDB and Illinois EPA – Office of Energy) duly tasked by the Act.  IECC\_LLC has suggested some language here and remains open to how it may be interpreted by the IOU’s, PA’s and Evaluators alike.
* Accordingly, the suggestion that the “regulated” IOU’s might be allowed in a position to pass ultimate judgement on code issues could prove foolish.  In this regard, and with due respect to VEIC … The suggestion that the TRM Administrator (perhaps w/o requisite field experience on Illinois enforcement issues with respect to the Act) should be questioned.
* We are “game” to whether the IE (Independent Evaluator) should be granted the aforementioned powers of “ultimate judgement.”  With regard to the agents deemed Authorities Having Jurisdiction over code issues, the Act clearly defers the Illinois Environmental Protection Agency – Office of Energy (EPA Energy Office) and the Illinois Capital Development Board (CDB).  These agencies have designated expert councils and technical assistance houses with the requisite track record to advise and consult the TRM Administrator, SAG and IE, should questions of “code”, “below code,” “above or beyond code”, “baseline” and “retrofit” require clarification.

**Midwest Energy Efficiency Alliance (MEEA) Comments from Stacey Paradis and Alison Lindburg (July 20)**

Email from Stacey:

I asked MEEA’s Building Policy team to review the recent discussion and proposed language and share their thoughts. MEEA developed the initial code claimed savings program that the SAG reviewed and the ICC approved a few years ago and we’re now the lead in managing the code collaboratives in Illinois and the compliance studies that will identify the potential energy savings. I’ve cc’d Alison Lindburg, MEEA’s Building Policy Manager will be leading this project as well as Chris Burgess, MEEA’s Senior Building Policy Manager and Ian Blanding, MEEA’s Senior Building Policy Associate. This team has decades of combined experience working in building policy in the areas of code development, adoption, implementation and compliance throughout the Midwest. Please feel free to direct any specific building questions to them. They are happy to be a resource. Thank you.

Email from Alison:

Thank you for the chance to respond. As you probably know, MEEA is working with the Illinois investor-owned utilities to establish a statewide energy code compliance baseline for residential and commercial buildings. This is being done through observational studies where data will be gathered directly from the field to better understand how energy code requirements are actually being implemented – what measures are typically complied with and what measures pose a greater challenge. These type of studies have been, and are currently being, conducted in numerous Midwest states. The information gathered will be used to determine the potential energy savings available at the compliance measure level and can be used to inform any future code enhancement program.

MEEA believes that the conversation we are having is important, and is generally in agreement with the NRDC edits regarding a separate energy code enhancement program that addresses noncompliance.  Regarding ELPC’s evaluation concerns, since the baseline studies are being conducted on a randomized basis (a random selection of buildings are surveyed), conducting a similar follow-up study with a different random selection of buildings would reasonably determine any delta of energy saving achieved from a future compliance support program. However, since these studies are just beginning, the bulk of this conversation may be a bit premature. Building buildings and determining energy code compliance are complex undertakings. At this point the only efforts underway are the baseline studies, which are not expected to be completed until mid or late 2019. It would seem more profitable to have the in-depth discussion that addresses specific programmatic and evaluation concerns once there is actual data to inform the conversation.

To cite just one example, consider the impact of compliance path choice. If the building was built using the prescriptive path, energy savings can straightforwardly be calculated using a measure-to-measure direct comparison (e.g., wall insulation value to wall insulation value). However, if the performance path was used, specific measure comparisons may not be so straightforward. Any given measure may have been traded off for any different measure (e.g., more-efficient windows for less-efficient wall insulation values). Therefore the “below code” wall insulation may actually be code compliant, making assigning energy savings a more complicated. The baseline studies will help determine the relative use of available compliance pathways used across the state, and potentially indicate the common items that are traded off in performance-based compliance – information that would be useful when considering the benefits of a code compliance support program.