

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

Northern Illinois Gas Company d/b/a	:	
Nicor Gas Company	:	
	:	13-0549
	:	
Application pursuant to Section 8-104 of	:	
the Public Utilities Act for Consent to and	:	
Approval of an Energy Efficiency Plan.	:	

ORDER

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By the Commission:

I. Procedural History

On September 30, 2013, Northern Illinois Gas Company d/b/a Nicor Gas Company, (“NICOR”, “Nicor Gas”, “the Company” or “the Utility”) filed a petition to submit an Energy Efficiency Plan (“Plan” or “Second EEP” or “Plan 2”) pursuant to Section 8-104 of the Public Utilities Act (“Act”). The Office of the Attorney General (“Attorney General” or “AG”), Citizens Utility Board along with the City of Chicago (collectively, “CUB”), Environmental Law & Policy Center (“ELPC”) and The Natural Resources Defense Council (“NRDC”) filed Petitions to Intervene. No objections were raised to the Petitions to Intervene by any party. Pursuant to notice given in accordance with the rules and regulations of the Commission, this matter came for an initial hearing before a duly authorized Administrative Law Judge (“ALJ”) of the Commission at its offices in Chicago, Illinois on November 7, 2013. On that date, Commission Staff (“Staff”) along with the Petitioner and the Intervenors appeared and the parties established a schedule. After the hearing, the parties filed written testimony and the matter was set for an evidentiary hearing on February 21, 2014, which was subsequently continued to March 6, 2014. During the March 6, 2014 evidentiary hearing, the Petitioner introduced the testimony of witnesses James Jerozal, Edward Weaver, Malcolm Quick and Hammad Chaudhry. The Attorney General presented the testimony of witness Philip Mosenthal; CUB presented the testimony of witness Rebecca Devens; Staff presented the testimony of witnesses Jennifer Hinman and David Brightwell; and ELPC presented the testimony of witness Geoffrey Crandall. At the conclusion of the hearing, the ALJ left the record open for the parties to file late-filed exhibits. The record was subsequently marked “Heard and Taken”. NICOR, Staff, Attorney General, CUB, and ELPC each filed initial and reply briefs in the matter. NICOR and Staff tendered suggested Draft Orders and the AG submitted its Statement of Position. A Proposed Order was served on the parties on April 23, 2014, and each party filed a Brief on Exception.

II. Statutory Authority

Section 8-104(b) of the Act states:

"[C]ost-effective" means that the measures satisfy the total resource cost test which, for purposes of this Section, means a standard that is met if, for an investment in energy efficiency, 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 measures to the net present value of the total costs as calculated over the lifetime of the measures. The total resource cost test compares the sum of avoided natural gas 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 electric utility costs, to the sum of all incremental costs of end use measures (including both utility and participant contributions), plus costs to administer, deliver, and evaluate each demand-side measure, to quantify the net savings obtained by substituting demand-side measures for supply resources. In calculating avoided costs, reasonable estimates shall be included for financial costs likely to be imposed by future regulation of emissions of greenhouse gases. The low-income programs described in item (4) of subsection (f) of this Section shall not be required to meet the total resource cost test.

220 ILCS 5/8-104(b).

Section 8-104(d) of the Act provides:

Notwithstanding the requirements of subsection (c) of this Section, a natural gas utility shall limit the amount of energy efficiency implemented in any 3-year reporting period established by subsection (f) of Section 8-104 of this Act, by an amount necessary to limit the estimated average increase in the amounts paid by retail customers in connection with natural gas service to no more than 2% in the applicable 3-year reporting period. The energy savings requirements in subsection (c) of this Section may be reduced by the Commission for the subject plan, if the utility demonstrates by substantial evidence that it is highly unlikely that the requirements could be achieved without exceeding the applicable spending limits in any 3-year reporting period. No later than September 1, 2013, the Commission shall review the limitation on the amount of energy efficiency measures implemented pursuant to this Section and report to the General Assembly, in the report required by subsection (k) of this Section, its findings as to whether that limitation unduly constrains the procurement of energy efficiency measures.

220 ILCS 5/8-104(d).

Section 8-104(f) of the Act requires:

In submitting proposed energy efficiency plans and funding levels to meet the savings goals adopted by this Act the utility shall:

(1) Demonstrate that its proposed energy efficiency measures will achieve the requirements that are identified in subsection (c) of this Section, as modified by subsection (d) of this Section.

(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 gas service expressed on a per therm basis associated with the proposed portfolio of measures designed to meet the requirements that are identified in subsection (c) of this Section, as modified by subsection (d) of this Section.

(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. Such 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 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) Demonstrate that a gas utility affiliated with an electric utility that is required to comply with Section 8-103 of this Act has integrated gas and electric efficiency measures into a single program that reduces program or participant costs and appropriately allocates costs to gas and electric ratepayers. The Department shall integrate all gas and electric programs it delivers in any such utilities' service territories, unless the Department can show that integration is not feasible or appropriate.

(7) Include a proposed cost recovery tariff mechanism to fund the proposed energy efficiency measures and to ensure the recovery of the

prudently and reasonably incurred costs of Commission-approved programs.

(8) Provide for quarterly status reports tracking implementation of and expenditures for the utility's portfolio of measures and the Department's portfolio of measures, an annual independent review, and a full independent evaluation of the 3-year results of the performance and the cost-effectiveness of the utility's and Department's portfolios of measures and 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 portfolio resources in any given 3-year period.

220 ILCS 5/8-104(f).

The Act further provides that:

No more than 3% of expenditures on energy efficiency measures may be allocated for demonstration of breakthrough equipment and devices.

220 ILCS 5/8-104(g).

III. Nicor Gas' Energy Efficiency Plan

A. Commission Analysis and Conclusion

The minimum requirements for Commission approval of the Company's Plan are set forth in Section 8-104(f) of the Act. The Commission has reviewed the Petition, testimony, record evidence, and discovery 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 within 30 days of the date of this Order in a compliance filing in this Docket that incorporates the modifications discussed and adopted below.

IV. Filing Requirements

A. Uncontested Section 8-104(f) Filing Requirements

1. Section 8-104(f)(2)

Nicor Gas' Second Energy Efficiency Plan meets the requirements of Section 8-104(f)(2). This is not contested.

2. Section 8-104(f)(3)

Nicor Gas' Second Energy Efficiency Plan meets the requirements of Section 8-104(f)(3). This is not contested.

3. Section 8-104(f)(4)

Nicor Gas' Second Energy Efficiency Plan meets the requirements of Section 8-104(f)(4). This is not contested.

4. Section 8-104(f)(5)

Nicor Gas' Second Energy Efficiency Plan meets the requirements of Section 8-104(f)(5). This is not contested.

5. Section 8-104(f)(6)

Section 8-104(f)(6) of the Act is not applicable to Nicor Gas. This is not contested.

6. Commission Analysis and Conclusion

Since the aforementioned filing requirements have either been met by Nicor or are inapplicable to this proceeding, the Commission notes the above filing requirements are uncontested and are approved by the Commission.

B. Section 8-104(f)(1) Modified Energy Savings Goals

1. Statutory Requirement

a) Nicor Gas' Position

Nicor Gas asserts that, in order to achieve the savings requirements of Section 8-104(c), as modified by Section 8-104(d), its savings goals must be modified in order to keep the rate impact on customers below 2%. Nicor Gas asserts that it has calculated the savings goals and 2% budgetary gap in accordance with Section 8-104(c) and 8-104(d). According to Nicor Gas, the statutory savings goals for Nicor Gas' Second EEP are 33,027,000 therms for its Plan Year ("PY") 4, 41,283,000 therms for PY5, and 49,540,000 therms for PY6. Nicor Gas further notes that, because Section 8-104(e) requires the Company to be responsible for 80% of these statutory amounts, Nicor Gas would be responsible for 26,421,000 therms for PY4, 33,027,000 therms for PY5, and 39,632,000 therms for PY6.

Nicor Gas states that the 2% budget cap for the Second EEP is \$124.1 million. Pursuant to Section 8-104(e), 75% of the available budget – approximately \$93 million – will be allocated to the Company. Thus, the Company's 75% share of the revised annual budget numbers will be approximately \$31,025,000 in each of PYs 4, 5, and 6. Nicor Gas asserts that it will allocate the remaining 25% of the budget, approximately \$31 million, to the Department of Commerce and Economic Opportunity ("DCEO"). Additionally, Nicor Gas states that while the Second EEP must remain within this budget over the course of the three PYs, individual years may deviate from the annual 2% budget cap. The Company notes that no party has contested Nicor Gas' calculations of either the statutory savings goals or the budget cap, nor did any party propose to adjust these figures.

Nicor Gas argues that it has demonstrated that it cannot meet the savings set forth in Section 8-104(c) without exceeding the 2% budgetary cap set by Section 8-104(d), and requests Commission approval of modified savings goals pursuant to Section 8-104(d). Nicor Gas specifically requests approval of three-year cumulative savings goals of 21.5 million net therms by the end of PY6, and suggests that these goals be measured from June 1, 2014 (the beginning of PY4) through May 31, 2017 (the end of PY6). Nicor Gas argues that tracking savings goals from the beginning of PY4, as opposed to the beginning of PY1, will focus attention on the performance of the Second EEP, will simplify the method of tracking the savings goals, and will not require performance under the Second EEP to be reliant on any deviations that may have taken place from the planned performance that occurred during the First EEP.

Nicor Gas explains that it revised its modified therm savings goals twice during the course of this proceeding in order to reflect changes in the identification of self-directing customers under Section 8-104(m). According to Nicor Gas, the first revision to the modified therm savings goals reflected a rounded total of 21,472,000 therms saved over the three years of the Second EEP; this resulted in therm savings of 7,629,948 therms for PY4, 7,198,348 therms for PY5, and 6,644,135 therms for PY6. The second revision to the modified therm savings goals increased the goals slightly, and resulted in a rounded total of 21,478,000 therms saved over the course of the three years of the Second EEP. Therefore, Nicor Gas requests Commission approval of a three-year cumulative modified savings goal of 21,478,000 (rounded) therms by the end of PY6. Nicor Gas has committed to providing the exact unrounded therm values for each Plan Year in the Second EEP in its compliance filing in this proceeding.

Nicor Gas argues that it has presented substantial evidence that it is “highly unlikely that the [savings] requirements could be achieved without exceeding the applicable spending limits in any 3-year reporting period,” pursuant to Section 8-104(d). 220 ILCS 5/8-104(d). In support of this argument, Nicor Gas points to its First EEP, noting that at the time the instant proceeding commenced, Nicor Gas planned to spend \$67 million in PY3 of the First EEP. Nicor Gas notes that \$67 million accounts for approximately 216% of the average funding available during the Second EEP – however, even at this high level of funding, Nicor Gas expected at the time it originally filed the Second EEP to be able to provide savings of only 27 million therms, or 0.62% of 2009 sales. Nicor Gas explains that, in order to meet the requirements of Section 8-104(c), it would need to create savings averaging 0.80% of the 2009 sales, independent of additional savings delivered by DCEO, during the Second EEP. Nicor Gas asserts that it cannot meet the savings level established in PY3 without spending more than twice the amount allowed under the statutory budget cap for the Second EEP (\$67 million in PY3 as compared to \$31 million in PY4), and argues that, therefore, it is highly unlikely that the statutory goals could be achieved in the Second EEP without exceeding the spending limits.

Nicor Gas notes that the Commission already has recognized that gas utilities would likely require modified energy savings goals due to the significant decline in natural gas prices since the enactment of Section 8-104. Additionally, Nicor Gas states that the Commission has approved modified savings goals in the recently concluded

proceedings relating to the energy efficiency and demand response plans of Commonwealth Edison Company (“ComEd”) and Ameren Illinois Company d/b/a Ameren Illinois (“Ameren Illinois”), in Docket Nos. 13-0495 and 13-0498, respectively. Nicor Gas emphasizes that neither Staff nor intervenors have contested Nicor Gas’ assertion that the Commission should set modified savings goals for the Company, and points out that the ELPC and the AG additionally have acknowledged that lower gas costs and an increase in the statutory targets has left Nicor Gas unable to meet the statutory savings goals.

Nicor states that the Second EEP meets the modified savings goals. The energy efficiency measures included in Nicor Gas’ Second EEP will achieve the requirements identified in Section 8-104(c), as modified by Section 8-104(d). In allocating the available funds available under the statutory budget cap, Nicor Gas developed a portfolio that provides substantial savings, but that also meets a number of additional objectives outlined in the Act that are important for long-term portfolio success. Specifically, Nicor Gas balanced the following six planning objectives: (1) budget; (2) cost-effectiveness; (3) savings levels; (4) fairness; (5) market considerations; and (6) risk management. Although Nicor maintains it could have developed a portfolio that came closer to meeting the therm savings goals defined in Section 8-104(c), it demonstrated that no portfolio exists that would be likely to meet the savings targets in Section 8-104(c) without exceeding the spending limits of Section 8-104(d). Moreover, Nicor argues, portfolios that come closer to meeting the statutory therm savings are not as successful as the Second EEP in meeting the Act’s other objectives, which are important to long-term portfolio success. Based on the above, Nicor urges the Commission to approve Nicor Gas’ modified savings goals and find that Nicor Gas’ Second EEP meets the requirements of Section 8-104(f)(1).

b) Commission Analysis and Conclusion

The Commission agrees that Nicor’s calculations of its statutory savings goals and the budget cap are accurate – Section 8-104(c) requires Nicor to achieve savings goals during its Second EEP of 33,027,000 therms for its PY4, 41,283,000 therms for PY5, and 49,540,000 therms for PY6. The Commission further agrees that, pursuant to Section 8-104(d), the 2% budget cap for the Second EEP is \$124.1 million, and that pursuant to Section 8-104(e), 75% of the available budget – approximately \$93 million – will be allocated to the Company.

The Company has demonstrated, through substantial evidence, that it is highly unlikely that it will be able to achieve the statutory savings requirements without exceeding the statutory spending limits imposed by the Act. The Commission agrees with Nicor that it is faced with a significant increase in statutory savings goals during its Second EEP, and further agrees that the Company is facing a significant decline in national natural gas prices since the enactment of Section 8-104. As Nicor accurately noted, the Commission pointed out the effect of these declining prices in its *Report to the Illinois General Assembly Concerning Coordination Between Gas and Electric Energy Efficiency Programs and Spending Limits for Gas Utility Energy Efficiency Programs*. The Commission anticipated that, as a result of the downward trend in natural gas prices, natural gas utilities were unlikely to meet unmodified savings goals.

The Commission has consistently adopted this view, and has approved modified savings goals in both the Ameren Illinois and ComEd EEP dockets, Docket Nos. 13-0498 and 13-0495, respectively. The Company is directed to file a Second EEP that includes modified savings goals consistent with the conclusions set herein within 30 days of this Order.

2. 10% Residual Risk Adjustment

a) Nicor Gas' Position

The Company asks the Commission to allow Nicor Gas to calculate its savings goals using downward residual risk adjustments in order to manage any additional risks that Nicor Gas cannot reasonably manage through normal program operations. Nicor Gas states it has developed its budgets and savings targets through detailed analyses of costs associated with each individual program and through application of current evaluation information, including savings algorithms as defined in the most recent version of the Technical Reference Manual ("TRM") and the consensus PY3 NTG ratios developed under the Stakeholder Advisory Group ("SAG") process. Because future evaluations may result in new TRM algorithms or NTG ratios, it believes these changes may impact the savings that are available from those forecasted and budgeted savings targets.

While Nicor argues that adoption of adjustable savings goals will not eliminate evaluation risks in their entirety, it believes that prospective evaluation policies will provide Nicor with certainty in knowing the evaluation parameters that will apply and will provide Nicor Gas with substantial risk protection. If the Commission adopts adjustable savings goals and the Company's revised NTG framework, the Company asks the Commission to recalculate Nicor Gas' savings goals to remove the 10% residual risk adjustment factors that are applied to the NTG ratios. They propose this recalculation would increase Nicor Gas' three-year savings goals from 21.5 to 23.9 million therms, and savings for individual programs as well as savings for each Plan Year would increase by the same proportion. However, the Company notes that should the Commission reject its revised NTG framework and declines to adopt the adjustable savings goals, however, the 10% residual risk adjustment is still warranted. In addition, Nicor asks the Commission to approve the values provided in Nicor Gas Exhibit 1.2 to be used by Nicor Gas as the starting point for calculating adjusted savings goals.

Nicor Gas asks the Commission to adopt the 10% residual risk adjustment in order to approve savings goals that are reasonable and fair, and to provide a mechanism through which the Company will be compensated for residual evaluation risks that are largely outside of the Company's control. The Company believes its customers will continue to receive substantial financial benefits after the adoption of this adjustment and realized its adoption would necessitate savings to be lowered by 25% before customers failed to reap financial benefits. In contrast, should Nicor Gas miss its savings goal by a single therm, it would be subject to a \$600,000 penalty. Additionally, this risk adjustment will only be adopted if the Commission does not approve Nicor Gas' revised NTG framework and adjustable savings goals. Finally, Nicor notes that if the Commission does not adopt the Company's revised NTG

framework and adjustable savings goals, it should apply the 10% residual risk adjustment, so that the Company is not burdened with unreasonable savings goals and unmitigated risk.

b) Staff's Position

Staff urged the Commission to require savings goals be recalculated to remove the 10% residual risk adjustment factors applied to the NTG ratios by Nicor. Staff pointed to the Commission's findings in the ComEd Plan 3 Order (Docket 13-0495) which noted that the Company's goal should be set at the level it is projected to be able to achieve, without an artificial 5% reduction.

c) AG's Position

The Attorney General notes that Nicor's 10% residual risk reduction strategy is contrary to the Act and without precedent at the Commission. The AG argues this methodology is more aptly described as a "risk avoidance strategy" and, for the reasons discussed in greater detail below, should be rejected by the Commission.

First, the AG argues, the Company's position is unjustified and unsupported by policy or law. The AG maintains that the Commission must rely on the direction provided to it by the legislature in Section 8-103, which explicitly establishes performance targets and assigns penalties to gas utilities for failing to meet these energy savings performance targets. The AG argues, that by effectively seeking to avoid accountability for factors within its control, Nicor is also seeking to avoid bearing any of the risk associated with energy savings performance. AG contends that allowing Nicor to avoid risk amounts to poor public policy and is also contrary to the legislature's intent in establishing Section 8-104. 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. AG argues the General Assembly made clear its intent to include penalties in the Act its intent to have the utilities absorb some performance risk. Therefore, the AG urges the Commission to reject the Company's request to avoid risk.

The AG notes that the Commission recently addressed a similar risk avoidance proposal in the ComEd Energy Efficiency Plan 3 docket. In Docket 13-0495, the Commission rejected this finding that the ComEd's goal should be set at the level it is projected to be able to achieve, without an artificial 5% reduction. The AG asks the Commission to also see past the arguments raised by the Company and reject Nicor's proposed 10% risk reduction proposal.

Nicor argues this is a necessary reduction to account for the uncertainty related to NTG evaluations. The AG counters by arguing that the effect generated by Nicor's proposal simply reduces its estimated net savings by 10% for purposes of goal setting. The AG argues the result is that the evaluation results simply provide a net effect of the program without estimating any NTG value. If the Commission assumes that Nicor has successfully and accurately planned, then the AG argues, the Company is asking the Commission to set its goals at only 90% of what it actually plans to achieve as a buffer against the possibility that it might not fully succeed. The AG believes that the proposed

10% risk reduction would strip Nicor of any incentive to push for reaching the full 100% and could unilaterally halt its efforts once it hits 90%.

While the AG agrees that it is true that estimating NTG values can be inherently uncertain and it carries a level of “evaluation risk,” they find that these characteristics do not justify Nicor’s proposal. According to its own analysis, the AG states the current estimated NTG values that Nicor is proposing be deemed are based on the latest evaluations and best information. Therefore, they find there is no reason to assume they are systematically overestimated by 10%, especially given they come from the same types of evaluations that are envisioned for future NTG estimation. Yet, AG notes, Nicor is proposing the 10% discount for all three years. The AG argues that Nicor’s repeated references to “evaluation risk” is both troubling and misleading to the Commission. Putting aside the fact that the legislature intended for Nicor to bear this risk, the AG maintains that Nicor seems to imply that this risk somehow arises from the act of evaluating its performance, and is not related to its performance or anything within its control. Further the AG acknowledges that evaluations can carry some uncertainty associated with their results, but Nicor has not claimed or shown any evidence to indicate that evaluations are systematically biased to underestimate savings. Therefore, the AG urges the Commission to reject Nicor’s proposal for a 10% residual risk reduction.

d) CUB’s Position

CUB argues that the effect of the 10% residual risk adjustment to Nicor’s savings goals would also result in a reduction from 23.9 million therms to 21.5 million therms. CUB argues that this proposal to reduce already modified goals by millions of therms would serve to shelter the Company from risk. CUB also notes that the Public Utilities Act and the Commission have already provided the Company with provisions that adequately buffer Nicor from risk. CUB states that Nicor has previously requested the same flexibility in the last plan docket, and this flexibility to adjust programs and budgets in response to market changes or new evaluation data adequately buffers the Company from an untoward degree of risk.

While the Company cites that it would be subject to a \$600,000 penalty for missing its savings goal; CUB points out that the Company is not subject to an annual goal, but rather to a three year cumulative goal that provides the Company with many opportunities to make necessary adjustments to achieve the modified goals. CUB concludes that the Commission should not approve proposals that mitigate risk for shareholders and increase risk for ratepayers, or that further lower the statutory savings goal. Therefore, CUB asks the Commission to reject the 10% residual risk adjustment proposed by Nicor.

e) ELPC’s Position

ELPC notes that with the proposed 10% risk adjustment, however, Nicor would achieve only 22% of the statutory therm goals as opposed to achieving 24% of the statutory goals without the risk adjustment. ComEd proposed a similar 5% risk

adjustment in Docket No. 13-0495 which was rejected by the Commission. In this docket, the Commission rejected ComEd's risk adjustment proposal, finding, "[ComEd's] goal should be set at the level it is projected to be able to achieve, without an artificial 5% reduction." As such, ELPC recommends that the Commission also reject Nicor's risk adjustment proposal, which arbitrarily reduces Nicor's expected savings.

ELPC maintains that given the Company's projected shortfall, the Commission should carefully evaluate Nicor's request for a risk adjustment because, it believes Nicor arbitrarily lowered its estimated savings by 10% to account for the potential risk that evaluators ultimately reduce the therm savings due to revising TRM algorithms or NTG ratios based on program evaluations. ELPC states this would mean that Nicor is only required to save 10% of what it expects to save from Plan 2. While ELPC acknowledges Nicor's argument that it used its professional judgment to determine that the 10% risk adjustment would allow the Company to manage portfolio savings in the face of downside evaluation risks; and the Company is seeking the risk adjustment as protection in the event that the value of a program measure decreases when the TRM and NTG changes, it finds that Nicor's argument fails to adequately justify the 10% reduction. ELPC noted that the AG believed the actual effect of Nicor's proposed risk adjustment is simply one of reducing its estimated net savings by 10% for purposes of goal setting.

In other words, ELPC argues that not only does Nicor want the Commission to set its goals significantly below the statutory targets, but also looks for the Commission to further reduce its goals in order to eliminate all risk. ELPC finds this to be inappropriate and contradictory to the legislative intent of Section 8-104, which clearly sets savings targets and established penalties for failing to meet those targets. ELPC argues that the Commission should not allow Nicor to avoid all risk, and it should not reduce the savings target by the 10% to account for the risk that evaluators would reduce therm savings as a result of TRM and NTG changes. Instead, ELPC urges the Commission to adopt the same position it adopted in the ComEd case and require Nicor to set its goals at a reasonable level that it is projected to be able to achieve.

f) Commission Analysis and Conclusion

The Commission rejects the Company's 10% residual risk adjustment. Consistent with our findings in ICC Docket No. 13-0495, the Commission finds that the Company's energy savings goals should be set at the level it is projected to be able to achieve, without an artificial 10% residual risk adjustment. The Company is directed to remove the 10% residual risk adjustment when submitting its Revised Plan.

3. Energy Efficiency Measures and Programs

a) Nicor Gas' Position

Behavioral Energy Savings Program

Nicor argued that its Behavioral Energy Savings ("BES") program is a critical aspect of the Company's balanced portfolio, that offers opportunities for all customers who buy into the program and participate in accordance with Section 8-104(f)(5). The Company notes that the BES program is also intended to reach markets underserved

by energy efficiency efforts, and argued that elimination of this program will eliminate a significant participation opportunity. In addition Nicor states the BES program would provide substantial sources of therm savings and opportunities for 20,000 customers to participate in each of the three years of the Second EEP.

Staff countered that the Commission should order Nicor Gas to eliminate the BES program in favor of joint EEP programs with ComEd, specifically the Multi-family Comprehensive Energy Efficiency Program and the Elementary Energy Education Program. To counter Nicor Gas' position that the BES program should not be eliminated Nicor argued that Staff misrepresented that the Second EEP does not reflect this fact. Nicor Gas stated that it is actually exploring approaches to tailor the BES program to rental and low-income markets. Nicor argues that the Commission should reject Staff's proposal to eliminate the BES program because it believes eliminating this program will deny a significant participation opportunity to the rental and low-income markets.

Staff further argued that its proposal is supported by the determination the Commission made in the ComEd EEP proceeding to increase the funding allotted for joint programs in the ComEd plan. Nicor finds the Commission should reject any attempt to balance the difference in the size of programs between Nicor Gas and ComEd on the backs of the rental and low-income customer groups, as it is inconsistent with both the approach the Company has taken to provide all customers opportunities to participate in the EEP and the statutory requirement that Nicor Gas offer a diverse cross section of opportunities for customers of all rate classes to participate in the programs.

Finally, Nicor asks the Commission to reject Staff's argument that it is appropriate to move funding from the Company's BES program to joint programs with ComEd because that will increase "net benefits" to customers. The Company finds Staff's argument is inconsistent with Section 8-104(f)(5), which defines cost effectiveness (and related net benefits) at the portfolio level and also requires utilities to balance cost effectiveness considerations by providing a "diverse cross section of opportunities for customers of all rate classes".

In sum, Nicor contends that Staff's proposal to eliminate the BES program and to move funding to joint programs with ComEd is inconsistent with the evidence it presented that demonstrates that elimination of the BES program will deny a significant participation opportunity to the rental and low-income markets and, moreover, is inconsistent with the law. Therefore, Nicor asks the Commission to reject Staff's proposal.

Nicor Gas argues that the Commission should reject the AG's suggestion that the BES program would be more cost-effective if it were a combined behavioral program with ComEd. According to Nicor Gas, the AG fails to account for issues that would arise from attempts to coordinate data and two distinct utility platforms and systems and to acknowledge that there are areas of Nicor Gas' service territory where ComEd is not the electric delivery provider. Nicor Gas emphasizes that it is not a combination gas and electric utility, and argues that if the Commission were to require Nicor Gas to implement a combined behavioral program with ComEd, it would impose high costs and require a significant and burdensome expenditure of time and energy. Nicor Gas

emphasizes that it has collaborated with ComEd on the Company's BES program in compliance with the Commission's Order in Docket No. 10-0562, but ultimately both utilities determined that a combined behavioral program was unworkable.

Turning to the position presented by the AG, Nicor contends the AG's concerns are insignificant since the AG ultimately supports the Company's proposed request for proposal ("RFP") to solicit ideas for a new BES offering on the condition that the new offering should be cost effective. Contrary to the AG's assertions that Nicor Gas only provided information about the nature of its proposal in rebuttal, Nicor maintains its initial filing of the Second EEP plainly described that Nicor Gas would be using an RFP process to implement the BES program to target apartment dwellers and other non-traditional customers that may be underserved by the Second EEP.

Finally, Nicor Gas contends it will also use the RFP to solicit ideas for the program's design, which the Company intends to use to tailor the BES program to non-traditional customers and, thereby, to meet the requirements of Section 8-104(f)(5) to provide a diverse cross section of opportunities for customers. Nicor notes that it has already agreed to allocate the funds into other residential offerings if it is determined that it is not possible to offer a cost-effective BES program, in response to the AG's arguments. For all of these reasons, Nicor argues the Commission should approve Nicor Gas' BES program as proposed.

Business Energy Efficiency Rebate Program

ELPC argues that the Commission should order Nicor Gas to double the amount of customer incentives and to correspondingly cut administrative costs for its Business Energy Efficiency Rebates ("BEER") program. Nicor says that ELPC has not factually substantiated the reason for this adjustment and, instead, ELPC argues Nicor Gas has not demonstrated that there are "unusual or extraordinary circumstances" that warrant spending half of the budget on administrative costs. Nicor dismissed ELPC's argument as unsupported by the evidence presented and states ELPC ignores the substantial evidence Nicor Gas provided demonstrating the multiple reasons for the budget to be allocated per its proposal, such as its application to a wide range of business customers, including many small businesses, across a wide geographic territory.

Nicor Gas further notes that these proposed adjustments fail to account for such associated impacts as impacts to marketing, trade ally engagement, administrative tracking, controls, education and outreach, and EM&V, and would ignore current awareness levels and customer acquisition challenges that exist for a newer program like BEER. Nicor Gas further asserts that this adjustment would be unlikely to improve the savings generated if the same program budget was utilized.

Moreover, Nicor Gas presented evidence showing the arbitrariness of ELPC's recommendation by demonstrating that its BEER program is consistent with similar prescriptive gas programs in Illinois. In particular, Nicor notes Ameren Illinois has a program (Business Standard Incentive – gas and electric) that is similar to the Nicor Gas BEER program. Nicor argues that based upon the filings in the Ameren Illinois EEP proceeding, the customer incentive percentage is similar to what ELPC calculated for the BEER program in Nicor Gas' Second EEP. Nicor argues that applying the same

basic calculation ELPC used in the Ameren proceeding to Nicor, the Ameren Illinois program customer incentives percentage of 30%, is reasonably comparable to the percentage in the Nicor Gas filing for a similar program, in a similar climate zone and customer base.

Therefore, Nicor proposes the Commission should approve Nicor Gas' BEER program.

Cost-Effective Joint Programs with ComEd

Nicor Gas has identified numerous programs that it expects to jointly implement with ComEd and municipal electric utilities, including Home Energy Savings, MCEEP, Residential New Construction, Elementary Energy Education, and Business New Construction. In addition to the jointly operated programs, Nicor Gas has identified numerous programs where it coordinates with electric utilities in areas such as lead sharing, bundling of electric and gas prescriptive measures, and joint marketing. Nicor noted these programs involve coordination between utilities, but do not require formal joint operating agreements. The Company noted that of the ten programs included in Nicor Gas' Second EEP, five include joint operation with an electric utility, three involve coordinated operation, one involves joint operation in one area with coordinated operation in others, and only one program involves solitary operation by Nicor Gas. Nicor also anticipates coordinating with the Integrys utilities, DCEO, ComEd, and other non-utility organizations in order to lower administrative costs, expand customer offerings, or improve program operations. The Company maintained it will also continue to participate in regional and national energy efficiency organizations, and in conferences and other industry events, in an effort to stay current with industry best practices and joint program development.

b) Staff's Position

(1) Cost-Ineffective Behavioral Energy Savings Program and Cost-Effective Joint Programs with ComEd

Staff recommends that the Company's BES Program be eliminated and that the money for the program be allocated to the Company's joint EE programs with ComEd. Staff contends the BES program is cost-ineffective, but they find the joint dual fuel EE programs with ComEd would provide greater net benefits to customers. The Commission significantly increased the funding allotted for the joint programs in ComEd's plan in Docket 13-0495; however, Staff noted that ComEd is reliant on the Company to ensure the joint programs offer gas EE measures, and the sizes of these programs are determined by the Company's limited budgets. Given the Company's relatively limited budget, and the greater net benefits that can be attained through the joint programs, Staff argued that allocation of the funds from the cost-ineffective BES program to the cost-effective joint programs would ensure maximum benefits for consumers.

Nicor argues that the BES Program should not be eliminated because it "is intended to reach some of the underserved markets, such as renters and apartment tenants." The Company also states that eliminating the BES Program would deny a

significant participation opportunity to these customers who pay to support the EEP. Contrary to Nicor Gas' statements, Nicor's Plan explains that the Joint Multi-family Comprehensive Energy Efficiency Program ("MCEEP") with ComEd is already planning to target apartment dwellers. Further, Staff argues that nowhere in the description of the BES Program did Nicor state that "renters and apartment tenants" are the target market. (Nicor Gas Ex. 1.1, 45-46.) Nicor also proposes a joint Elementary Energy Education ("EEE") Program; focused on installations in the households of individual students as well as behavior modification; that would target schools, teachers, students, and families located in the Nicor service territory, including renters and apartment tenants. Thus, Staff argues, elimination of the cost-ineffective BES Program from Nicor's Plan would not deny a significant participation opportunity to customers given the other comprehensive program offerings proposed in the Company's Plan. Rather, it would increase net benefits to ratepayers by reallocating funding to the cost-effective joint residential programs Nicor proposes to offer with ComEd. Staff argued that behavioral modification would still remain an important aspect of certain programs in Nicor's Plan even if the BES Program is eliminated.

To address Nicor Gas' apparent concern about ensuring the Plan reaches underserved markets, Staff suggests the Commission could direct Nicor Gas to shift funding from the BES Program to the MCEEP and the EEE Program in order for Nicor Gas' Plan to expand its reach to renters and apartment tenants.

(2) Cost-Ineffective Tankless Water Heaters

Nicor also sought to have the Commission approve tankless water heaters. To support its position, Nicor relied on the mere assertion that customers often expect rebates associated with water heaters. Staff argued this is insufficient to justify inclusion of extremely cost-ineffective energy efficiency measures that produce negative net benefits to ratepayers. While it is true that in certain cases the implementation of cost-ineffective measures could increase participation in other cost-effective measures that more than offset the losses from implementing the cost-ineffective measures, Staff finds this is not the case for the tankless water heater measure. Nicor wants the water heaters included based on the claim that there may be no other measures that the customer could implement; there is no tie to implementing the tankless water heater measure with increasing participation in cost-effective measures. Moreover, Nicor claims that it proposes to offer this measure so that every customer would have an opportunity to install a gas efficiency measure, but Staff counters that the Company is already offering cost-effective water heater measures through the program that these same customers could choose to install. Nicor Gas argues the tankless water heater measure has minimal costs, while the benefits and participation opportunities are significant. Staff contends these assertions contradict the evidence in this case for a number of reasons. First, Nicor's own analysis shows that the projected costs of implementing the measure are over six times the projected benefits of the tankless water heater measure. Further, Staff claims Nicor admits that it added the cost-ineffective tankless water heater measure to its program during Plan 1, yet as of the date it filed its surrebuttal testimony, there have been zero participants for the tankless

water heater measure. They note that Nicor's Plan projects only 6 participants for the tankless water heater measure. Taken together, Staff argues that, Nicor's surrebuttal testimony and its own Plan projections contradict its statement that the participation opportunities are significant for the tankless water heater measure. Thus, Staff believed it serves the public interest for the Commission to direct Nicor to shift the funds associated with the extremely cost-ineffective water heaters to cost-effective joint programs implemented with ComEd.

c) AG's Position

(1) Behavioral Energy Savings Program

The Company presents a BES program that is much smaller than its previous Plan 1 program and is not cost-effective – achieving a benefit-cost ratio of 0.86. The AG questioned the wisdom of offering this program given the Company-projected non-cost-effectiveness. They argued that BES only provides savings for a single year, unlike other longer-lived efficiency investments; and find that these savings come from encouraging customers to change their behavior in the short term based on receiving on-going home energy reports. The AG states that many of the reasons Nicor provided to support its rationale for pursuing a non-cost-effective program does not apply to the BES program; a program that only provides savings for a single year and does not rely on market-based strategies. The AG suggests that if Nicor could combine this program with ComEd's behavioral program that might make it more valuable and cost-effective.

On rebuttal, Nicor characterized the BES program as a "pilot" effort, and indicates the Company is open to soliciting new ideas; including targeting under-served or non-traditional customers, and new vendors. Nicor stood on the belief that it is important that the BES program be offered to test potential strategies that may be pursued more aggressively in future years.

Nicor further set out to explore other options through the RFP process, and to seek new ideas on how to further target apartment dwellers in the BES, as well as other non-traditional customers that may be underserved by the EEP. They believed this would provide important feedback to Nicor Gas on possibly developing and enhancing its BES program.

Given Nicor's explanation, the AG conditionally supports the BES based upon an understanding that Nicor will issue a RFP and solicit new ideas to address residential behavioral patterns in a cost-effective manner.

The AG urged the Commission to enter an Order that requires Nicor to deliver a program that is cost-effective, and to direct potential bidders in its RFP to put forth cost-effective proposals. Should those RFPs produce savings estimates that show the BES program is simply not cost-effective, the Commission should direct Nicor to pursue other resources with these funds.

Therefore, the AG urges the Commission to direct Nicor to offer BES as a pilot to solicit innovative ideas to broadly address residential behavioral opportunities in a cost-effective manner. The AG also encourages the Commission to direct Nicor to pursue this pilot as a joint effort with ComEd. The AG believes the Commission's Order should also provide that if the pilot cannot be offered in a cost-effective manner, the dedicated funds should be re-directed to other Residential programs.

d) ELPC's Position

(1) Business Energy Efficiency Rebate Program

ELPC asks the Commission to direct Nicor to use at least 50% of Business Energy Efficiency Rebates ("BEER") Program Funds for Direct Customer Incentives. Nicor's BEER program seeks to obtain long-term natural gas energy savings in the business sector by promoting the purchase and installation of targeted and cost effective prescriptive measures. The BEER program, targeting business customers that use 60,000 therms or more per year, promotes the purchase and installation of "high-efficiency space heating and water heating technologies" and promotes high efficiency natural gas furnaces as well as other prescriptive measures. Nicor proposes to allocate 25% of the program budget to direct customer incentives, about 50% to administrative costs, and the remaining 25% to marketing costs.

ELPC counters that allocating only 25% of the program budget to direct customer incentives would impede the program's ability to yield greater therm savings. ELPC recommends that Nicor use at least 50% of program funds for direct customer incentives party, particularly since Nicor has failed to provide persuasive evidence that it needs to spend 50% of the budget on administrative costs. ELPC states that spending more on direct customer incentives rather than on administrative costs would generate additional savings of approximately 3.6 million therms during the three-year plan period.

Nicor counters by stating that ELPC's position fails to address the real-world impacts to marketing, trade ally engagement, administrative tracking, controls, education and outreach, and evaluation, measurement and verification ("EM&V"). Nicor also argued that the change suggested by ELPC serves to ignore the current awareness levels and customer acquisition challenges presented to the Company. ELPC finds this argument fails to demonstrate that Nicor needs to spend 50% of the budget on administrative costs and only 25% on direct customer incentives. ELPC notes that if Nicor increased its implementation budget from 25% to 50% of the program budget, that would still leave \$1.7 million for administrative costs; and points out that Nicor does not indicate any unusual or extraordinary circumstances that would justify the need to spend more than \$1.7 million over three years to manage the BEER program. Since Nicor has not demonstrated that its BEER program warrants having to spend 50% of the budget on administrative costs. ELPC recommends that the Commission direct the program to be adjusted to designate more resources to direct customer incentives to be at least 50% of the BEER program budget.

e) Commission Analysis and Conclusion

The Company's budget is limited and should be carefully allocated to ensure maximum benefits to ratepayers. Further, the Commission notes that the Company does not contemplate being able to achieve the unmodified statutory energy savings goals set forth in Section 8-104(c) of the Act within the budget constraints set forth in Section 8-104(d) of the Act. The Commission wishes to encourage joint program implementation where possible because these joint dual fuel energy efficiency programs provide benefits to consumers by offering both gas and electric energy efficiency measures at the same time, thereby saving costs and reducing customer disruption. The Commission hereby finds that the Company already is jointly implementing programs with ComEd to the extent practicable in order to provide a streamlined approach for customers to participate in programs offering both electric and gas savings energy efficiency measures. The Commission also notes that Section 8-104(k) of the Act encourages statewide coordination and consistency between the gas and electric energy efficiency programs and the Commission's directive herein should help foster such statewide coordination and consistency. Notwithstanding the estimated shortcoming in savings, the Commission finds that Nicor should continue its BES program and explore ways to make it more cost-effective including expansion. The Commission's finding here assumes that the results of the pilot support going forward with the program, and the Commission orders Nicor to submit the pilot results to the Commission as soon as possible.

The Company is further directed to shift funds from the cost-ineffective tankless water heater measures to the cost-effective joint programs the Company currently implements with ComEd. The Commission declines Staff's request to require a filing with the Commission to the extent the Company wishes to deviate from the Commission-approved Plan and discontinue offering a program jointly implemented with ComEd. The Commission finds that requiring Commission approval before the Company may make a program change such as this runs counter to the flexibility we grant to Nicor Gas below. One of the conditions of this flexibility is that Nicor discuss with SAG, prior to initiating the change, "any shift in budget that results in a 20% or greater change to any program's budget, or that eliminates or adds a program." Docket No. 10-0562 at 43-44. In addition, requiring such Commission approval in a formal proceeding may increase the costs of administering the Company's portfolio and jeopardize energy savings depending upon the extent of the litigation at issue.

Finally, the Commission sees merit in ELPC's proposal concerning the Business Energy Efficiency Rebates Program. Therefore, the Commission hereby directs Nicor Gas to increase the savings attributable to this program in the Company's Revised Plan in a manner consistent with ELPC's recommendation.

C. Section 8-104(f)(7) Tariff Design Changes to Lower Customer Monthly Charge

1. Nicor Gas' Position

The Company's Rider 30, Energy Efficiency Cost Recovery, was approved by the Commission in Docket No. 10-0562. The costs of Nicor Gas' Second EEP will be recovered under Rider 30. Nicor notes that no changes were proposed to Rider 30 in this proceeding, thus, the Commission should find that Nicor Gas' Second EEP meets the requirements of Section 8-104(f)(7).

The Company sees that ELPC has argued in favor of a separate proceeding to alter Nicor Gas' tariffs purportedly "to provide enhanced incentives to improve energy efficiency." Nicor Gas argued it has evidence that demonstrates numerous problems with the ELPC proposal, including its incorrect estimation of potential therm savings; its failure to demonstrate how conservation efforts would be quantified; and its failure to address how possible tariff alterations would impact other ratemaking objectives. Nicor was supported by Staff who agrees there are many problems presented by ELPC's proposal and that tariff design should be addressed in a full rate case proceeding. Since ELPC did not rebut the evidence presented by either Nicor Gas or Staff, Nicor believes the Commission should reject ELPC's recommendation to require Nicor Gas to submit tariff alterations.

2. Staff's Position

Staff also asks the Commission to reject ELPC's proposal to initiate a separate proceeding to increase volumetric distribution rates for greater gas conservation and to modify the Company's statutory EE therm targets based on anticipated therm savings resulting from such rate changes should be rejected. Staff was willing to consider rate design changes aimed at decreasing gas usage, but they believed any revision to the Company's tariff rate design should only be considered in a general rate case so that the totality of factors impacting rates can be considered, and any savings from such revisions should not be credited to the Company's EE portfolio.

A Commission Report to the General Assembly suggested that if a gas utility were to increase its volumetric distribution charges by 10%, additional savings of approximately 55% of the PY5 and 50% of the PY6 statutory EE targets could be achieved. ELPC recommends that the Commission set modified statutory therm targets based on the Company's estimated savings. Both Staff and Nicor point out, however, that the conservation effect of changing the price signal is but one of several factors that must be taken into account in any rate design modification; including costs of service, cost causation, billing impacts, conservation impacts, revenue recovery and revenue stability. Staff maintains there is not a direct correlation between the volumetric price and the price signal sent to consumers, or the price signal and gas savings as assumed by ELPC. Staff argues the price signal also includes the actual cost of gas, which varies; therefore savings goals tied to a price signal must account for this inherent

volatility. Staff also noted there is the potential to double count the savings through the incentive programs as well as the price signal.

Staff also argued that ELPC's proposal is contrary to Section 8-104 of the Act. They state the express policy of the gas EE statute is that utilities use cost-effective energy efficiency to reduce indirect and direct costs to consumers. To achieve that policy, utilities are to implement cost-effective measures, defined as measures that reduce the amount of energy required to achieve a given end use, or reduce the total BTUs of gas needed to meet the end use or uses, to meet specific annual incremental savings goals. Staff notes that changing the price to lean more towards volumetric recovery does not constitute a utility implementing an energy efficiency measure. Further, they believe that, if savings from increased volumetric rates are counted towards EE goals, there is a price at which the goals can be met without having a program offer rebates. Thus, Staff concludes that ELPC's proposal could create a perverse incentive for the Company to reduce or even eliminate the rebate programs or to discourage the Company from implementing EE measures.

Accordingly, Staff recommends the Commission reject ELPC's proposal and that any consideration of changes to the monthly customer and volumetric charges designed to decrease gas usage should be addressed in a rate case where the Commission may assess the totality of the factors impacting rates.

3. ELPC's Position

ELPC holds the position that the Commission should direct Nicor to change its tariff design to provide strong price signals that encourage efficient use of natural gas by shifting some costs from the fixed cost component to the volumetric cost component. ELPC believed the statutory cost cap makes it difficult for the Company to meet the statutory targets for Plan 2. They believed that this meant customers will save significantly less natural gas than the legislature intended. ELPC noted that the Commission, in its August 30, 2013 Report to the Illinois General Assembly Concerning Coordination Between Gas and Electric Programs ("Report"), identified a way that Nicor and other utilities could alter their tariff structures to achieve greater efficiency savings "without increasing the budget limitation" by shifting charges from the fixed cost component to the volumetric cost component. ELPC noted the Commission found that placing greater emphasis on the variable cost can decrease energy use by providing a greater price signal without affecting the overall bill to an average retail customer.

ELPC believed that a change in the rate structure would spur customers to implement conservation activities such as setting the thermostat at a lower temperature in the winter months or other strategies, such as "purchasing more efficiency equipment."

ELPC notes that no other party has argued that Nicor's calculation is wrong. ELPC, Nicor and Staff all used similar calculations to arrive at estimates for the savings from a tariff revision. Nicor, however, disagrees with the Commission's assumption that

the distribution charge constitutes 40%-50% of a customer's bill; and stated that "the volumetric distribution charge for a Nicor Gas customer is closer to 6% to 7% rather than 40% to 50%." Nicor estimates that a 10% increase in the volumetric charge would result in "about 2.75 million therms under this assumption." However, Staff rebutted by stating that Nicor's calculation is based on the fact that Nicor is confusing volumetric distribution charges with total distribution charges. Staff calculated a savings of 12.3 million therms per year from a tariff revision, assuming a 30% distribution charge.

The Commission should ignore Nicor's estimate, which relies on an unrealistic assumption about the distribution charge. ELPC says that it used the Commission's best estimates from a report provided to the General Assembly only one month prior to the filing of this application which demonstrated that the utilities are leaving nearly 20 million therms of savings due to over-emphasizing the fixed distribution charge in its retail tariff. Through its Report, ELPC states, the Commission has already recognized the role that tariff revisions can play to increase efficiency "without increasing the budget limitations." Therefore, ELPC argues the Commission can significantly increase energy efficiency savings outside of Plan 2 by requiring Nicor to make the appropriate tariff changes shifting some of the fixed charge to the variable charge. Thus, they contend the Commission should direct Nicor to submit an application in a separate proceeding to implement tariff changes that send the right price signals to customers to save energy.

ELPC does not recommend that the Commission allow the Company to count the savings derived from a tariff change toward meeting its energy efficiency targets. ELPC sided with Staff and maintained that the Commission should not interpret Section 8-104 as allowing credit towards achieving EE savings requirements from savings that result from changing the price signals in the recovery of distribution rates as it noted, Section 8-104 (c) refers to natural gas utilities implementing cost-effective energy efficiency measures in order to meet specified annual incremental savings goals. Staff did not believe changing the price to lean more towards volumetric recovery constitutes a utility implementing an energy efficiency measure. They stated that allowing changes in the price structure to count towards meeting EE goals could reduce or possibly eliminate the rebate programs. Staff also found this to be contrary to the intent of the law, which is to encourage the utilities to implement EE measures.

ELPC noted that the purpose of making the tariff changes is to incent Nicor customers to use less gas, not to help Nicor meet its statutory goals; and stated that ELPC has not recommended that Nicor adjust its savings targets based on the tariff change. Instead, ELPC recommends, the Commission set modified statutory therm targets based on the Nicor EEP anticipated therm savings and in conjunction with the tariff revisions authorized by the Commission.

Since ELPC states it is not recommending that the Commission allow Nicor to count the savings derived from the tariff adjustment toward its goals, Mr. Brightwell's concern regarding double counting savings is misplaced. ELPC maintains there is no guarantee that customers who are motivated by the price change to purchase more efficient equipment will not use utility rebates in the process and highlights the potential

problem of double counting savings. ELPC argued the double counting of savings would occur if Nicor receives credit from the rebate and then again from the price effect. Therefore, ELPC asks the Commission to prohibit Nicor from using savings generated from a tariff modification to meet its savings goals.

4. Commission Analysis and Conclusion

The Commission rejects ELPC's request to initiate a separate proceeding to increase volumetric distribution rates in order to incent greater gas conservation. The Commission finds that ELPC's request would be better addressed in a general rate case so that the totality of factors impacting rates can be considered.

D. Section 8-104(f)(8) Independent Evaluation Contract and Cost-Effectiveness Analysis

1. Nicor Gas' Position

Staff introduced three policy/procedural recommendations related to the independent evaluation contract. Nicor Gas agreed to Staff's first two recommendations, as they relate to the contractual and day-to-day management of the independent contractor hired by the Company to perform evaluation, measurement and verification ("EM&V"), namely that the Company (1) file the independent evaluation contract and scope of work in this docket within fourteen days of execution, and (2) continue to include language in the independent evaluation contract such that the Commission can (a) terminate the contract if the Commission determines that the evaluator was not acting independently, and (b) prevent the Company from terminating the contract without Commission approval.

Nicor Gas argued that the Commission should reject Staff's third recommendation which was to have the independent evaluator be responsible for performing the three-year cost-effectiveness analysis. Instead, Nicor Gas offered to complete a cost-effectiveness analysis that will then be reviewed and validated by the independent evaluator. Nicor noted the AG is in support of the Company's approach and states that the Company will provide sufficient assurance that the cost-effectiveness analysis will be done properly and will be transparent enough to undergo sufficient scrutiny.

Nicor stated that Staff appears to be concerned whether the analysis will be "independent" as contemplated in the statute and noted the Commission has repeatedly held that in order for the evaluation to be 'independent,'; the utility shall not have total control over the evaluator hired to conduct the independent evaluation as mandated by statute; and the Commission retains the right to approve the hiring and firing of the Evaluator. Nicor notes the Commission's previous rulings actually support Nicor Gas' showing that the Second EEP satisfies the "independent" evaluation requirement of Section 8-104(f)(8). The Company maintains it will not have total control over the evaluator and the Commission will retain the right to approve the hiring and firing of the evaluator.

Staff also turned to the Ameren Illinois Order which noted, “the statute requires that an independent evaluator rather than [Ameren Illinois] must perform the cost-effectiveness evaluation” instead of the utility. Nicor argues that the Commission’s finding in the Ameren Illinois proceeding is not dispositive in this matter. First and foremost, the Company notes, the Commission did not make such a finding in the ComEd Order, even though ComEd has utilized the same method Nicor Gas proposes for more than five years.

Secondly, Nicor Gas states that there was no evidence presented on Staff’s proposal in the Ameren Illinois EEP proceeding, and Staff only raised the issue in its briefs. In the present docket, Nicor Gas presented substantial evidence that Staff’s recommendation to impose the cost-effectiveness analysis on the evaluator is problematic because they believe it would result in inefficiency; create unneeded complexity; create a certain “true-up error”; generate an inference that the current process somehow is not “independent”; reduce the capacity to conduct EM&V work, and; unnecessarily alter the methodology that has been successfully followed by ComEd and Ameren Illinois for several years.

Nicor Gas argued it has invested significant effort in modifying the basic E3 tool for use in accordance with the Act. Nicor states that the final cost-effectiveness analysis requires a significant amount of data and is performed by the Company’s data management system---the program management tool (“PMT”) and its Energy Environmental Economics Calculator (“E3”). This cost-effectiveness analysis is then provided to the independent evaluator for review and vetting.

Nicor finds that having the EM&V independent evaluator vet and analyze all of the Company’s data and the E3 model as a standard practice is reliable, transparent, and is an effective method to audit such a complex program. The Company argues that if the EM&V contractor was required to perform the cost-effectiveness analysis, per Staff’s recommendation, it would be required to attempt to duplicate all of the Company’s prior activity in a time-consuming and complicated process that would require the independent evaluator to import that data and run algorithms on a separate system. Nicor argued this would inevitably result in true-up errors due to the complexity and size of the evaluation and identifying and resolving these errors would be expensive and time-consuming. Nicor further maintained the problems that would arise from syncing the data would be further compounded if the independent evaluator used some tool other than the E3 tool as modified by Nicor Gas, something that Staff has never addressed in its proposal.

Nicor also has allocated 3% of its spending – or \$2,793,000 – to activities associated with EM&V as prescribed by Section 8-104(f)(8) and argued that, if the time-consuming, complex, and expensive process described above was imposed upon the independent evaluator, this would add additional hours and cost to the limited EM&V budget. Such a strain on limited resources could limit the contractor’s ability to complete other EM&V tasks.

For all of these reasons, the Commission should reject Staff's proposal to shift the responsibility for performing the cost-effectiveness analysis to the independent evaluator.

2. Staff's Position

Staff says the Company is required to ensure an annual independent review and full independent evaluation of the three-year results of the performance and the cost-effectiveness of its portfolio of measures is conducted. Therefore, they propose the Final Order should include the following findings, as it relates to the Company's Independent Evaluation Contract:

(1) The Company shall file the independent evaluation contract and scope of work in this docket within fourteen days of execution;

(2) The Company shall continue to include language in the independent evaluation contract such that the Commission can: (a) terminate the contract if the Commission determines the Evaluator was not acting independently; and (b) prevent the Company from terminating the contract without Commission approval; and

(3) The Independent Evaluator is responsible for performing the three-year ex post cost-effectiveness analysis per Section 8-104(f)(8) of the Act. These proposed findings are consistent with prior Commission Orders.

As previously stated, Staff noted the Commission has established that a utility must not have total control over the evaluator in order to ensure the evaluator's independence, and that the "Commission has a supervisory capacity regarding the hiring and firing of evaluators, meaning that [the utility] must gain Commission consent to make the hiring and firing decisions regarding [the] evaluator[s]." ¹ Staff said the Commission agreed that Nicor should provide language in the contracts of the independent evaluators so that the Commission can terminate the contracts if it determined the evaluators were not acting independently; and prevent the utilities from terminating the contracts without Commission approval. Staff notes these provisions were included in the contracts of the utilities in ICC Dockets 07-0539 and 07-0540 to ensure that the evaluators were truly independent from the utilities.

Nicor Gas does not contest first two of Staff's findings, and Staff concludes the Commission should adopt its proposals. Nicor does object to assigning the cost-effectiveness analysis to an independent evaluator. Staff counters and notes the statute requires an ex post independent cost-effectiveness analysis be performed. Thus, if Nicor were permitted to perform the ex post cost-effectiveness analysis, there would be no independent cost-effectiveness analysis, in contradiction to the statutory

¹ Commonwealth Edison Co., ICC Order Docket No. 07-0540, 45 (Feb. 6, 2008); Commonwealth Edison Co., ICC Order on Rehearing Docket No. 07-0540, 3 (March 26, 2008).

mandate. 220 ILCS 5/8-104(f)(8); see Ameren Illinois Co., ICC Order Docket No. 13-0498, 46 (Jan. 28, 2014) (“Ameren Plan 3 Order”).

3. Commission Analysis and Conclusion

The Commission agrees that ensuring the evaluator maintains its independence from the Company is critical. Staff’s proposals, designed to ensure the independence of the evaluators, are reasonable and are hereby adopted. The Commission directs the Company to file the independent evaluation contract and scope of work in this docket within fourteen days of execution. The Commission directs the Company to continue to include language in the independent evaluation contracts such that the Commission can: (1) terminate the contract if the Commission determines the evaluators were not acting independently; and (2) prevent the Company from terminating the contracts without Commission approval.

The Commission finds that the statute requires an independent evaluator, rather than the Company, to perform the *ex post* cost-effectiveness evaluation. While the Commission understands the AG and the Company’s concerns regarding limited evaluation funds, the Commission cannot ignore the plain language of the statute requiring an independent cost-effectiveness analysis. Accordingly, Staff’s position is adopted and the independent evaluator is responsible for performing the three-year *ex post* cost-effectiveness analysis per Section 8-104(f)(8) of the Act.

The Commission notes Nicor Gas’ expressed concerns that this finding could generate an inference that Nicor Gas’ current process utilized for the first program years of Plan 1 somehow is not independent. The Commission agrees that given the Company performed the initial cost-effectiveness analysis rather than the independent evaluator for the first program year, such cost-effectiveness analysis cannot be deemed truly “independent” from the Company. The Commission notes that this lack of independence for this single year cost-effectiveness analysis is not a violation of Section 8-104(f)(8) of the Act. Rather Section 8-104(f)(8) of the Act requires that the three-year cost-effectiveness analysis must be independent, as opposed to a single year cost-effectiveness analysis. That being said, the Commission notes that there are likely efficiencies in having the independent evaluator perform both the single year and the three-year *ex post* cost-effectiveness analyses. Finally, the Commission notes that this decision should not be construed as limiting Nicor Gas from performing its own cost-effectiveness analysis, however, the independent evaluator is entirely responsible for performing the three-year independent cost-effectiveness analysis pursuant to Section 8-104(f)(8) of the Act.

E. Section 8-104(i) Savings Goal Compliance Proceeding

1. Nicor Gas’ Position

Staff initiated the following findings with regard to Savings Goal compliance:

(1) The three-year cost-effectiveness results by program shall be reviewed and reported to the Commission in the three-year savings goal compliance proceeding per Section 8-104(f)(8) of the Act.

(2) The Company is directed to petition the Commission to initiate the three-year savings goal compliance proceeding once the Section 8-104(f)(8) independent evaluation reports are available

The Company does not oppose Staff's recommendations, which would initiate after the independent evaluation documents and cost-effectiveness analyses are available; but Nicor notes that the Company's First EEP is not yet concluded, and it has not yet had experience with the timing of when all necessary documents will be available prior to initiating the compliance proceeding recommended by Staff.

2. Staff's Position

Staff proposed that the proceeding to determine whether a utility should make a contribution to the Low-Income Home Energy Assistance Program and the independent cost-effectiveness evaluations should be combined in a single proceeding. Staff proposes these evaluations should be conducted concurrently in a single Commission proceeding because the two subjects are integrally related; it is likely many of the same evaluation reports will be needed in both dockets; and it is more efficient to conduct a single proceeding. Thus, Staff suggests, the Company should be ordered to petition the Commission to initiate a single proceeding to determine both the cost-effectiveness of its programs and the savings goal compliance.

Therefore, Staff concludes, the Commission's Final Order should adopt the following findings: (1) The three-year independent cost-effectiveness results by program shall be reviewed and reported to the Commission in the three-year savings goal compliance proceeding per Section 8-104(f)(8); and (2) The Company is directed to petition the Commission to initiate the three-year savings goal compliance proceeding once evaluation reports are available. Staff believes the petition filing deadline should be consistent with a previous Commission Order wherein a utility was directed to petition the Commission for a review of whether it met its savings goals within 60 days after the independent evaluation reports are available.

3. Commission Analysis and Conclusion

The Company is directed to petition the Commission to initiate the three-year savings goal compliance proceeding within 60 days of receipt of the final independent evaluation reports. The Commission agrees with Staff that, for the sake of efficiency, the three-year independent cost-effectiveness results by program shall be reviewed and reported to the Commission in the three-year savings goal compliance proceeding pursuant to Section 8-104(f)(8) of the Act.

V. Portfolio Flexibility, Cost-Effectiveness, and Reporting

A. Nicor Gas' Position

In Docket No. 10-0562, the Commission approved Nicor Gas' First EEP and granted Nicor Gas substantial flexibility in managing its portfolio across the three years of the First EEP and among different program activities. The Commission also confirmed that it would not require additional authorization for adjustment of spending or savings for individual years or programs, but imposed certain conditions for Nicor Gas with regards to this flexibility. Specifically, the Commission determined:

Nicor should fully discuss with the SAG prior to initiating the change, any shift in budget that results in a 20% or greater change to any program's budget, or that eliminates or adds a program. Further, Nicor shall not shift more than 10% of spending between residential and [commercial and industrial] sectors without Commission approval; and Nicor shall not modify its plans such that it no longer meets the statutory requirements for allocations to the low income and state and local government markets. Nicor argues that these conditions are reasonable restrictions on Nicor Gas' flexibility and the Commission should apply the same conditions to Nicor Gas' Second EEP.

The first condition, requiring notification to SAG prior to any change that results in a 20% or greater change to the budget, is reasonable. Nicor Gas' experience with the SAG indicates that these notifications are not unduly burdensome and can generate valuable feedback from stakeholders. Similarly, although Nicor Gas has not yet shifted more than 10% of spending between residential and business sectors, the Company supports Commission approval for such shifts as it will ensure that different customers support the overall portfolio with similar funding levels. Lastly, the third condition is necessary to maintain the statutory requirements related to allocations of funding between Nicor Gas and DCEO.

Staff supports Nicor Gas' request for flexibility, subject to certain requirements. Nicor maintained that Staff's proposed conditions should not be imposed by the Commission as a prerequisite for maintaining the flexibility already granted to the Company, because they found these conditions are unrelated to the issue of management flexibility and deal largely with cost-effectiveness with respect to various programs and measures. Moreover, Nicor Gas emphasizes that imposition of Staff's proposed reporting requirements would permit what is, in effect, micro-management of the Company's Second EEP. Nicor Gas argues that these conditions would permit Staff to manage the Second EEP down to the measure level. The Company notes that the AG similarly argues that these restrictions would be burdensome and would permit Staff to "effectively 'police' the Company." Further, Nicor Gas emphasizes that both the AG and CUB oppose Staff's recommendations and have provided substantial evidence demonstrating numerous reasons why the Commission should reject those conditions.

Nicor Gas also argues that Staff's recommendations are contrary to the language of Section 8-104, which requires cost-effectiveness to be evaluated at an overall portfolio level and similarly requires the Second EEP to provide diversity of participation opportunities for all rate classes. According to the Company, adoption of Staff's conditions would mandate evaluation of cost-effectiveness at the program and even the measure level, and would force the Company to forego less cost-effective programs in order to maximize spending on a limited number of programs that would maximize cost-efficiency. The Company also points out that Staff refers to inapposite and inapplicable provisions of the Act in support of its position. While the Company did not agree to these conditions, it notes that all of the information that Staff has requested on a quarterly basis is already available to all stakeholders and is contained in the Company's Annual Report of Activities filed at the end of each plan year. Nicor proposed it could collaborate with Staff to add pertinent and reasonable information to this end-of-year report that will achieve Staff's goals in a reasonable fashion. The Company notes that the AG and CUB also oppose Staff's recommended conditions.

The AG supported the need for management flexibility but still opposed Nicor Gas' request for flexibility because they allege the Company would "make changes to its plan as it sees fit without any stakeholder or Commission approval." The Company argues the AG's opposition ignores that Nicor Gas is requesting the very same flexibility that the Commission previously approved in Docket No. 10-0562 and that this flexibility strikes a balance between Commission oversight over any significant modification to the EEP and avoiding micro-management and approval of every adjustment.

The AG further argued against flexibility because, it feared, continued flexibility would allow the Company to "easily game the system." Nicor says the evidence shows otherwise and argues the AG provides no examples to suggest that this has taken place during the Company's First EEP. Instead, the AG attacks the modifications made to the Company's BES program, alleging that Nicor Gas made these modifications in order to "make up for goal shortfalls in Plan 1." Nicor said this claim is inaccurate and notes the Company has demonstrated why such changes to the BES program were appropriate and resulted in enhancements to nearly every program in Nicor Gas' First EEP. Contrary to the AG's suggestions, Nicor Gas argues it cannot unilaterally shift program funding to cheaper programs in order to meet approved goals. Nicor noted the Commission previously approved management flexibility in Docket No. 10-0562; and mandated SAG oversight of any shifting of funds within a program sector that would result in a 20% or greater change to any program's budget. This condition establishes a clear limit on the amount of flexibility that Nicor Gas is given with regards to shifting funding for its EEP programs. Nicor Gas is requesting the same condition with respect to its Second EEP.

The AG also proposes that the Commission impose limits on the Company's flexibility in the form of a flexible savings goal adjustment that would be triggered if Nicor Gas shifted budgets that resulted in a change of 20% or more. Nicor Gas demonstrated why the Commission should reject the AG's proposal regarding cost-effectiveness of the Second EEP. Nicor argues that the AG failed to acknowledge that: (1) there may be

instances in which it is appropriate to shift funds between programs, and (2) there are checks and balances already in place that provide oversight and accountability. The Company further argues that the AG failed to provide any evidence substantiating this argument, and instead refers to speculation about hypothetical situations in which the Company may shift funds that would necessitate oversight by the Commission or SAG. Nicor Gas also points out that the AG seemingly opposes such an adjustment with regards to therm savings goals based on changes to the TRM and NTG values. According to Nicor Gas, the AG's flexibility proposal is unrelated to the Company's proposal. The AG opposed this adjustment to therm savings goals based on changes to the TRM and NTG values.

Although the AG attempts to explain away this inconsistency by presenting its proposal as simpler and "more transparent," Nicor maintains the evidence shows the two proposals do not compare. The AG proposes a goal adjustment for flexibility that relates to significant shifts in budgets, while the current flexibility employed by Nicor Gas and other utilities, and permits the utilities to adjust their programs in reaction to changing markets and needs in order to provide options for customers who pay into the programs. The Company says these scenarios are distinct and unrelated. Nicor also notes the Commission has already rejected the AG's claims in ComEd and Ameren's recent EEP dockets, finding that significant budget shifts will be brought to the Commission's attention.

Nicor Gas argues it requires flexibility to effectively and efficiently manage its Second EEP; thus, the Commission should reject as unnecessary the conditions submitted by Staff, reject as unsupported the AG's proposals, and grant Nicor Gas the flexibility to manage its program budgets and savings across the three Plan Years and the different programs of the Second EEP. Thus, Nicor asks the Commission to adopt the conditions on flexibility that were previously adopted in Docket No. 10-0562. CUB is in support of the Company's position on flexibility as set forth in the aforementioned docket.

Cost effectiveness

The Act requires Nicor Gas to provide "a diverse cross section of opportunities" for its customers to participate in energy efficiency. 220 ILCS 5/8-104(f)(5). Going beyond rate classes, Nicor Gas designed its portfolio to provide meaningful opportunities for all customers to participate, including large and small customers, owners and renters, customers in new construction and existing buildings, customers in the market to purchase new equipment, and customers interested in improving the efficiency of existing equipment, as well as a wide range of additional market segments.

In order to demonstrate that the overall portfolio of energy efficiency measures, not including low-income programs covered by Section 8-104(f)(4), are cost-effective under the total resource cost ("TRC") test, Nicor argued it must meet the standards set forth in Section 8-104(b). Under Section 8-104(b), cost-effectiveness is achieved and the TRC test is met when "the benefit-cost ratio is greater than one." The Company

states the TRC test measures the benefits and costs of an energy efficiency portfolio as an energy resource option based on the total costs and benefits to the utility's service territory, to the utility's EEP participants, and to the utility itself. In order to measure these costs, Nicor offers that a TRC test balances the investments that are made by program participants and the utilities at the outset of the EEP against the long-term benefits of reduced energy usage for both program participants and the utilities. The Company found these benefits would include costs of natural gas supplies, reasonable estimates for "financial costs likely to be imposed by future regulation of emissions of greenhouse gases,"; and "other quantifiable social benefits" as required by Section 8-104(b). Nicor proposed costs that would be included in the TRC calculation are, direct installation costs incurred by the utility, costs incurred by participants to purchase, install, and maintain energy efficient equipment, and costs incurred by the utility to market and administer the EEP. The Company states that if a TRC measures greater than 1.0, this measurement indicates that an energy efficiency portfolio has long-term benefits that exceed the costs.

Nicor found its Second EEP portfolio has a TRC benefit-cost ratio of 1.34, and meets the statutory requirement and indicating that benefits exceed costs by 34%. Further, Nicor Gas expects the Second EEP portfolio to deliver lifecycle net TRC benefits of over \$40 million to Nicor Gas customers. The Company notes that neither Staff nor any intervenor presented evidence contesting that the Second EEP meets the requirements of Section 8-104(f)(5).

Nicor Gas argues that the Commission should approve those limited individual programs and measures that do not pass the TRC test, because such measures and programs add clear and identifiable benefits to the Company's Second EEP. Nicor Gas further claims that elimination of such programs and measures could lead to harm, customer confusion, and a decrease in participation. Nicor Gas asserts that Section 8-104(f)(5) only requires that the overall EEP pass the TRC test to qualify as cost-effective. As previously stated, Nicor Gas asserts that its Second EEP has a TRC benefit-cost ratio of 1.34, meeting this standard. Nicor Gas notes that it has analyzed the cost-effectiveness of its individual programs and measures under the Second EEP, and in doing so has adjusted its portfolio to eliminate investment in some cost-ineffective measures and to adjust certain delivery approaches in order to improve program cost-effectiveness. Nicor Gas states that it has determined that the TRC benefit-cost ratios for each individual energy efficiency program under the Second EEP ranges from 0.86 to 3.79, and notes that the only individual programs that do not pass the TRC test are the Behavioral Energy Savings ("BES") program and the Home Energy Savings ("HES") program, with TRC benefit-cost ratios of 0.86 and 0.93, respectively.

Nicor Gas argues that even though these programs do not meet the TRC test, they should be included in the Second EEP because they are important for meeting other portfolio objectives, they provide substantial sources of therm savings, and they increase opportunities for customers to participate. Nicor Gas further describes these programs, noting that its HES program provides comprehensive energy assessments and retrofits to customers in existing single-family housing, creates an opportunity for those customers to achieve comprehensive savings, provides the only source of meaningful savings opportunities for these customers who are not eligible to participate

in multi-family and new construction programs, and is delivered jointly with ComEd. The Company points out that if electric costs and savings are considered, the combined TRC benefit-cost ratio for the HES program increases to 1.08. Nicor Gas also notes that its BES program is targeted to approximately 20,000 customers, that it requires no initial investment from those customers, and that it is potentially attractive for lower income customers and renters with landlords who do not participate in Nicor Gas' multi-family programs.

Nicor Gas argues that these programs may prove cost-effective in the future, especially because the Company is changing the delivery model for the HES program in order to reduce costs associated with energy assessments and to gain economies of scale through a larger trade ally network. Moreover, Nicor Gas explains that cost-effectiveness could be achieved for these two programs with minor changes in avoided costs or delivery costs. Lastly, the Company notes that if these two programs are eliminated, there may be serious barriers to reinstating them in the future, especially as elimination of these programs may devastate local trade ally networks.

Nicor Gas asserts that the BES and HES programs are essential to the provision of a diverse cross-section of opportunities for customers, pursuant to Section 8-104(f)(5). Nicor Gas claims that its BES program provides a critical aspect of the Company's balanced portfolio and is intended to reach underserved markets, and argues that elimination of this program will eliminate a significant participation opportunity.

Similarly, Nicor Gas argues that even though certain individual measures do not pass the TRC test, they should be included in the Second EEP. Nicor Gas explains that those measures with a TRC of less than 1.0 include: (1) tankless water heaters in the Multi-Family Comprehensive Energy Efficiency Program ("MCEEP") and in the Small Business Energy Efficiency Program ("SBEEP"); (2) furnace tune-ups in MCEEP and SBEEP, as well as boiler tune-ups in the Business Energy Efficiency Rebate program; (3) attic insulation in MCEEP; and (4) certain individual water heater measures in the Home Energy Efficiency Rebate program. Nicor Gas notes that it has bundled certain of these measures with other cost-effective measures and has included them in the design of certain programs. The Company argues that these measures provide additional benefits that contribute to overall program success, that they provide opportunities to interest customers in participation, that they eliminate market confusion by simplifying overall program offerings, and that they provide bundling opportunities that enhance participation in more cost-effective measures. Additionally, Nicor Gas asserts that these measures ensure that the portfolio satisfies the diversity requirement set forth in Section 8-104(f)(5).

Nicor Gas argues that the Commission should reject Staff's argument that the Company should shift the funds associated with its tankless water heater measure to more cost-effective measures, noting that the tankless water heaters are included in a comprehensive small business program, can be used in any type of small business facility, and provide opportunities for small business owners to save natural gas. Nicor Gas further notes that there are minimal costs associated with the tankless water heater measure, but the benefits and participation opportunities offered are significant.

B. Staff's Position

Staff recommends that the Commission grant the Company's request for flexibility subject to the adoption of the following four requirements:

(1) The Company is directed to stay apprised of and respond prudently and reasonably to information concerning energy efficiency measure and program level cost-effectiveness while implementing its Plan to help ensure the Plan produces and maximizes the net benefits to Illinois ratepayers envisioned by Section 8-104 of the Act and remains in compliance with all other statutory objectives.

(2) The Company is directed to include a discussion of how it utilized the flexibility it was granted in its quarterly reports filed with the Commission in this docket. The quarterly reports shall summarize program activities, implementation modifications, additions or discontinuations of specific energy efficiency measures or programs, spending and savings amounts compared to the Plan filing, how the Company responds to past Evaluators' recommendations and changes in the IL-TRM, NTG ratios, market research findings, and other relevant information the Company relies upon in making its decisions. To the extent such changes significantly impact the portfolio and expected cost-effectiveness in the view of the Company, the Company shall also report revised projected program-level and portfolio-level TRC test cost-effectiveness results for the program year.

(3) The Company is required to provide cost-effectiveness screening results in its quarterly reports filed with the Commission in this docket for new energy efficiency measures the Company adds to its Plan during implementation.

(4) The Company is required to limit the participation of cost-ineffective measures to no more than the levels proposed in its Plan, with the following conditions:

a. If a measure is cost-effective in the vast majority of building types to which it is directed and marketed, then the Company need not attempt to limit participation of the energy efficiency measure within a program year.

b. If the cost-ineffective measures are a necessary component for implementing cost-effective measures (e.g., comprehensive whole home dual fuel programs), then the Company need not attempt to limit participation of the energy efficiency measure within a program year.

c. The Company shall provide cost-effectiveness screening results in its quarterly reports filed with the Commission in this docket for measures previously projected to be cost-ineffective that become cost-effective over the course of the Plan such that it is clear that limitations on participation of these measures is no longer necessary.

In the alternative, if condition (4) is not adopted, then Staff recommends that Nicor Gas shall explain in its quarterly reports filed with the Commission the extenuating circumstances for each new cost-ineffective measure that Nicor Gas adds to its Plan after Commission approval; and the extenuating circumstances that would cause the Company to exceed the participation estimates included in the Plan for cost-ineffective measures.

Staff argued this alternative proposal to condition (4) provides for transparency to stakeholders and the Commission during the implementation of the Company's Plan and also suggested reporting should be required with respect to mid-Plan changes because the Company's existing quarterly reports have not sufficiently explained changes to the Plan, nor documented the Company's decisions to exercise its flexibility. They believed it is logical that in exercising the flexibility granted to it by the Commission, the Company should report to the Commission the reasons for doing so, and such reporting will provide the Commission with greater transparency and insight into the Company's decision-making process.

Staff further maintained the Company should be ordered to provide cost-effectiveness screening results for new EE measures and to limit the participation of cost-ineffective measures to ensure that participation of cost-ineffective measures does not exceed expectations in the Company's Plan. While there may be circumstances in which it is appropriate to include cost-ineffective measures in the Plan, Staff believes ultimately cost ineffective measures reduce net benefits to ratepayers and increase the risk that the portfolio may become cost-ineffective. Accordingly, they state that if evidence exists that a measure is both cost-ineffective and unlikely to promote longer-term, cost-effective savings, it should be excluded. Likewise, Staff objects to the addition of new cost-ineffective measures after Plan approval and ask that they also be prohibited. To ensure compliance with these restrictions, Staff suggests the Commission should order the Company to provide the TRC cost-effectiveness screening results for any new measures the Company decides to add to its Plan during implementation in its quarterly reports.

If, in the alternative, the Commission be persuaded to eliminate Staff's recommended condition limiting the number of cost-ineffective measures to the participation estimates assumed in the Plan, then Staff recommends that the Company be required to explain in its quarterly reports both the extenuating circumstances for each new cost-ineffective measure Nicor adds to its Plan after Commission approval and the extenuating circumstances surrounding exceeding the participation estimates included in the Plan for cost-ineffective measures. They find that this alternative proposal would provide transparency to stakeholders and the Commission during the implementation of the Company's Plan.

Nicor countered that all the information Staff requests on a quarterly basis can be provided to all stakeholders in the Company's Annual Report of Activities. Nicor Gas suggests that Staff and the Company work together to add pertinent and reasonable information to this end of year report that will achieve the goals in a reasonable fashion.

Staff agrees with Nicor Gas' suggestion to work together concerning the information that should be included in the annual report; but still believes that information should also be included in the statutorily-required quarterly reports to the Commission. Staff countered that since the annual reports are not produced until after the end of the program year and only include the cumulative information requested by Staff as opposed to the quarterly data would limit the ability for parties to provide input to the Company mid-program year which would result in timely changes during implementation.

Staff clarified that this is not the intent of Staff's recommendations, nor is it specified in Staff's recommendations to have the Company strictly maximize net benefits for ratepayers at the expenses of certain programs that may target a specific rate class, but may be less cost-effective. Staff reiterated that the Commission should adopt its first proposed requirement as an answer to Nicor's concerns.

The clause "and remains in compliance with all other statutory objectives" ensures that the perverse outcome that Nicor Gas purports may occur would not actually occur in practice. Under Staff's recommendation, it argued, the Company would not be forced to forego less cost-effective programs that target certain rate classes in order to maximize benefits, because per Staff's recommendation, the Company must remain in compliance with all other statutory objectives, including Section 8-104(f)(5) and compliance with the statutory requirements of modifying its portfolio of measures to maximize net benefits. Removal of the cost-ineffective program in the circumstance outlined above would be contrary to Staff's recommendation, and Nicor's concerns are unfounded.

CUB argues that Staff wants a minimum cost-effectiveness requirement at the measure level, which would be measured through the Plan period. Staff countered by stating it clearly acknowledged there may be circumstances where it may be appropriate to include certain cost-ineffective energy efficiency measures in the Plan.

Furthermore, Staff argued its position should not be a limit on flexibility insofar as requiring net benefits increase as a result of the program modification, because as previously stated, Staff's recommendation explicitly includes cost-ineffective measures where these serve energy efficiency goals. They maintained its concern is simply with ensuring that unlimited promotion of cost-ineffective measures does not occur during the Plan because this would serve to erode net benefits for ratepayers and undermine the purpose of the energy efficiency statute. Staff found CUB's characterization of Staff's position is without merit and should be ignored by the Commission.

CUB further argued that Staff's references to the MidAmerican cases are irrelevant because MidAmerican operates under a different statutory provision than the Company. Staff states that CUB's argument misses the point; and noted the MidAmerican cases support Staff's position that the Commission can and should impose more stringent requirements than imposed in the respective governing statutes for MidAmerican and the Company.

Since the Company is no longer proposing to meet its statutory savings goals, Staff believes it does not make sense for the Company to promote measures and programs that produce diminished net benefits to ratepayers unless extenuating circumstances can be shown. Rather, Staff suggests, the Commission should require each program or measure be cost effective in this plan filing, unless extenuating circumstances can be shown to warrant inclusion of such program or measure, such as satisfying statutory objectives like offering programs to customers of all rate classes.

The AG opposes Staff's reporting proposals, describing them as "unrealistic, bureaucratically and administratively burdensome, and unlikely to work in practice." Staff countered by stating its proposal is consistent with the reporting requirements and review processes that the Commission recently adopted for Ameren's and MidAmerican Energy Company's ("MidAmerican Energy") Plans in Docket Nos. 13-0498 and 13-0423/13-0424 (Cons.), respectively. Further, the Company notes that the information Staff requests can be, or already is available to stakeholders and is contained in the Company's Annual Report of Activities filed at the end of each plan year. Accordingly, Staff found its proposal is reasonable and imposes little, if any, additional administrative burden upon the Company.

C. AG's Position

The AG asks the Commission to deny Nicor's request for unlimited flexibility because it creates perverse incentives for achieving energy savings goals.

The AG maintains that Nicor is proposing an unlimited level of flexibility to modify their Plan 2, subject to only a couple of self-imposed restraints. Despite the Company's argument that this is not a request for unfettered flexibility, the AG argues Nicor's request speaks otherwise. The AG points out that the Company's proposal shifts budgets between programs with no exceptions other than a limit of a 10% shift between residential and commercial and industrial sectors. Nicor further asserts that its flexibility would avoid violations of statutory requirements related to low income funding in Section 8-104 of the Public Utilities Act and Staff proposes a series of reporting requirements that will do little more than add layers of bureaucracy for all parties involved. . Therefore, even if the Commission approves the Company's request and incorporates Staff's burdensome reporting requirements, the AG believed the end result would still grant Nicor a unilateral ability to make changes to their plans as they see fit without any prior stakeholder or Commission approval.

Instead, the AG asks the Commission to adopt its proposal which enables portfolio flexibility, keeps stakeholders informed and retains approved programs

To counter the above-mentioned risk that the Company would manipulate the Plan to achieve energy savings goals, the AG proposes that, in the event Nicor makes a major shift of more than 20% of budget from one program to another, the energy savings goals should be adjusted to be consistent with the budget transfer. The AG argues such a requirement protects both the Company and ratepayers by simply resetting goals to reflect the actual plan the Company ultimately choose to pursue. They rationalize the energy savings goals adjustment can be done after the fact; is not

burdensome; would be transparent to all parties, and simply ensures that goals reflect the approximate plan being pursued. Further, because the AG proposal permits the Company to shift up to 20% of a program budget with no energy savings goals adjustments, The AG argues its proposal still provides the Company with a great deal of flexibility that would not even trigger any goal adjustments. Finally, flexibility to modify individual programs — for example adding or removing measures, adjusting incentives, changing marketing strategies, etc. — would still be fully allowed to respond quickly to market events or evaluation findings.

The AG recognized the reality of market changes and other factors, and noted that it is unreasonable and unrealistic to expect a program administrator to complete a program exactly as planned and exactly on budget. In fact, as the AG noted in its testimony, expecting or requiring this kind of outcome runs the risk of creating perverse year-end incentives.

In addition, the AG urges the Commission to direct the Company to first bring any proposed modifications to the SAG for discussion and ideally to build consensus around the change. They argue the Company should do this whether or not the 20% limit is exceeded, but it is particularly important for larger changes, and state the SAG has proven to be an effective sounding board to allow various stakeholders a forum for providing input and building support for the programs. The AG believes the SAG will also, 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; in an effort to consider differing points of view prior to making any final decisions. AG Ex. 1.0 at 19. In the event that a modification does require a modified goal, it can also reduce contentious litigation by ensuring all parties reach consensus on the exact amount to modify goals.

Finally, the AG finds its goal adjustment proposal is far simpler and far more transparent to all parties than the Company's and Staff's suggested changes to the TRM. It should also be noted that the AG is not seeking to constrain Nicor from making the choices it needs to make to manage its portfolio. Rather, the AG is simply recommending that the Commission establish some limits on flexibility. The proposed limits would not serve to prevent Nicor from exceeding them if they should so choose. Rather, the exceeding of a limit would trigger a goal adjustment in the event the Company chooses to exceed them.

D. CUB's Position

CUB argued against Staff's recommendation. In sum, CUB argues that Staff wants a minimum cost-effectiveness requirement at the measure level, which would be measured throughout the Plan period. Staff would in essence have any measure that dips below a 1.0 in cost-effectiveness terminated immediately unless the Company could somehow demonstrate it fit into an exception. CUB found this is despite Staff's acknowledgement that both Section 8-104(f)(5) of the Act and the Commission's last Order for Nicor's plan establish the plan must be cost-effective at the portfolio level, and

not the measure or program level. CUB argues this runs directly counter to the ICC's most recent order on the subject of cost-effectiveness in ICC Docket No. 11-0341.

The cost-effectiveness standard in Illinois is the Total Resource Cost ("TRC") test, defined as "a standard that is met if, for an investment in energy efficiency or demand response measures, the benefit-cost ratio is greater than one." "Cost-effective" energy efficiency measures are defined as measures that "satisfy the total resource cost test." Utilities must "demonstrate" that the "overall portfolio of energy efficiency measures... 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." CUB believes the law is clear: the "overall portfolio" of measures must be cost-effective, not individual measures.

As such, CUB maintains that Staff's recommendations rest on irrelevant sections of the Act and previous Commission orders in unrelated dockets. They state that Staff turned to the Commission's Final Order in ICC Docket No. 12-0132, a docket involving the energy efficiency plans of MidAmerican Energy, however CUB notes MidAmerican Energy is based in Iowa and serves a relatively small number of customers in Illinois along the border between the two states whose energy efficiency programs are not governed by Section 8-104. Instead, MidAmerican Energy's programs are governed by Section 8-408, that holds different requirements for cost-effectiveness and calls for individual "programs" to be cost-effective. CUB also noted that Staff also cited to one Commission finding from ICC Docket No. 12-0544, approving the 2013 Illinois Power Agency ("IPA") Procurement Plan as an alternative legal theory. In that case, the Commission addressed the procurement of specific energy efficiency measures and programs, which must be individually cost-effective under the IPA Act. CUB points to the fact that both of these proceedings are inapplicable to the case at hand and provide no support for Staff's position.

CUB found the Commission has already rejected Staff's attempt to use a discussion on the cost-effectiveness of gas griddles as a basis for creating a cost-effectiveness standard for each individual energy efficiency measure within a program and a Plan: in ICC Docket No. 11-0341.

CUB states that Staff is continually pushing for the standard for cost-effectiveness to be at the measure level, when the statute clearly shows the criteria for cost-effectiveness is at the portfolio level; and despite numerous past Commission orders that reinforce the same. CUB states that Staff's insistence on trying to push a policy that is inconsistent with the governing statute is a drain on the utility companies' and intervenors' resource. CUB believes that the Commission should reject Staff's cost-effectiveness recommendations and reaffirm that as in previous EEPs dockets, the Commission declines to create cost-effectiveness requirements beyond those in the Act.

CUB further states that the Intervenor and Staff will always have opportunities to discuss the worth of cost-ineffective measures and programs at the SAG or litigate in

future dockets. CUB also argues that Staff's recommendation that programs must pass the TRC at the measure level could lead utilities to overemphasize measures that garner short term savings over long term programs that require time to develop. Instead, CUB notes that applying the TRC test at the portfolio level insures that utilities do not have a bias towards measures that only generate savings in the current program year, but instead are able to offer a mix of programs, including measures with long lifetimes. Since some programs require time to become cost-effective, perhaps through customer education or market changes and because Section 8-104 (f)(5) also requires that all utility energy efficiency programs "represent a diverse cross-section of opportunities for customers of all rate classes to participate in", CUB says that programs intended for hard to reach customer segments, in particular, may not pass the TRC, especially in a program's early stages and argues that Staff's recommendation will hinder the viability of energy efficiency programs and prevent consumers from reaping the economic and societal benefits the General Assembly intended by creating the EEPS.

CUB does not agree with Staff that the Commission should challenge the Act's guidance related to cost-effectiveness, or contradict the many previous orders in which it has supported the Act's guidance, but CUB shares Staff's position regarding transparency. Participants in the SAG and intervenors in dockets related to Nicor and other utilities' plans already discuss the values and merits, or lack thereof, of including cost-ineffectiveness measures in a portfolio. CUB did not see a basis to oppose additional discussions related to cost-effectiveness occurring in quarterly reports, provided the discussion is not framed around "extenuating circumstances," as there is no legal definition of this term in the record or in the Act or previous Commission orders.

Thus, CUB concludes the Commission should confirm its finding in the 2013 EEPS and reject Staff's proposal to establish a measure-level cost-effectiveness criteria, and instead adopt the requirements related to Company flexibility that were adopted in the aforementioned dockets.

E. Commission Analysis and Conclusion

As an initial matter, the Commission reiterates that Section 8-104(f)(5) of the Act requires a utility's entire portfolio to be cost-effective in order for the Commission to approve a Plan, and does not require every single measure or program to be cost-effective. However, it is expected that the Company will not eliminate careful consideration with respect to the addition of cost-ineffective measures during Plan implementation. The Commission recognizes that the addition of cost-ineffective measures reduces net economic benefits for consumers. The Commission notes that the Company is not able to meet the unmodified statutory energy savings goals without exceeding the budget cap and thus it does not make sense for the Company to promote energy efficiency measures that produce negative net benefits for ratepayers. Thus, the Commission finds it reasonable for the Company to include explanations for any necessary cost-ineffective measures in its Revised Plan in its compliance filing. The Commission agrees that reporting to the Commission TRC results for new measures in the Company's quarterly reports is appropriate.

The Commission recognizes that flexibility in Plan implementation is critical to the success of energy efficiency programs in Illinois. The Commission also recognizes that any grant of flexibility should be followed by transparency and clear policy guidance concerning implementation in order to ensure the fruition of the policy objectives specified in the energy efficiency statute. Therefore, the Commission grants the Company's request for flexibility in implementing its Plan, subject to the same conditions we applied to the Company's grant of flexibility in Docket No. 10-0562 for the Company's first three-year Plan. Nicor must fully discuss with the SAG, prior to initiating the change, any shift in the budget that results in a 20% or greater change to any program's budget, or that eliminates or adds a program and it cannot shift more than 10% of spending between residential and business sectors without Commission approval. The Company shall not modify its plans such that it no longer meets the statutory requirements for allocations to the low income and state and local government markets.

Additionally, the Commission grants the Company's request to continue its existing reporting practices to the SAG involving program changes and budget shifts that were adopted in the Company's first Plan filing, ICC Docket No. 10-0562.

VI. Evaluation

A. Consistent IL-NTG Methods

1. Staff's Position

Staff says the Commission should require consistent statewide net savings or NTG methodologies ("IL-NTG Methods") in the evaluations of comparable EE programs offered by the program administrators. They argue that standard IL-NTG Methods would improve efficiency, consistency, transparency and comparability in the evaluation process. The current EE program Evaluators should take the lead in compiling and formalizing standard IL-NTG Methods and collaborate with the SAG in the process. Staff would not introduce "new" NTG methodologies. Instead, existing NTG methods that have been used to evaluate EE programs in Illinois would be assessed, and the Commission would consider adoption of the most defensible and well-vetted methodologies. Staff maintained the best approaches would be flexible and adaptable to multiple program designs and tailored to appropriately assess the specifics of each of the utilities' EE programs, consistent with standard NTG protocols adopted in other states. Staff pointed to the Company's last Plan filing, where the Commission recommended that the independent evaluator work with the SAG to ensure transparent and consistent methods for determining electricity and natural gas savings.

The Commission emphasized that "[i]t is critical that both gas and electric utilities are required to play by the same rules and assumptions." Despite the Commission's recommendation, this has not occurred to any significant extent for net savings methodologies, with the exception of the joint evaluations. Staff believed that consistent statewide NTG methods would reduce contention over spillover estimation approaches, provide greater consistency and certainty to utilities about likely future evaluation results, and provide a more efficient process for all interested parties and utilities to vet the reasonableness of NTG methodologies.

Staff notes that despite the Commission direction to the SAG in the prior Plan docket described above, alternative NTG methodologies are currently being implemented for comparable EE programs in Illinois. Thus, Staff believed the Commission should direct the Company to require its Evaluators to collaborate with the other Illinois Evaluators and the SAG to reach consensus on the best approaches to assessing NTG in particular markets for both residential and non-residential EE programs. Further, the Commission should direct Staff to file the agreed-upon consensus statewide IL-NTG Methods with the Commission as an appendix to the updated IL-TRM. Staff notes the evaluators in Illinois have currently been working on understanding and reconciling differences in NTG methods for non-residential EE programs, so finalizing a consistent approach for the non-residential EE programs should be able to be completed soon.

Therefore Staff proposed, the Commission adopt the following findings regarding consistent IL-NTG Methods:

(1) In order to help ensure the independence of the Evaluators and to improve efficiency, consistency, transparency, and comparability in the evaluation process, consistent statewide net savings or NTG methodologies shall be used in the evaluations of comparable programs offered by different Illinois Program Administrators. The Company is directed to require its Evaluator to collaborate with the other Illinois Evaluators and the SAG to reach consensus on the most defensible and well-vetted methodologies to assessing net-to-gross ratios in particular markets for both residential and non-residential energy efficiency programs in a manner consistent with the direction provided herein.

a. ICC Staff shall file the agreed-upon consensus statewide NTG methodologies with the Commission as an appendix to the Updated IL-TRM. If consensus is not reached on a certain component of the statewide NTG methodologies, that particular non-consensus component should be submitted in a manner consistent with the approach used for non-consensus IL-TRM Updates. It is efficient, transparent, and reasonable to keep the Commission-adopted gross savings methodologies (IL-TRM) and net savings methodologies (IL-NTG Methods) together.

ELPC agrees with Staff and Nicor Gas did not object to Staff's recommendation in testimony. Based on the Company's surrebuttal testimony, Staff believes the Company has no objection to having the Evaluators for different utilities consult with each other and attempt to reach consensus on consistent NTG across utilities for similar programs.

Staff also noted that the Commission adopted Staff's recommendations in the Ameren Illinois Company's Plan 3 proceeding and should do so in this proceeding.

2. ELPC's Position

As stated above, ELPC supports Staff's proposal regarding consistent IL-NTG methods and urges the Commission to adopt the proposal in this docket.

3. Commission Analysis and Conclusion

The Commission believes that Staff's recommendations concerning Commission adoption of consistent statewide net-to-gross methodologies ("IL-NTG Methods") for use by the evaluators are reasonable and will aid in future evaluation of the energy efficiency programs. To help ensure the independence of the evaluators, to improve efficiency in the evaluation process, and to ensure programs across the state as delivered by the various program administrators can be meaningfully and consistently evaluated, the Commission hereby adopts Staff's recommendation that consistent IL-NTG Methods be established for use in the evaluations of comparable energy efficiency programs offered by different Illinois program administrators. The Commission notes that Section 8-104(k) of the Act encourages statewide coordination and consistency between the gas and electric energy efficiency programs and Staff's proposal would help ensure consistency in the evaluation of program performance. The Commission notes that this directive is not to create entirely "new" NTG methodologies for every energy efficiency program, but rather to assess NTG methodologies and survey instruments that have been used to evaluate energy efficiency programs offered in Illinois, and to compile the most justifiable and well-vetted methodologies (or potentially combine certain components from the existing approaches to better represent the most justifiable and well-vetted method consistent with best practices) in an attachment to the Updated IL-TRM that would get submitted to the Commission for approval. The Commission notes that the IL-NTG Methods will be flexible and adaptable to multiple program designs and budgets and tailored to appropriately assess the specifics of each of the program administrators' energy efficiency programs, consistent with standard NTG methodologies adopted in other states that were filed in this proceeding. The Commission agrees with Staff that in the interest of efficiency, the current program evaluators should take the lead in compiling and formalizing standard methodologies for NTG in Illinois taking into consideration SAG input. Because the existing Plan 1 evaluators are under contract with the Company for the evaluation of the program year three energy efficiency programs, it is appropriate for these existing evaluators to work on and complete the compilation of the IL-NTG Methods over the next year. The Commission recognizes that each year considerable time may be spent vetting NTG methodologies for each program evaluation separately for each utility under the existing evaluation plan review practices; adoption of IL-NTG Methods would save on these limited evaluation resources by having a common reference document for the evaluators to use in estimating net savings for Illinois.

The Commission hereby directs the Company to require its evaluators to collaborate with the other Illinois evaluators and the SAG to use best efforts to reach consensus on the approaches used in assessing NTG in particular markets for both residential and non-residential energy efficiency programs in a manner consistent with the direction described herein.

The Commission agrees with Staff that Commission consideration and approval of statewide net savings methodologies should be accomplished in conjunction with the existing Commission-approved process for approving statewide gross savings methodologies. Staff's proposal is efficient, reasonable, and would likely reduce litigation costs for all parties by avoiding the need for two separate docketed proceedings. Staff's proposal concerning the establishment of consistent statewide IL-NTG Methods is hereby adopted and the Company is directed to comply with the terms of Staff's proposal and involve the evaluators within one month of the date of this Order.

B. Spillover

1. Nicor Gas' Position

Nicor introduced a revised NTG framework to address spillover in response to concerns raised by Staff, the AG, and ELPC, Nicor Gas modified its revised NTG framework to include language similar to what the Commission included in the ComEd and Ameren Illinois Orders but maintains its original position that the independent evaluator may rely on deemed values from secondary research.

Notwithstanding the modification proposed by Nicor, Staff objects to certain language in the Company's proposal. Nicor requests the Commission reject Staff's objections to certain language contained in the Company's revised NTG framework proposal since the challenged language makes it clear that the independent evaluator may rely on all available information, including deemed values developed from evaluation of other EEPs not operated by Nicor Gas. The Company finds this language is essential, and addresses the concerns expressed by multiple parties regarding the costs of spillover evaluations. The inclusion of this language not only guarantees that spillover effects will not be ignored, it provides a mechanism through which spillover effects can be captured and measured at a fraction of the costs that are required for primary research.

Further, Nicor disagrees with Staff's argument that some of the revised language is "too vague," They believed the language contained in the proposed revised NTG framework not only clearly defines the role of the independent evaluator, it also mirrors that language adopted by the Commission in the ComEd and Ameren Illinois Orders. However, Nicor suggests that if the Commission agrees with Staff that additional clarity is needed with regards to the specific phrase "when appropriate", the Commission could clarify this point in its final Order.

The Company notes that Staff made three additional recommendations with respect to spillover, two of which the Commission should adopt. First, Nicor Gas agrees to Staff's proposal to work with its independent evaluator and the SAG "to determine the feasibility of a portfolio-level spillover study." Second, assuming the Company's adjustable savings goal proposal is adopted, Nicor agrees that the Commission should adjust portfolio goals in the future to reflect changes between actual spillover evaluation results and the initial planning assumptions that Nicor Gas relied

upon to calculate the 21.5 million therm goal. However, should the Commission reject the Company's adjustable savings goal proposal, Nicor also asks the Commission to reject Staff's proposal.

Nicor also objects to Staff's final issue regarding the Company's spillover proposal seeks an explanation of what would constitute participant versus non-participant spillover for each energy efficiency programs and how it could reasonably be estimated through each of the program evaluations. Nicor Gas believes Staff's request is unreasonable and unnecessary and should not be adopted by the Commission. Since it is believed that spillover can result from a wide range of potential measures and market effects; and can vary based on a number of factors; it would be premature to attempt to define all potential spillover effects. Instead, Nicor maintains it would be more appropriate for the independent evaluator to conduct surveys of real customers, trade allies, and implementation contractors in an effort to provide such a definition.

2. Staff's Position

As stated above, Nicor Gas proposes that the Commission should require the Evaluators to consider spillover, "including, when appropriate, relying on deemed values developed from evaluations of other programs." Staff argued the Commission should reject Nicor's vague and ambiguous proposal and stated Nicor's proposed language is too vague to be usefully applied. Staff noted the phrase "when appropriate" when contrasted with the provision "significant market or program change" stated in the current version of the NTG Framework that has been the source of considerable contention. Instead, Staff argued, the Commission should use the same language concerning spillover as used in the ComEd Plan 3 Order:

Staff proposed that rather than trying to evaluate spillover on a program-by-program basis, the Commission should require Nicor to direct its evaluator to conduct an evaluation of non-participant spillover across the entire sectors of the portfolio, if feasible. Staff maintained that, if a comprehensive non-participant spillover survey were conducted, there would be no need to conduct program-specific assessments for non-participant spillover or use deemed values from other jurisdictions and comprehensive sector-wide portfolio-level evaluation may more accurately reflect how spillover occurs.

Staff suggested a portfolio study be conducted but the feasibility of a portfolio-level spillover study may need to be determined. Staff suggests the Commission should encourage the Company and its evaluator to work with the SAG in determining the feasibility of a portfolio-level spillover study. Nicor has no objection to this concept and Staff noted the Commission approved a similar Staff proposal in the ComEd Plan 3 Docket:

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. ComEd Plan 3 Order at 101.

Accordingly, Staff recommends that the Commission require Nicor to direct its evaluator to conduct an evaluation of non-participant spillover across the entire sectors of the portfolio.

3. AG's Position

As previously stated, Nicor outlines a NTG framework that specifically requires an independent evaluation to consider the effect of spillover in NTG assessments. Nicor acknowledges that (1) excluding spillover from NTG calculations is likely to unfairly reduce a program administrator's calculated savings; (2) because it can be costly to determine spillover, the independent evaluator should not be required to always include it in NTG ratio calculations; and (3) the independent evaluator, however, should consider spillover, including, when appropriate, relying on deemed values developed from evaluations of other programs, while being mindful of any excessive costs to measure spillover in relation to the predicted impacts of such measurements. The AG concurs with Nicor's recommendation.

AG also notes that Staff recommends that the Commission reject Nicor's proposal, but it is unclear exactly what Staff finds objectionable beyond the Company's reference to permitting reliance on other spillover studies. Staff argues that the Commission should enter a finding related to spillover analysis consistent with the Ameren (13-0498) and ComEd (13-0495) orders. The AG agrees with Staff's position on this point and concludes that the Commission's final order should ensure that NTG analysis includes both spillover and free ridership assessments. As noted above, and in consideration of EM&V resources, the AG believes the Commission should enter a finding that mimics the conclusion in the Ameren and ComEd orders, which Commission directs evaluators to (1) always include both free ridership and spillover assessments, while being mindful of any excessive costs to measure spillover in relation to the predicted impacts of such measurements.

4. ELPC's Position

ELPC asks the Commission to reject Nicor's NTG proposal which requires a spillover assessment before considering free ridership. ELPC notes that the Commission rejected similar revisions in docket 13-0495, 13-0498, and 13-0499 and chose not to require a spillover assessment. As it did in prior energy efficiency dockets in recent months, ELPC believes the Commission should reject Nicor's proposal to pre-condition a spillover assessment prior to inclusion of free ridership impacts in NTG analyses. Moreover, the Commission should require Nicor to use the best available information when assessing program effectiveness. Furthermore, the Commission

should direct evaluators to consider spillover whenever possible while being mindful of any excessive costs to measure spillover in relation to the predicted impacts of such measurements.

ELPC maintains a NTG assessment is an important component of measurement since it “estimates and separates the projected gross energy savings from the naturally occurring and directly attributable program-induced savings to determine a NTG value.” The NTG value, therefore, ensures that Nicor receives credit only for savings that its programs actually generate, which forces Nicor to properly allocate ratepayer money to programs that achieve real efficiency savings.

ELPC defined “Free riders” as program participants who would have taken an energy saving action regardless of whether an incentive was offered, whereas they attribute Spillover to customers who took an energy saving action because of Nicor’s programs but without participating in the program. ELPC recalls that Nicor proposes to require a spillover assessment as a prerequisite to considering free ridership impacts. While both free ridership and spillover are important to understanding the success of a program, Staff explains that assessing spillover is often more costly than assessing free ridership. ELPC concludes that spillover, by its very nature, is more difficult and costly to measure than free riders.

Given the likely cost of measuring spillover, ELPC maintains, it is unlikely that every Plan 2 program can be evaluated for spillover. As noted, Nicor proposes that a program analysis that does not account for spillover should ignore free ridership. Nicor’s proposal, therefore, would eliminate free ridership from at least some NTG analyses, which would undermine the purpose of NTG analyses. Therefore, ELPC recommends that the Commission reject – as it has previously, Nicor’s request to precondition a spillover assessment and instead require Nicor to use the best available information when assessing program effectiveness.

5. Commission Analysis and Conclusion

The Commission finds that excluding spillover from the NTG calculations might unfairly reduce a program administrator’s calculated savings, but because it can be costly to determine spillover, the Commission will not require that it always be included. Thus, the Commission directs evaluators to consider spillover while being mindful of the costs to measure spillover and the likely impacts of such measurements.

Staff’s proposal to consider a portfolio-wide spillover survey is worthwhile and the Company is directed to take it to its evaluators and the SAG for further development and implementation as soon as practical.

C. Modified Illinois Net-To-Gross Framework

1. Nicor Gas' Position

Nicor believed a revised NTG framework is integral to a comprehensive risk management approach. Accordingly, Nicor Gas proposes a revised NTG framework with the following four provisions:

1. For existing programs, when a Nicor Gas evaluation of a program has identified an estimated NTG ratio, that ratio will be used prospectively until a new Nicor Gas evaluation estimates a new NTG ratio. The prevailing NTG ratio provided by the independent evaluator by March 1 of any Plan Year is the NTG ratio value to be applied to the next Plan Year beginning June 1.

2. For new programs, planning NTG ratio values that have been provided by the independent evaluator 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 Nicor Gas evaluation estimates a revised NTG ratio. If the revised NTG ratio is provided by the independent evaluator 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 described above.

3. Excluding spillover from NTG calculations is likely to unfairly reduce a program administrator's calculated savings, but because it can be costly to determine spillover, the independent evaluator is not required to always include it in NTG ratio calculations. However, the independent evaluator should consider spillover, including, when appropriate, relying on deemed values developed from evaluations of other programs, while being mindful of any excessive costs to measure spillover in relation to the predicted impacts of such measurements.

4. Prior to March 1 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.

Nicor Gas argues that its proposed revised NTG Framework improves upon the current NTG Framework that was approved in Docket No. 10-0562 and emphasizes that its revised NTG Framework "creates a defined schedule for completing the process, eliminates the possibility of unnecessary litigation, and decreases unreasonable evaluation risks." Nicor Gas asserts that the Company's proposed revised NTG Framework is preferable to the current NTG Framework because, among other things, it explicitly addresses spillover and permits the independent evaluator to rely on deemed values from secondary sources.

Nicor notes that the parties have dedicated a significant portion of their initial arguments to the revised NTG framework issue. Nicor found that overall, the parties are largely in agreement on the goals to be achieved in modifying the NTG framework to be applied to the Second EEP; which were well emphasized by Nicor and the AG. As summarized by the AG, both Nicor Gas and the AG support evaluators making the initial proposals for NTG values, bringing these to the SAG to attempt to reach consensus, and also acting as the final arbiter to decide any non-consensus values prior to March 1. Nicor also notes the parties also recognize that the Commission has already considered this issue at length in the Ameren Illinois and ComEd EEP proceedings.

Staff, the AG, and ELPC continue to emphasize their concerns that the SAG be included in the assessment of NTG values and in response Nicor Gas revised its framework to add the aforementioned fourth provision to its proposal.

Nicor Gas further notes that the three sentences in the fourth provision are identical to language that the Commission adopted in the Ameren Illinois proceeding. However, Nicor Gas maintains that the Commission's other conclusions regarding NTG in the Ameren Illinois proceeding are not ideal because, as a starting point, rather than adopt language similar to the Company's proposal, the Commission maintained the provisions of the NTG framework adopted in the Final Order in Ameren Illinois Docket No. 10-0568. Nicor noted this earlier framework includes a number of problems that all parties to the current Nicor Gas EEP proceeding agreed should be rectified, including, among others, retroactive application of NTG values under certain conditions, as well as uncertainty in applying the term "undergoing significant change" in triggering retroactive NTG application. While the Commission direction to Ameren Illinois will allow the independent evaluator to circumvent these problems, Nicor argued it adds unnecessary confusion and should not be applied to the Company. Finally, Nicor Gas argues that the Commission should reject the NTG Framework proposals submitted by the AG, ELPC, and Staff, because, among other problems, these frameworks include an unreasonable retroactive evaluation risk in such cases where the SAG cannot come to a consensus, and recommend application of NTG values retrospectively in cases where utilities miss deadlines for filing materials that are dependent on third parties over whom the Company does not have managerial control. Additionally, Nicor Gas argues that these proposals would negate Nicor Gas' approach of applying evaluation risks prospectively, an objective which the AG supports. Nicor Gas asserts that these proposals include punitive measures that are unwarranted and unnecessary and impose unreasonable costs on Nicor Gas.

Nicor Gas also claims that these proposals impose an overly burdensome process on the SAG and the Commission; according to the Company, these proposals would require extensive SAG resources, would call for numerous meetings, teleconferences, individual memos, and other obligations. Nicor Gas argues that it is unclear whether these proposals could be implemented, and notes that the independent evaluator had previously failed to meet deadlines that mirror those proposed by Staff, the AG and ELPC. Nicor Gas asserts that imposing deadlines such as those proposed

by Staff, the AG and ELPC could force evaluators to cut short evaluation timelines and could reduce the accuracy of evaluation results.

For all of these reasons, Nicor concludes the Commission should adopt the Company's four point revised NTG framework as reasonable and efficient and reject the NTG frameworks submitted by Staff, the AG and ELPC as problematic in several respects.

2. Staff's Position

Staff asks the Commission to adopt its NTG Framework as set out in Staff Ex. 1.1. ELPC supports this position and states that "[t]he revised framework that Staff has proposed would . . . provide a more efficient NTG update and revision process." Staff believed the key premise underlying Staff's Modified NTG Framework proposal is consistent with the Commission's finding in the Ameren Plan 2 Order, where the Commission found NTG ratios could reasonably be expected to be in the program year for which they are deemed. Staff maintained this encourages the utility to make appropriate program design changes to minimize free-ridership in the short-term during the program year for which deeming takes place and to credit savings claims based on the best estimate of the program's true effectiveness by taking into consideration a variety of information that could influence the level of free-ridership and spillover in the applicable program year. They concluded that application of Staff's NTG Framework would enable the Company to more efficiently allocate resources to the most effective energy efficiency programs and measures.

Staff also notes that ELPC sought to introduce an exception to Staff's NTG Framework that includes a provision providing for the establishment of voting parties, including Program Administrators, Staff and other parties that have traditionally intervened in the EE dockets and consistently participated in the SAG. Both the AG and ELPC expressed concern that Staff's NTG framework, absent a voting party provision, could allow any SAG attendee, including subcontractors, to object to consensus. In direct testimony, Staff addressed this concern with respect to voting parties by recommending that the Commission order the Company to include provisions within its contracts with its implementers that expressly prohibit the contractors and any of their subcontractors from obstructing the consensus seeking IL-TRM and NTG Update processes. As noted by the AG and ELPC, should the Commission adopt Staff's recommendation in this regard, both of these parties could support Staff's NTG Framework. Neither the Company nor any other party opposed this recommendation and Staff believes this solution addresses AG's and ELPC's concerns regarding voting parties. Accordingly the Commission should adopt Staff's NTG Framework in its entirety.

Staff sees that the Commission recently rejected the ELPC's proposal related to voting parties in Docket No. 13-0499. They propose the Commission also reject the proposal to create voting parties at the SAG and instead, order the Company to include provisions within its contracts with its implementers that expressly prohibit the contractors and any of their subcontractors from obstructing the consensus seeking IL-TRM and NTG Update processes.

Staff argues against the AG's and the Company's proposed NTG Frameworks because they do not create an incentive to encourage all parties to reach consensus on the best estimate of future NTG ratio ("NTGR") values to deem. Staff stated that only the ELPC NTG Framework and the Staff NTG Framework create these important incentives that will reduce litigation in future energy savings goals compliance proceedings.

Further, since the NTG ratio values the Evaluator recommends under the AG and the Company's NTG Frameworks impact whether the Company meets statutory energy savings goals (if the adjustable savings goal proposal is not adopted), Staff believes this could create an incentive for the Company to pressure Evaluators to provide high NTG ratio values and any deviation from the Evaluator's initial NTG ratio recommendation could be perceived by some parties as not being "independent." To help mitigate the risk of compromising the independence of the Evaluators who will face a lot of pressure under the AG's and the Company's NTG Frameworks, the Commission should incentivize parties to reach consensus at the SAG as part of the NTG Update Process in line with SAG's similar role in the existing Commission-approved IL-TRM Update Process. Staff maintained that requiring consensus at the SAG for NTG updates would work well as evidenced by all of the last three IL-TRM Updates being consensus in nature.

Under the NTG Frameworks supported by both the AG and the Company, the Evaluator has no incentive to modify its initial NTG recommendation unless there is consensus. Indeed, modification of the Evaluator's initial recommendation in favor of one of the competing non-consensus proposals at the SAG may be construed by the parties whose position was not adopted by the Evaluator that the Evaluator is not acting "independently." Thus Staff believed this work effectively means that the Company has no incentive to negotiate in good faith on any NTG ratio that would lower the Evaluator's recommended NTG ratio under either the AG or the Company's NTG Frameworks and notes that adoption of an adjustable savings goal approach would help mitigate this disincentive. Assuming the Commission did not adopt the Company's adjustable savings goal proposal, the Company will have an incentive to oppose updates to NTG ratio values because those updates would make it more challenging for the Company to meet the energy savings goals forecasted in the Plan filing.

While Staff believes the ELPC's NTG Framework (ELPC Ex. 1.5) has flaws and is inferior to its own, they believed ELPC's NTG Framework is at the same time, much superior to the NTG Frameworks offered by both the Company and the AG because of the incentives it creates to help ensure parties work in good faith to reach a consensus on the most accurate NTG ratios to deem for the programs.

Should the Commission adopt either the AG's or the Company's NTG Frameworks, then Staff states the Commission should also require that if consensus cannot be reached at SAG by March 1 on the best estimate of the NTG ratio value to deem for the upcoming program year, then the average of the NTG ratios estimated in

the current program year and the most recent previous program year evaluation shall be the deemed NTG ratio for the upcoming program year. Staff contends that adoption of this modification provides benefits to ratepayers because the utility now has an incentive to manage risky programs rather than to divert the risk to ratepayers and would help ensure incentives are in place such that all parties work in good faith to reach consensus at the SAG on the best estimates of NTG ratio values to deem.

The Commission should adopt Staff's NTG Framework for Nicor Gas. Staff's NTG Framework can be found in Staff Ex. 1.1, and is explained in Staff Ex. 1.0. In addition, the Commission should (1) adopt the spillover provision as adopted by the Commission in ICC Docket No. 13-0495; (2) direct Nicor to include language in its contracts with its implementers that prevent its contractors or any of their subcontractors from obstructing the consensus-seeking IL-TRM and NTG Update process; and (3) require the deemed NTG ratio values and the evaluators' actual estimated NTG ratio values both shown in the evaluation reports for informational purposes. However, to the extent the Commission does not adopt Staff's primary position or Staff's two alternatives ((i) the Commission should adopt ELPC Ex. 1.5, excluding the voting parties provision, or (ii) if the Commission adopts the AG or the Company's NTG Frameworks, then the Commission should also require that if consensus cannot be reached at SAG by March 1 on the best estimate of the NTG ratio value to deem for the upcoming program year, then the average of the NTG ratios estimated in the current program year and the most recent previous program year evaluation shall be the deemed NTG ratio for the upcoming program year then the Commission should adopt either the AG's or Nicor's proposals as described in their respective testimony, which seem to be fairly consistent. Staff explained that each description differs from the respective NTG Framework provided by the AG and Nicor, and concluded that neither should be adopted.

Staff disagrees with the AG's statement that "the Commission's order in the Ameren docket (13-0498) specifically required the evaluator to consider SAG input when deciding on a new value *when consensus cannot be reached*." Staff's interpretation of the Commission's Order in ICC Docket No. 13-0498 and the fourth provision of Nicor's NTG Framework is that the evaluator considers SAG input and makes the final determination on the NTG ratio values to deem *in all cases*, not only cases where consensus cannot be reached. Nicor states that is not the intent of its fourth provision. However, Nicor stated its intent of "the fourth provision of the Company's proposal [is to] ensure[] that the SAG has input into the process, the process is completed by March 1, and the independent *evaluator will be the final arbitrator if SAG cannot reach consensus*." To clarify this issue, the Commission should slightly modify the fourth provision of Nicor's NTG Framework to ensure the Commission's Final Order contains language to reflect its intent that if SAG consensus is reached on a NTG value, then that NTG value would be deemed, but if consensus is not reached on a NTG value, then the evaluator would act as the arbiter for that NTG value.

The AG argues that the Commission's order should clarify that the SAG should be given a reasonable period of time to review information and attempt to reach

consensus on the best NTG ratio values to deem prior to the March 1 deadline. Nicor indicates that if the Commission determines that guidance with respect to schedules is necessary, then it supports the general direction the AG suggests. While Staff prefers that the Commission impose no later than a January deadline for providing the evaluator's initial NTG recommendations as this creates greater certainty for the purpose of this alternative Staff does not object to the AG's proposal, which appears to be acceptable to Nicor. Therefore, the Commission should eliminate the first three provisions of Nicor's NTG Framework which create confusion because they contradict the fourth provision and adopt the following modifications to the fourth provision of Nicor's NTG Framework if Staff's other three recommendations are not adopted: 4. Allowing for a reasonable period of time to review information and attempt to reach consensus prior to March 1 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. In proposing values, the independent evaluator may consider evaluation research from programs operated in Illinois and other jurisdictions, and any relevant factors that could influence the level of free-ridership and spillover in the following program year (e.g., changes to program design, incentive levels, market, building codes). If consensus cannot be reached at SAG by March 1 on the best estimate of the NTG ratio value to deem for the upcoming program year, then the independent evaluator shall act as the final arbiter and determine the NTG ratio value that will be deemed for the following program year taking into consideration SAG input while also ensuring that the NTG ratio value reflects the best estimate of what the evaluated NTG ratio could reasonably be expected to be in the program year for which it is deemed. If consensus can be reached at the SAG by March 1 on the most accurate NTG ratio value to deem for the following program year, then SAG's consensus NTG ratio value shall be deemed for the following program year.

Staff noted that it appears that the AG argues for Commission adoption of the NTG Framework adopted in the Ameren Order. If the Commission maintains the Plan 1 NTG Framework with minor modifications as it did in the Ameren Order, then the Commission should eliminate the existing confusion established by the Plan 1 NTG Framework by defining a program undergoing "significant changes" in either program design or delivery or changes in the market itself as "a change that results in a NTG ratio value changing net savings by 10% or more." Such retroactive application of the NTG ratio value would also result in savings goal adjustments for Nicor Gas (assuming the Commission adopts this request of Nicor's) for the relevant program year, which in turn protects Nicor from any type of disadvantage.

Staff notes that the AG argues that the Commission's NTG finding in Docket No. 13-0498 should be adopted in this proceeding, although the AG also states it favors prospective application of the NTG ratios. There appears to be no argument that the Commission has already approved retroactive application of the NTG ratios in ICC Docket No. 13-0498. Therefore, if the Commission desires no retroactive application in a NTG framework then it should not adopt the NTG framework adopted in ICC Docket

No. 13-0498 for Nicor Gas. Staff supports partial retroactive application in the case of non-consensus issues; if there is a non-consensus issue, then the current NTG and previous year's NTG values should be averaged, and that average should be the deemed NTG value for the following program year because it encourages all parties to reach consensus. The point of having the potential for partial retroactive application is not to actually apply results retroactively, rather it is to encourage parties to work in good faith to reach consensus on the best NTG ratio values to deem. If all parties believe that a forecasted NTG ratio that is different than the average of the previous year NTG and current year NTG would provide a better estimated NTG for the following program year, then parties will have an incentive to negotiate on a better value and reach consensus. If partial retroactive application has to be applied, it produces a better NTG value than the existing framework because the deemed NTG includes information that is only one and two year old data, as opposed to two year old data under the current Plan 1 NTG framework.

3. AG's Position

The AG and Nicor appear to be in agreement that the NTG Framework must incorporate SAG input and incorporate that input when non-consensus exists. Nicor acknowledges that it supports the AG recommendation that the Commission-approved NTG evaluation process should require evaluators to annually present its findings to the SAG for critical input related to development of annual NTG values, so that market and regulatory changes and other up-to-date variables impacting NTG analysis can be considered. Most importantly, the Company acknowledges that when consensus does not exist during the annual evaluation process, the independent evaluator should consider the critical SAG input in developing the NTG value to be applied prospectively for the coming program year, rather than simply default to the values recorded in the last evaluation, which could be out-of-date, as was approved in the ComEd three-year plan docket, Docket No. 13-0495.

Staff also advocates that “[t]he key premise underlying Staff’s Modified NTG Framework proposal is consistent with the Commission’s finding in the Ameren Plan 2 Order: The NTG ratios that will be deemed are to reflect the best estimates of what the evaluated NTG ratios could reasonably be expected to be in the program year.” The AG noted that the key difference between Staff’s NTG framework and the framework that Nicor and the AG have reached consensus on is Staff’s inclusion of the provision concerning partially retroactive application of NTG values when non-consensus occurs. While the AG notes it has supported Staff’s proposal in principal, the AG, in the spirit of compromise, is willing to agree to prospective application of the NTG values. Given that, the AG believes the Commission must ensure in its Order that the SAG is given a reasonable period of time to review information and attempt to reach consensus. They point to the reference to “prior to March 1” and note that Nicor’s proposed NTG framework could allow the evaluators to propose values on February 28th and then declare a failure to reach consensus the next day. The AG believes that the SAG can be relied upon to work out a reasonable schedule, so the Commission’s Order here need not specify the schedule. Rather, the Commission’s final order should simply be clear that reasonable time be allocated for this effort.

The AG finds that ultimately, it is important for the Commission to understand the distinction between allowing evaluators the flexibility to select what they view as the best estimate of future NTG values and to work collectively on all utility NTG values with the SAG and incorporating those viewpoints shared therein, rather than be constrained by a single prior utility-specific study. The AG notes that the Commission's NTG finding in the Docket 13-0498 Ameren Order allows for this, and the Commission should order that same process here.

For all of the reasons discussed above, the Commission should adopt the NTG framework proposed by the Company and supported by the AG, which provides the utilities with certainty on upcoming Plan Year NTG ratios, based on a collaborative process that incorporates SAG input and the best, most up-to-date information affecting program values.

4. ELPC's Position

Although ELPC agrees that using prospective NTG values for as many programs as possible is a good goal, it finds Nicor's proposal takes the SAG out of the NTG process, and therefore is not feasible. The ELPC proposes that the Commission can allow the SAG to remain as an active participant in the NTG framework while still applying NTG values prospectively. ELPC suggests the Commission adopt the proposed modified NTG framework, which revises Staff's framework and incorporates the NTG framework developed by the non-utility SAG members. Further, ELPC notes the Commission's recent decisions in the ComEd and Ameren efficiency cases both require SAG input into the final NTG values. In both the ComEd and the Ameren efficiency dockets, ELPC notes, the Commission approved a NTG framework that requires the independent evaluator to bring proposed NTG values to the SAG for discussion and an attempt to reach a consensus for what each value will be for the upcoming year. The ELPC and AG framework also addresses the issue of voting parties. Under Staff's framework (which is similar to ELPC's proposed NTG framework), but lacks a voting parties provision, "any entity that is participating in any SAG meeting can object to consensus." The AG objected by stating that, Staff's approach could allow anyone to attend a SAG meeting and refuse to agree to a NTG consensus position regardless of whether that party had any involvement with the issue. ELPC points out that the AG's the new proposed NTG framework contains a voting parties provision and states that "voting parties," while flexible in terms of specific number and members, cannot include subcontractors in Section 8-104 efficiency programs. Staff then proposed to include new language that would resolve the voting parties issue that states if any party in this proceeding expresses concern about subcontractors of the Company potentially obstructing the consensus for NTG Updates, the Commission should order the Company to include provisions within its contracts that expressly prohibit the contractors or subcontractors from obstructing the consensus-seeking IL-TRM and NTG Update Processes.

ELPC finds this solution acceptable but still recommends the Commission approve the new proposed modified NTG framework which provides significantly more

detail than the frameworks approved in the Ameren and ComEd cases. Should the Commission reject that framework, however, ELPC recommends alternatively that the Commission approve Staff's NTG framework with the above-proposed language resolving the voting parties issue. Finally, should the Commission reject a wholesale change in the NTG framework, it should direct Nicor to implement a NTG framework consistent with the NTG frameworks in the Ameren and ComEd cases.

5. Commission Analysis and Conclusion

The Commission has frequently noted the importance of consistency among its decisions when addressing issues that span multiple dockets. The revised NTG framework is one such issue. In light of the need for consistency with the Commission's previous decisions in both the Ameren Illinois EEP docket and the ComEd EEP docket, and due to the parties' agreements on certain provisions of the Company's proposal, the Commission adopts the Company's proposed revised NTG framework. Although this NTG framework has a different starting point than the NTG framework adopted in Ameren Illinois' EEP docket, this avoids certain issues that the parties here agree should be rectified, including avoiding retroactive application of NTG values.

The Commission notes that the Company revised its proposal to account for certain concerns and recommendations expressed by Staff, the AG, and ELPC in this proceeding. The Commission agrees with Nicor that the NTG framework allows the independent evaluator, in making its final determination, and the SAG, in its advisory role, to consider prior evaluations and the discussions among the SAG, the specific program designs and expectations about the market, and any other research or information that is available and relevant, as well as the collective input of SAG members and evaluators to use their best professional judgment to formulate the best estimate of future NTG values.

The Commission rejects the NTG framework proposals submitted by the AG, ELPC, and Staff. These proposals conflict with the NTG frameworks approved by the Commission in the Ameren Illinois and ComEd EEP dockets, and impose what has been established to be unreasonable retroactive evaluation risks.

D. NTG Ratio Values for Program Year 4

1. Nicor Gas' Position

Staff proposes that Nicor Gas should work with the SAG to reach consensus on NTG ratio values to deem for PY4 and to include such NTG ratio values for PY4 in the remodeling of the Company's portfolio for its compliance filing in this proceeding. Nicor argues that Staff failed to note, that the timeline needed to achieve their proposal simply cannot be achieved since the March 1st deadline has expired.

Nicor notes that in the Ameren Illinois and ComEd proceedings, the Commission recognized that the independent evaluator would have to present proposed NTG values to the SAG "prior to March 1" in order to provide sufficient time for the SAG to provide input on those values; the independent evaluator to review the SAG feedback; and the independent evaluator to make the final determination of NTG values to be used for the upcoming plan year beginning on June 1. In this proceeding, the AG requests that the

Commission clarify that the SAG should be given “a reasonable period of time to review information and attempt to reach consensus” on the NTG values, which the AG indicates would mean presentation of the proposed NTG values sufficiently in advance of March 1. Nicor Gas notes that March 1 is a date that “provides plan administrators with sufficient time to be ready to launch programs on June 1.” Staff also recognizes the importance of discussing NTG values with the SAG prior to March 1:

To help mitigate the risk of compromising the independence of the Evaluators, Nicor proposes the Commission require that SAG participants have an opportunity to be involved in the NTG Update Process by ordering the Company to hold NTG Update meetings open to all interested SAG participants prior to March 1. Nicor suggests these meetings would be consistent with the process and commenting opportunities identified in Staff Exhibit 1.1.

Furthermore, in accordance with Section 8-104, the Company’s Second EEP will commence on June 1, 2014. In order to have sufficient time to address the Commission’s final Order in this proceeding, Nicor initially requested an expedited schedule when it initiated this proceeding, in an effort to have sufficient time to address the Commission’s final order prior to the commencement of the EEP on June 1. Nicor notes the present schedule does not make it likely that the Commission will enter a final Order until sometime in May. Since Nicor Gas expects to be required to make its compliance filing possibly only several days before the start of PY4, it maintains that “deemed” NTG values for PY4 will not be available in time to be included in that filing. Thus, Nicor argues its only option will be to include the NTG values in its compliance filing the NTG values approved in the Commission’s final Order. Further, since the March 1 deadline defined in the NTG frameworks proposed by all the parties has expired for PY4, Nicor maintains the only option available will be to deem PY4 NTG values using the values approved by the Commission’s final Order.

2. Staff’s Position

Staff asks the Commission to direct the Company to work with the SAG to reach consensus on NTG ratio values to deem for program year 4 (“PY4”) and include such NTG ratio values for PY4 in the remodeling of the Company’s portfolio for its Revised Plan filed as a compliance filing in this docket. The PY4 NTG discussion should initiate with a memorandum from the Company’s existing Evaluators containing their initial recommendations for deeming NTG ratio values for PY4. This approach is consistent with the first step in Staff’s Modified Illinois NTG Framework proposal.

3. Commission Analysis and Conclusion

Nicor Gas correctly points out that Staff has proposed an impossible timeline to engage with the independent evaluator and the SAG in defining new PY4 values for inclusion in its compliance filing. Therefore, the Commission directs Nicor Gas to include in its compliance filing the NTG values approved in this Order. In addition,

because the March 1 deadline has already come and gone for PY4, Nicor Gas should deem PY4 NTG values using the values approved in this Order.

E. Creation of an Illinois Energy Efficiency Policy Manual

1. Nicor Gas' Position

The AG argues that the SAG should develop an Illinois Energy Efficiency Policy Manual ("Policy Manual"). The AG has clarified during the course of this proceeding that it does "not intend to limit the policies that SAG members could discuss and reach agreement on" and that it does not believe the Policy Manual should be limited to evaluation-related topics, as suggested by Staff. Because the intended content and scope of the Policy Manual has not yet been determined, Nicor Gas urges the Commission to consider that its program resources are limited, and to determine whether these limited resources may be better invested in the Company's Second EEP instead of spent on further discussions surrounding a Policy Manual.

However, if the Commission directs SAG to address the Policy Manual, Nicor would agree with Staff that it should be limited to evaluation-related topics and such topics should be presented and developed through the SAG process. Nicor Gas further suggests that the SAG consider a similar national effort that is currently being coordinated by the Department of Energy ("DOE").

2. Staff's Position

Staff does not object to the creation of a statewide Policy Manual limited to evaluation issues and consistent with the Commission's recent Orders in the Ameren, DCEO and ComEd Plan 3 dockets. Staff asks that the issues related to prudence and program implementation should not be addressed in the Policy Manual but issues related to cost-effectiveness analysis, treatment of interactive effects, treatment of fuel switching measures, defensible statewide NTGR methodologies, evaluation reporting and statewide code collaborative savings attribution should be included.

Nicor agrees with Staff that the Policy Manual should be limited to evaluation-related topics, but the Company does not believe that the content can be exactly and prescriptively established at the present time. To contrast, the AG disagrees and believed the Policy Manual should specifically be limited to evaluation-related topics.

While the Commission did not specify in other EE Plan dockets which topics would be contained in the policy manual, Staff believes the policy manual should be limited to evaluation issues based on the language of the Commission Orders in the other EE Plan dockets, a position that is not supported by the AG. Therefore, Staff asks the Commission to clarify the limitations on the subject matter of the policy manual. Staff notes that one of the reasons the Commission gave in approving the creation of the policy manual was that the AG's clarified proposal is specific and would reduce litigation. Given the AG's position in this case, it is clear that significant litigation and delays may occur based on misinterpretations of the Commission's decisions.

Therefore, Staff urges it the Commission to clarify in this docket the direction that the Policy Manual should take for Nicor.

As such, Staff concludes that the Commission should direct the Company to work with its Evaluator, Staff, the other Illinois utilities, DCEO and SAG to create a Policy Manual that would resolve outstanding evaluation policy issues, and further direct Staff to submit the proposed Policy Manual to the Commission in a proceeding for its approval. (Staff Ex. 3.0, 9.)

3. AG's Position

As to Staff's and Nicor's concerns about limiting the scope of the manual, the AG specifically noted that despite Staff's interpretation of the order in the ComEd three-year plan Docket (13-0495), the Commission did not specifically constrain the SAG from exploring topics outside of evaluation-related issues in that docket. Rather, the AG notes, the Commission adopted the AG's proposal, specifically designed to achieve the goal of ensuring consistency in terms of monitoring savings achieved and evaluating programs:

The Commission has stated 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 has previously directed the SAG to complete a Policy Manual to ensure that programs across the state and as delivered by various program administrators can be meaningfully and consistently evaluated.

Contrary to the views originally expressed by Staff, the AG does not seek to further burden the SAG or create additional work that further constrains already limited resources. Rather, the AG suggests creating a policy manual that is designed to streamline and encourage consistency on various program-related policies for review and approval by the Commission. The AG states that this type of manual could provide a common definition of administrative costs so that each utility is defining these costs in a consistent manner and would help ensure that programs are delivered and evaluated based on the same foundational assumptions.

Thus, the AG urges the Commission order 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.

4. Commission Analysis and Conclusion

The Company is directed to work with its evaluators, Staff, the other Illinois utilities, DCEO, and 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.

Consistent with our findings in Docket Nos. 13-0495, 13-0498, and 13-0499, the Commission directs the Utilities to work with their evaluators, Staff, the other Illinois utilities, DCEO, and 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.

F. Alignment of Schedules for NTG and IL-TRM Updates

1. Nicor Gas' Position

The Company noted that each multi-step proposal would call for numerous meetings, teleconferences, individual memos drafted by separate parties, and additional communications and negotiations outside of the specifically scheduled meetings. They argue that not only are these proposals burdensome, it is unclear whether they can be implemented given the example of Nicor Gas' PY2, where the independent evaluator was only able to meet the deadlines under Staff's timelines for one of eleven programs undergoing full impact evaluations. Nicor finds that defining hard deadlines could force evaluators to cut short evaluation timelines and reduce the accuracy of evaluation results.

Moreover, the Company states that evaluators have struggled to meet evaluation schedules and these programs would be significantly compounded when compared to the schedules proposed by Staff, the AG and ELPC. Notably, the Commission did not impose similar timelines on either ComEd or Ameren Illinois in their respective EEP dockets. Nicor asks the Commission to decline to order any particular NTG schedule while acknowledging that all parties understand the importance of finalizing NTG values by March 1. If, however, the Commission determines that guidance with respect to schedules is necessary, the Company supports the general direction the AG suggests in rebuttal.

Similarly, the Commission should also reject Staff's proposal to establish specific TRM timelines, which Nicor believes would unnecessarily advance evaluator deadlines and delay the TRM update process. The Company claims Staff's proposal would serve to unduly constrain the input of Nicor Gas and its evaluator in the TRM update process and restates the fact that the Commission did not impose similar deadlines for the evaluators of ComEd, Ameren Illinois, or the DCEO in Docket Nos. 13-0495, 13-0498, and 13-0499, respectively.

2. Staff's Position

The Commission should adopt the workable timelines suggested by the Evaluators for TRM and NTG updates contained in Staff Ex. 1.2. The AG requests that the Commission direct the Company to work with the SAG to improve the EM&V process to ensure reports are produced in a timely fashion to inform the IL-TRM and NTG updates. Staff agrees with the AG in concept; however, Staff recommends a more efficient process that would free up SAG resources, and is consistent with the

Commission Order in the Ameren Plan 3 docket. Accordingly, the Commission should adopt the timelines for TRM and NTG updates as contained in Staff Ex. 1.2.

3. ELPC's Position

ELPC asks the Commission to adopt the proposed modified NTG framework. Nicor proposes that NTG values for a given year should be certain by March 1 for the following Plan year beginning June 1 and that for new programs, "planning NTG ratio values that have been provided by the independent evaluator by March 1 of any Plan Year will be applied prospectively to the next Plan Year beginning June 1." ELPC notes that Nicor desires certainty around NTG estimations to properly plan and manage its portfolio. ELPC states that this proposed NTG framework differs from the existing framework in that it ensures prospective NTG values for all programs. In the Final Order approving Plan 1 in Docket No. 10-0562, ELPC points out that the Commission ordered Nicor to use the NTG framework approved for Ameren's efficiency plan in the Docket No. 10-0568. In that case, the Commission held, "For existing and new programs not yet evaluated, and previously evaluated programs undergoing significant changes . . . NTG ratios established through evaluations would be used retroactively"

As in the ComEd and Ameren cases, ELPC also believes the evidence in this matter supports the need to make SAG an integral part of the NTG framework. The proposed NTG framework proposed by ELPC and the AG "allows for deeming NTG values in all cases and simply requires that the EM&V consultants work jointly to recommend a single comprehensive set of best-estimate NTG values to use for each program...and resolves concerns about not having certainty by March 1." ELPC suggests this framework provides clear procedures if consensus is not reached by March 1 to still provide certainty before the next program year. Throughout this time, the SAG will discuss the proposed NTG values and come to consensus about what the filed value should be. If the SAG cannot reach consensus, then the NTG value will default to an average of NTG values from prior years.

4. Commission Analysis and Conclusion

The Commission hereby adopts the IL-TRM and NTG schedules set forth in Staff Exhibit 1.2 as follows:

IL-TRM Updates

- July 1st: the TRM Technical Advisory Committee informs the evaluators and others which measures are high or medium priority measures, for which work papers need to be prepared.
- August 1st: updates to existing measure work papers to clarify terms or approaches will be completed.
- October 1st: completely new work papers for new measures will be completed.

NTG Updates

- November 1st: draft residential NTG estimates will be completed for the program year that ended May 31st.
- December 1st: draft commercial/industrial NTG estimates will be completed for the program year that ended May 31st.

In order to ensure the SAG has adequate time to review the evaluators' NTG recommendations before March 1 under the NTG Framework, the Commission directs the Company to require its evaluators to make best efforts to provide the evaluators' initial recommendations for deeming NTG ratios for the energy efficiency programs by the end of the first week in January of each year.

VII. Adjustable Savings Goal

A. Nicor Gas' Position

Nicor Gas argues that although the established NTG Framework and TRM policies may lessen its evaluation risks, substantial risks remain. Nicor Gas argues that certain evaluation risks are unreasonable, and points out that utility commissions in a number of states authorize evaluation risk management approaches that go beyond the provisions of current Illinois NTG and TRM policies. Nicor Gas proposes that the Commission establish savings goals that will be adjusted after the start of the Second EEP in order to remain current with changes in NTG and TRM assumptions that also begin after the start of the Second EEP. The Company explains that independent evaluators use a range of approaches and assumptions to calculate savings for individual EEP measures and programs, including (1) participation, (2) gross unit savings, and (3) NTG ratios. Specifically, in order to decrease savings goals when evaluation results are lower than planning assumptions, or to increase savings goals when evaluation results are higher than planning assumptions, Nicor Gas recommends that all NTG ratios and gross unit savings for measures covered by the TRM be modified to reflect final NTG evaluations and updated TRM algorithms available by March 1 prior to the start of each Plan Year.

Importantly, Nicor argues its adjustable savings goals proposal are similar to the adjustable savings goals most recently adopted by the Commission in Ameren Illinois' EEP proceeding. Nicor Gas further notes that this proposal is similar to the goals adopted by the Commission in Docket No. 10-0570, wherein the Commission approved ComEd's second EEP, but explains that ComEd's approach was limited to one measure in one program and only included adjustments for changes in NTG results. The Company argues that because the risk posed by changing NTG values cannot be confined to a single program, its proposal would expand the evaluation adjustments to all programs. In addition, Nicor found its proposal is analogous to approaches for measuring savings performance that are used by utility commissions in California and Vermont, which both rank among the top five states in the American Council for an Energy Efficiency Economy's 2012 State Energy Efficiency Scorecard.

Nicor noted that Staff supports the Company's proposal in concept, but also recommends compliance with seven requirements, the first four of which overlap with its recommendations with regard to flexibility, reporting, the NTG framework, and the residual risk adjustment factor. Nicor Gas opposes the first four of Staff's recommendations for the reasons stated in the Sections of the Company's Initial Brief and this Reply Brief addressing flexibility, reporting, the NTG framework, and the residual risk adjustment factor.

Nicor Gas also opposes Staff's recommendation that the Company maximize net benefits for ratepayers. As discussed before, Nicor believed this recommendation is inconsistent with the Act's requirement that the Company must demonstrate that its overall portfolio of energy measures represents a "diverse cross section of opportunities for customers of all rate classes to participate in the programs." Nicor argued it may not be able to meet the requirements of Section 8-104(f)(5) if the Company is strictly required to maximize net benefits for ratepayers, because the Company could be forced to forego less cost-effective programs that target certain rate classes in order to maximize benefits.

As noted previously, the Company agrees to provide information in its compliance filing that identifies the inputs and the basis of those inputs that were used in computing the unit savings estimates in Nicor Gas 1.2. Nicor Gas also agrees to file revised spreadsheets in the future, once changes to NTG ratios and Illinois TRM values are known with the caveat that the Commission need not adopt Staff's proposed language establishing alternative deadlines if the Commission adopts Nicor Gas' revised NTG framework.

The AG opposes the Company's proposed adjustable savings goals, arguing that it would eliminate utility performance risk, that it presents practical problems in administration, and that it is contrary to Section 8-104. CUB similarly argues that the Company's proposal provides the Company with "unfettered ability to lower savings goals." The Commission should reject each of the AG and CUB arguments for the reasons set forth below.

Notably, the AG and CUB raised identical arguments against Ameren Illinois' proposed adjustable savings goals, which the Commission rejected in approving Ameren Illinois' proposal. In rejecting those arguments, the Commission recognized that "the TRM and NTG values upon which adjustments to savings goals would be made are not set by Ameren, but rather are values that were either provided by independent evaluators and the SAG/[Technical Advisory Committee ("TAC")], agreed-to by the parties or derived from a Commission approved process." Nicor believed the Commission should reach the same conclusion based upon the same reasoning in this docket.

Further, Nicor presented substantial evidence demonstrating why the AG's arguments about performance risk and practical administration of adjustable savings goals are without merit. Moreover, the evidence shows that the Company is

responsible under its proposal for all of the delivery risk associated with achieving the participation targets in the Second EEP while remaining within the budgets set in Section 8-104(d) and that the Company faces a portion of evaluation risks, retroactive gross savings risk for all measures not covered by the TRM (which represent over 40% of projected savings), and realization rate risk.

Additionally, the evidence shows that the AG and CUB arguments about negative incentives only examine one side of the possible outcomes—those resulting in lower savings goals. Instead, Nicor states that while its proposal can decrease savings goals under some circumstances (when changes to TRM or NTG values decrease compared to those assumed in calculating savings goals), it also will increase savings goals in other cases (when TRM or NTG values increase). Thus, to the extent that negative incentives exist with the Company's proposal, they would also exist with the AG and CUB recommendations to reject adjustable savings goals. In other words, the AG and CUB arguments in this regard should have no bearing on the Commission's decision.

Contrary to the AG's concerns that the Company's proposal would be "administratively burdensome and impractical", Nicor states the evidence demonstrates that this is not the case as the Company has already forecasted NTG ratios and TRM algorithms to calculate the savings goals proposed for the Second EEP and will provide all relevant assumptions and calculations with the Company's compliance filing. Additionally, the Company notes that in any given year, only a handful of TRM measures are updated (a subset of which apply to natural gas programs) that result in a manageable list of measures to capture in the adjustable savings goal calculation. The NTG portion of the adjustable savings goal calculation also is a simple calculation that involves, at most, only 15 numbers for the entire portfolio. Nicor Gas notes that it has established straightforward calculations for the adjustment of savings goals, and that it will bear the risk that its estimates will prove to be incorrect after the independent evaluator calculates savings for PY4 through PY6. In further support for its proposal, Nicor Gas emphasizes that a small number of evaluation results could have a significant impact on the majority of the Company's portfolio savings goal. In sum, Nicor finds its proposal establishes straightforward calculations for the adjustment of savings goals for various measures.

Further, Nicor states there is no merit to the AG's argument that the Company's adjustable savings goal proposal is contrary to the penalty provision in Section 8-104(i). They argue that the AG erroneously states the inclusion of this penalty provision demonstrates the General Assembly's intent that the Company must achieve "maximum" natural gas savings goals. Nicor says the plain language of Section 8-104 contains no such requirement to achieve "maximum" savings goals. Moreover, the language of Section 8-104(d), to which the AG only makes passing reference, grants the Commission unqualified discretion to determine when the savings requirements set forth in Section 8-104(c) may be reduced. A court or agency must ascribe to words used in an unambiguous statute their ordinary and commonly accepted meaning, and is not at liberty to restrict or enlarge that plain meaning.² It may not read into the language

² Henrich v. Libertyville High School, 186 Ill. 2d 381, 391 (1998)

exceptions, limitations, or conditions not expressed by the legislature.³ The Commission should reject the AG's legally incorrect interpretation of Section 8-104.

Finally, Nicor Gas asserts that there is no evidence to suggest that it may change its behavior, act imprudently, or fail to efficiently manage its programs, and Nicor Gas also points out that the AG comes to a similar conclusion. Indeed, Nicor Gas states that the savings in PY3 are expected to exceed those achieved by all other natural gas portfolios in the United States for the PY3/2014 implementation year. Lastly, Nicor Gas points out that its proposal would not create any negative incentives, and, to the extent negative incentives exist, they would also exist in the absence of adjustable savings goals.

For all of these reasons, Nicor concludes that the Commission should approve the Company's adjustable savings goal proposal, reject the majority of Staff's recommendations, and reject the entirety of the arguments made by the AG and CUB.

B. Staff's Position

Staff believed the Commission should adopt a modified version of the Company's proposal to adjust energy savings goals based on changes to the NTGR values and IL-TRM values. Staff's suggested modifications are designed to prevent otherwise possible disincentives to use money in the most cost-effective manner. Staff states that the NTGR values, the IL-TRM values, the market and any new information should drive implementation adjustments even though the changes in NTGR values and the IL-TRM values would be the only factors driving savings goal adjustments. However, there should be flexibility and reporting, and the Company should continue to prudently manage the portfolio and adjust funds during a program year in a manner that seeks to increase net savings beyond the modified savings goal and maximize net benefits for ratepayers while remaining in compliance with the other statutory objectives. Staff maintains this recommendation should not be construed as limiting flexibility insofar as requiring net benefits increase as a result of the program modification. Staff only supports adoption of adjustable savings goals for Nicor if the Commission also adopts Staff's recommended flexibility and reporting conditions (which is primarily consistent with the conditions adopted in ICC Docket No. 13-0498 in relation to approving adjustable savings goals) and Staff's Modified Illinois NTG Framework. Staff's flexibility and reporting provisions include the Commission making the following findings:

- (1) The Company is directed to stay apprised of and respond prudently and reasonably to information concerning energy efficiency measure and program level cost-effectiveness while implementing its Plan to help ensure the Plan produces and maximizes the net benefits to Illinois ratepayers envisioned by Section 8-104 of the Act and remains in compliance with all other statutory objectives.

³ Lawrence v. Regent Realty Group, 197 Ill. 2d 1, 10-12 (2001).

(2) The Company is directed to include a discussion of how it utilized the flexibility it was granted in its quarterly reports filed with the Commission in this docket. The quarterly reports shall summarize program activities, implementation modifications, additions or discontinuations of specific energy efficiency measures or programs, spending and savings amounts compared to the Plan filing, how the Company responds to past evaluators' recommendations and changes in the IL-TRM, NTG ratios, market research findings, and other relevant information the Company relies upon in making its decisions. To the extent such changes significantly impact the portfolio and expected cost-effectiveness in the view of the Company, the Company shall also report revised projected program-level and portfolio-level TRC test cost-effectiveness results for the program year.

(3) The Company is required to provide cost-effectiveness screening results in its quarterly reports filed with the Commission in this docket for new energy efficiency measures the Company adds to its Plan during implementation.

(4) The Company shall explain in its quarterly reports filed with the Commission in this docket the extenuating circumstances for each new cost-ineffective measure Nicor Gas adds to its Plan after Commission approval and the extenuating circumstances surrounding exceeding the participation estimates included in the Plan for cost-ineffective measures.

Staff notes that adoption of the flexibility and reporting conditions recommended by Staff in conjunction with approving an adjustable savings goal is consistent with the Commission's findings in ICC Docket No. 13-0498.

Staff urges the Commission to direct the Company to file any revised spreadsheets containing the changes to NTGR values, IL-TRM values, and energy savings goals in this docket no later than May 1 of each program year, in advance of those values taking effect on June 1. To the extent the NTGR is unavailable by that date, the Company should file a revised version of the spreadsheet once the changed NTGR is known. These spreadsheets should clearly identify the assumptions used for each EE measure, including the IL-TRM measure codes, participation estimates, TRC ratios, net present value of benefits from the measure, program, savings, NTGR, and other relevant measure-level inputs indicating which inputs are fixed and which are adjusted based on IL-TRM changes. Staff finds that these recommendations are consistent with the Commission's Final Order in Docket No. 13-0498 approving adjustable savings goals for a comparable EE plan, and should be adopted in this docket.

Staff also notes that Nicor Gas committed to producing the information requested by Staff with the Company's compliance filing after the Commission enters its Final Order in this proceeding. Accordingly, Staff urges the Commission to adopt its uncontested recommendation that directs the Company to file relevant input

assumptions and the basis of those input assumptions used to estimate its savings goals in its compliance filing.

C. AG's Position

Nicor has argued that it remains subject to some performance risk. While the AG acknowledges Nicor's position that its proposal to modify goals based on NTG and TRM updates significantly reduces the Company's risk of penalties and minimizes the potential that it would make certain program changes that would otherwise occur they were required to manage the risk of modified NTG and TRM values; the AG finds there are practical problems with adopting the Nicor moving target approach to establishing savings goals.

The AG maintained that updating savings goals based on annual NTG and TRM updates would be administratively burdensome and impractical since the TRM literally contains hundreds of measures and thousands of individual assumptions. The AG believed it would be very difficult for SAG parties to follow and understand how goal adjustments were made and whether they were appropriate and increased litigation under such a scenario is likely.

In addition, even if the Commission and SAG participants were willing to absorb these extensive administrative burdens, the AG finds it is still unclear exactly how this would be done. For example, annual updates of the TRM can include adding new measures being promoted that were not in the latest version. While this would clearly be determined to be a TRM change, it is unclear how this would translate into goal adjustments when no original TRM value existed. The AG states that it is important that program administrators constantly consider and adopt new efficiency measures as they are appropriate, and a rule that any TRM modifications would drive goal adjustments would create a strong disincentive to updating the TRM over time and for utilities to pursue new opportunities that can benefit ratepayers.

Staff countered the AG's position, arguing that "[a]nnually adjusting the savings goals based strictly on changes to the IL-TRM and NTG ratio values is administratively easy to implement as it involves simply changing an assumed NTG ratio value or IL-TRM value in a spreadsheet to calculate the revised savings goals." The AG notes that Staff seems to believe that the planning spreadsheets the Company uses to estimate goals are completely deterministic and accurate, and that actual program activities will exactly match what is in the spreadsheets. Nicor similarly claims such savings goals adjustments would involve only "a manageable list of measures", or straightforward algorithm calculations, but the AG disputes that point, using a detailed analysis of TRM measures and goals.

The AG notes that Nicor has no way to accurately predict each of these savings values with any reasonable certainty. Rather, all its planning values are best estimates in aggregate and at much less granularity than the TRM actually calls for. The AG

states that even if Nicor was precise in estimating all of these variables, Commission oversight to evaluate the TRM adjustments were proper.

The AG also points out that it is unclear how “TRM changes” associated with the introduction of new efficiency programs would be handled under the Company’s proposal. The AG noted that new technologies regularly come to market, and over time it is expected that the Company should and will promote new measures that may not have previously been in their programs, plans, or in the TRM. When this happens, the TRM is necessarily modified to include them. In fact, the AG finds, the Company’s proposal attempts to essentially fix all programs for three years to be exactly as they estimated in their spreadsheets, and would discourage the addition of new measures, or the removal or shift in strategy away from poorly performing measures. The Company’s proposal effectively holds them harmless if they pursue exactly the projected number of each measure, regardless of whether this course of action is actually in the interests of ratepayers.

The AG went on to criticize Staff’s position in light of their concern about the importance of establishing a reasonable NTG framework. They argued that Staff fails to realize is that their support of Nicor’s proposal to adjust goals whenever the NTG values change completely eliminates this supposed positive incentive to minimize free riders and maximize spillover. Essentially, while Staff seems to be concerned about preserving this theoretical incentive in the NTG framework, they proceed to undermine its own position by rendering Nicor completely indifferent to the actual evaluation results and future NTG values. The AG notes that the net effect of Staff’s proposals would be to render the entire effort of evaluating and estimating NTG values moot, as they would no longer have any effect on program management and achieving maximum savings goals. They maintain that the Company’s and Staff’s proposals related to NTG Frameworks and goal adjustments based on NTG and TRM changes are internally contradictory, and would undermine maximizing the energy savings produced by the programs.

The AG finds the NTG/TRM goals adjustment proposed by Nicor simply constitutes a request to eliminate virtually all risk associated with energy savings performance, and establish a system that virtually guarantees it won’t fail to achieve the statutory savings goals (as modified by the statutory cost cap), even if it chooses to pursue inappropriate measures and resources. This is not good public policy, contrary to the requirement that programs are “cost-effective” and is contrary to the General Assembly’s inclusion of penalty provisions in Section 8-104.

The Act explicitly established performance targets and penalties to utilities for failure to meet these energy savings performance targets. The AG says that it is clear that the legislature intended for the utilities to absorb some performance risk or they would not have included these penalty provisions. The utilities are using the ratepayers’ money to implement programs for ratepayers. They contend that the utilities must have some accountability to ensure that they perform this statutory duty on behalf of

ratepayers in a prudent manner. For all of the reasons cited above, Nicor's request for goals adjustments based on NTG and TRM updates should be rejected.

D. CUB's Position

Nicor Gas proposes that the Commission approve its annual goals but also allow Nicor to adjust those approved goals in each Plan year in response to changes in NTG and TRM values. If approved, CUB maintains this request would remove Nicor's responsibility to respond to changes in the market to improve programs, and would instead allow Nicor to simply lower or raise its goals as new values are put in place. CUB concludes the Commission should not grant the Company an unfettered ability to lower savings goals. Therefore CUB recommends that the Commission reject this request.

CUB found that NTG values are estimates of the amount of savings directly attributable to a specific energy efficiency measure or program, or in other words, savings that would not have occurred in the absence of a program. To calculate NTG estimates, CUB states evaluators may take into account three categories of customers:

1) Customers who participated in a program because of an incentive being offered.

2) Customers who would have taken an action regardless of whether an incentive was offered. These customers are referred to as "free riders."

3) Customers who took an action such as purchasing a high efficiency clothes washer as the result of an efficiency program, but without participating in the program (i.e., receiving an incentive). These customers are referred to as "spillover."

In employing a NTG approach, evaluators seek to count savings from the first class of customers, who invested in an energy efficient upgrade specifically because of the existence of an incentive program. Depending on the type of NTG approach employed, evaluators may or may not subtract "free rider" customers from the savings calculation, and they may or may not add "spillover" estimates to the savings calculation. The end result is an estimate of how many therms or kilowatt hours are attributable to the program, expressed as a NTG ratio. The TRM is a document created by the SAG to provide a transparent and consistent basis for calculating energy savings generated by EEPS programs. It is updated annually, and includes estimated measure and program savings values and other inputs that are used by evaluators to determine program and measure savings. Changes to the TRM could mean evaluators will use different values or assumptions than Nicor did in putting its Plan together to evaluate Plan programs and measures after each Program Year.

Taken together, CUB maintains the TRM and NTG values represent the most accurate information available about how many therm savings measure or programs are creating. Changes to the TRM or NTG values impact the amount of savings Nicor can

claim to have achieved in any given program year. They argue this impact could be positive or negative depending on the nature of the change, for example, a change could mean that a program is performing better or generating more savings than anticipated, or it may mean that a program isn't performing as well as anticipated or generating the savings expected. When Nicor Gas receives information about changes in the TRM or NTG, CUB believes the Company should evaluate the existing portfolio to determine whether changes are needed. There is no reason to change the current practice simply to reduce risk of possible penalties for failure to achieve a savings goal for Nicor Gas and the Company's shareholders.

If Nicor's proposal were adopted Nicor would no longer be responsible to respond to changes in the market to improve programs. Instead, Nicor would instead simply lower or raise its goals as new values are put in place. The Commission should not grant the Company an unfettered ability to lower savings goals. CUB believed that Nicor, just like any entity offering goal-centered energy efficiency programs, must always respond prudently to changes in the market, whether that change results from federal efficiency standards, an informative EMV report, or a change in TRM values. Under the Adjustable Savings Goal proposal, CUB argues that Nicor would not have to respond to changes in the market or in evaluation results to meet the savings goals that will be approved by the Commission in this docket. Nicor already has flexibility in budgeting from one program year to the next within this approved Plan. This flexibility to adjust programs and budgets in response to market changes or new evaluation data adequately buffers the Company from an untoward degree of risk.

Staff agrees with CUB that if granted, Nicor's proposal "allows the Company to take a 'set-it-and-forget-it' approach to managing its portfolio. Yet, CUB notes Staff still is willing to accept the proposal if the Commission also adopts Staff's recommendations related to management flexibility and reporting. It appears Staff believes that if the Commission does not adopt this proposal, the Company will "have an incentive to oppose updates to the IL-TRM and NTG values that reduce savings attributable to energy efficiency measures." CUB argues that Staff is incorrect and notes that Nicor, along with other Illinois utilities, has consistently participated in the SAG in using the best data available in the TRM and in determining NTG values so that savings forecasts and results are as accurate as possible. There is no evidence in the record that Nicor will oppose updates to make the savings estimates for measures and program more accurate, even when that could lead to lower savings measurements.

The Commission should reject the adjustable savings goal proposal.

E. Commission Analysis and Conclusion

The Commission notes that the IL-TRM and NTG values upon which adjustments to savings goals would be made are not set by the Company, but rather are values that were either provided by independent evaluators and the SAG/TAC, agreed-to by the parties or derived from a Commission-approved process. The Commission notes that no evidence has been presented that the Company is not committed to energy efficiency or integrity in administering its Plan portfolio. The Commission also notes the

issues that have been raised about the possible threats to the energy efficiency programs should this request be granted.

The Commission notes that Staff's argument that the most-up-to-date and defensible information should be used when setting NTG and TRM values prospectively is undisputed. That fact, however, does not justify permitting the Company to continually adjust the savings goals established by the Commission in this docket in accordance with NTG and TRM annual updates. The Act explicitly established performance targets and penalties to utilities for failure to meet these energy savings performance targets. The utilities should ensure maximum saving targets are achieved during the three-year Plan period. For all of these reasons, we concur with the Attorney General that the Company's proposal should be rejected. The Commission directs the Company to respond to annual NTG and TRM value changes by making necessary program modifications and adjustments that ensure the energy savings goals established by the Commission are achieved during the three-year Plan period.

VIII. Stakeholder Advisory Group

A. Nicor Gas' Position

In Docket No. 10-0562, the Commission directed Nicor Gas to participate in a SAG process so that "consumer and environmental stakeholders can share their expertise and collaborate with the Company [on] issues relating to the utilities' energy efficiency programs." The Commission further ordered that the natural gas SAG should be structured to facilitate coordination with the electric SAG already in existence, but emphasized that it was not appropriate to extend "decision-making authority" to the SAG. Since the Commission's Order in Docket No. 10-0562, Nicor states the primary focus of the SAG has been to develop the TRM Technical Document and the TRM Policy Document, and to attempt to develop a consensus NTG policy.

Nicor Gas seeks similar direction from the Commission in this docket; and specifically, notes that the natural gas and electric SAGs have addressed nearly similar issues and have developed a fully integrated process. Thus, Nicor believes the Commission should direct the Company to continue to participate in the combined SAG. In addition, in light of the fact that performance under the EEP remains the sole responsibility of the utility, Nicor Gas asks the Commission to confirm the SAG's role as a purely advisory body, without any decision-making authority.

In light of the extensive list of issues that have already been directed to the SAG in the ComEd and Ameren Illinois Orders, and the possible additional topics suggested by the AG, Staff and ELPC in this proceeding, Nicor Gas suggests that plan administrators act as a sub-committee to bring forth proposals to the broader SAG in order to initiate discussions on items to be addressed. Nicor maintains the collaborative process Nicor Gas suggests is routine, reasonable, and efficient, and despite Staff's concerns, completely transparent and beneficial to the overall SAG process. Nicor Gas further emphasizes that the Company has not requested that the Commission order or sanction "subcommittees" in this regard.

Finally, if the Commission directs the SAG to participate in initiatives associated with the EM&V issues Staff and intervenors raised in the current docket, such as the spillover study that Staff suggests or the development of an Energy Efficiency Policy Manual that the AG suggests, the budget for all such activity should be attributed to the 3% portion of the Second EEP budget that is set aside for EM&V activities. Accordingly, to control the costs of these efforts, if so ordered, the Commission also should direct the SAG with a narrow focus and scope for such initiatives.

B. Staff's Position

Staff notes the Company proposes that Program Administrators, functioning “essentially as a subcommittee of the SAG,” discuss and prepare a technical solution to fuel switching prior to introducing their ideas to the SAG for further input. Staff disagrees with this approach, noting that participation in any SAG subcommittee should be open to all interested parties, consistent with the inclusive, open and transparent SAG process previously directed by the Commission. Company witness Mr. Jerozal criticizes Staff’s position as suggesting that “participants can’t have discussions outside of the SAG, or that such discussions somehow prevent or subvert the overall SAG process”.

Nicor entirely misinterprets Staff’s position, which obviously does not pertain to informal extra-SAG discussions, but rather, to Commission sanctioned SAG subcommittees of the kind that Nicor proposes. Staff’s position is that the Commission does not need to provide a directive that the Program Administrators should be a subcommittee. Rather, subcommittees of the SAG should be open to all interested parties, consistent with existing Commission approved policies concerning the Technical Advisory Committee (“TAC”), an existing subcommittee of the SAG. The Commission-approved IL-TRM Policy Document states:

The TAC is a subcommittee of the SAG whose primary responsibility is to provide a forum to allow all interested parties to recommend TRM Updates and facilitate consensus for TRM Updates among the Evaluators, ICC Staff, Program Administrators, environmental organizations, interested stakeholders (e.g., other SAG participants), and the TRM Administrator prior to the annual TRM Update proceeding. All recommendations for TRM Updates shall be submitted to the TAC.

Staff states that the Company has not provided any evidence to show that exclusionary subcommittees would produce a more desirable outcome than subcommittees open to all interested parties. Therefore, to the extent the Commission entertains Nicor’s position concerning SAG subcommittees; Staff believes the Commission should find that any SAG subcommittees should be open to all interested stakeholders, consistent with the open and transparent process experienced to date.

C. AG's Position

The AG argues that Nicor's proposed Sub-Committee SAG Framework should be rejected. The AG urged the Commission to specifically direct the Company to continue participating with the SAG, to work with the SAG on developing an Illinois Energy Efficiency Policy Manual, and reject Nicor's request for program administrator-driven subcommittees.

The AG strongly opposes Nicor's proposal, because Nicor's proposal stands contrary to the function and purpose of the SAG to date. The SAG was adopted to enable the creation of best practices through consultation with stakeholder representatives and experts. Staff agrees with this characterization, particularly where Staff witness Hinman notes that any party can bring ideas for presentations to the SAG in its current format and that the "primary purpose of SAG is to provide input to the program administrators and the Commission." Staff further notes in their Initial Brief that Nicor "has provided no evidence showing that exclusionary subcommittees would produce a more desirable outcome than subcommittees open to all interested parties" and that "the Commission should find that any SAG subcommittees should be open to all interested stakeholders, consistent with the open and transparent process experienced to date."

In addition, adopting Nicor's proposal would be starkly out of character given the Commission's expansion of the SAG's role over the past years and the work on establishing the TRM that the SAG has accomplished to date. Finally, the AG noted that the Commission, in forming the SAG, stressed that it was creating a stakeholder-driven process. As previously noted, stakeholders' expert presentations on best practices to the plan administrators in attendance are the norm, and the Commission has a history of orders stressing the importance of the purpose of the SAG: to instigate stakeholder involvement and collaboration with utility Plan administrators. The AG urges the Commission to reject Nicor's proposal to turn the Commission's SAG directive on its head and limit stakeholder involvement on issues that the Commission has forwarded to the SAG to address collaboratively. Thus, the AG asks the Commission to reject Nicor's SAG framework in its entirety.

D. ELPC's Position

Although ELPC agrees that using prospective NTG values for as many programs as possible is a good goal, Nicor's proposal takes the SAG out of the NTG process, and therefore ELPC finds it is not workable. The Commission can keep the SAG as an active participant in the NTG framework while still applying NTG values prospectively. To that end, ELPC proposes that the Commission adopt the proposed modified NTG framework, which revises Staff's framework and incorporates the NTG framework developed by the non-utility SAG members. Further, ELPC notes the Commission's recent decisions in the ComEd and Ameren efficiency cases both require SAG input into the final NTG values. In the ComEd and Ameren final orders, the Commission refused to approve a NTG framework that "inappropriately constrains SAG." In both the ComEd

and the Ameren efficiency dockets, ELPC notes the Commission approved a NTG framework that requires the independent evaluator to bring proposed NTG values to the SAG for discussion and an attempt to reach a consensus for what each value will be for the upcoming year. At the very least, ELPC suggests the Commission issue an order in this case that is consistent with the Ameren and ComEd final orders.

E. Commission Analysis and Conclusion

As an initial matter, the Commission confirms SAG's role as a purely advisory body, without any decision-making authority. In addition, the Commission understands that SAG has a number of issues to address during implementation of the Company's Plan. The Commission notes with approval that SAG subcommittees may be an efficient and appropriate solution in order to tackle the number of issues that SAG needs to address over the Plan. The Commission encourages Nicor Gas' participation in such SAG subcommittees, but finds that an exclusionary SAG subcommittee of Program Administrators is not appropriate. The Commission has always stated that the SAG, including the Technical Advisory Committee ("TAC"), which is a Commission-sanctioned SAG subcommittee, should provide a forum for all interested parties to attend and participate in energy efficiency discussions in Illinois. While the Commission appreciates Nicor's attempt to foster productivity at the SAG, we decline to pursue Nicor's suggestion.

IX. Wasted Energy Analysis

A. Nicor Gas' Position

ELPC claims that, based on a study recently completed by ComEd, it is "likely that there are also significant behavioral efficiency opportunities for gas savings in the Nicor service territory." Based on ComEd's study, which ELPC admits was "conducted on customers using electricity in Illinois," ELPC argues that the Commission should direct Nicor Gas to "perform an analysis similar to the one performed by ComEd to determine the potential behavioral waste savings potential." ELPC asks the Commission to "require that Nicor conduct such an analysis within six months of the date of the order and include consideration of the assessment in delivering its programs during the second and third program periods of the EEP."

The Commission should reject ELPC's proposal. ELPC has never conducted such a study, and is unable to identify any wasted energy study besides the study conducted by ComEd. Further, ELPC has conceded that it is unaware of the costs required to conduct such a study, and an examination of the ComEd study indicates that it took at least one year to complete.

Nicor Gas has already accounted for potential therm savings associated with behavior change in its Second EEP; moreover, in light of the spending limits imposed by the Act, conducting a costly and lengthy study that has no quantifiable benefits would be detrimental to the Company's Second EEP. As such, Nicor concluded the Commission

should decline to order Nicor Gas to conduct a wasted energy study as the replication of such a study is wholly unsupported by the evidence.

B. ELPC's Position

ELPC asks the Commission to require Nicor to conduct a Waste Study and incorporate the study results into its programs. ELPC argues there are significant untapped savings from wasted energy that could help Nicor achieve additional savings at minimal additional cost. They state, "the identification of behavioral waste, and the development of programs to address it would probably tap into a much larger energy efficiency resource than was contemplated by Nicor when it developed its energy efficiency plan." ELPC noted that behavioral waste contrasts with technology waste and changes that eliminate behavioral waste improve the savings generated from technology improvements, and vice versa.

ELPC notes that according to ComEd's recent study, behavioral waste is a source of significant untapped efficiency potential. ELPC Ex. 1.4. ELPC explained that "ComEd's study shows that the inclusion of behavior waste in addition to technology waste can significantly increase the energy efficiency potential over that identified in the analysis of technology improvements alone." While ComEd's study focused on electricity customers, ELPC argues the study is "applicable [in this case] because it impacts space conditioning, set back thermostats, and some of the same buildings in Nicor's service territory." Therefore, ELPC recommends that Nicor conduct a similar study to better design its energy efficiency programs.

Nicor countered by expressing concern about the cost and time needed to complete a study similar to the ComEd study and argued that "nothing new or novel would likely be generated from commissioning such a study that is not already determinable from the ComEd report and from evaluations of the Behavioral Energy Savings program that Nicor Gas implemented from PY1 through PY3 and proposes for 294 PY4 through PY6."

ELPC suggests that if the Commission agrees with Nicor that the ComEd waste study contains sufficient information, then it should order the Company to develop an action plan based on the ComEd findings and present that plan to the SAG for implementation in PY4 and PY5. Otherwise, the Commission should order Nicor to conduct its own analysis similar to the ComEd study, use that new study to develop an action plan, and present that plan to the SAG for implementation in PY5 and PY6.

C. Commission Analysis and Conclusion

ELPC is correct in pointing out that employing a wasted energy study creates the potential to realize significant untapped savings for the Company. The recent ComEd study supports the fact that there is a great opportunity to maximize energy efficiency when behavioral waste is measured along with technology waste. The Company has not produced any evidence to support that a waste study would be too costly to

conduct; especially when balanced against the savings it could yield. The Commission notes that these potential savings would ultimately contribute to the Company attaining its overall savings goals as well as provide net savings to the ratepayers. For these reasons, Nicor is ordered to conduct its own waste energy analysis; and use this study to develop and action plan to present to the SAG for implementation in PY5 and PY6.

X. On Bill Financing

A. Nicor Gas' Position

Although not a requirement in this proceeding, Nicor Gas presented evidence showing that the Company's On-Bill Financing ("OBF") Program under Section 19-140 of the Act has been approved by the Commission in the form of Rider 31, has been implemented by the Company; and will continue as long as funding for OBF is available. Nicor Gas recognizes that customers may be prevented from participating in certain energy efficiency measures due to a lack of financial resources. Nicor Gas asserts that it has engaged in, and will continue to engage in, significant efforts to provide information and education to customers about financing options that are available to them. Nicor Gas also demonstrated that the Company's OBF Program is well underway, having received roughly 40 loan applications in the first month of operations since the Company's revised Rider 31 became effective on December 31, 2013. Further, Nicor Gas demonstrated that OBF options are available to customers and are part of the Company's efforts to provide information and education to customers about financing opportunities available to them. Nicor Gas states that it has presented evidence that demonstrates that OBF options are available to and are part of a significant outreach and education effort that began on January 1, 2014. According to the Company, the OBF Program is prominently displayed on the Nicor Gas rebates home page and further details are provided on a separate linked web page exclusively designed to promote and educate customers. Nicor Gas also points out that there is a state-wide website where OBF loans are coordinated by one lender, state-wide, for all of the Illinois utilities participating in OBF.

CUB criticizes Nicor's proposed EEP since the OBF Program is omitted. CUB also argues that the Commission should order Nicor Gas to discuss the OBF Program with the SAG "to ensure that the Company is coordinating the implementation of the OBF" with the Second EEP programs. Nicor maintains the Commission should reject both arguments since Section 8-104 does not require the Company include its OBF Program in the Second EEP and CUB fails to articulate any specific concerns it has with this program.

Moreover, Nicor Gas argues it has demonstrated there is already a Commission-approved process underway in which each of the utility's OBF Programs will be subject to an independent effectiveness evaluation. Specifically, Nicor points to the Commission's Final Order in Docket No. 11-0689, which established the ground rules for an independent effectiveness evaluation of each utility's OBF program; and recognized that the evaluation should address how to increase participation in OBF

programs. Nicor notes that CUB, the utilities and other interested parties participated in the proceeding. The Final Order also provides that the evaluation will be filed in a new docket where “parties will have the opportunity to comment.”

Thus, Commission-approved actions are already taking place to address the topics CUB suggests for discussion at the SAG, i.e., how vendors and contractors implementing the EEP are making customers aware of the OBF Program and vice versa. The Company notes the Final Order in Docket No. 11-0689 shows that the Commission is aware of issues relating to the OBF programs and has established a process to analyze these issues and receive feedback from interested parties on the effectiveness of the OBF programs. Accordingly, Nicor concludes there simply is no need to order SAG discussions on the OBF programs, which are being addressed through the evaluation process approved in Docket No. 11-0689 and will be discussed in the future docket contemplated in the Final Order in that proceeding.

B. CUB’s Position

CUB points out that the OBF program is a financing mechanism that enables customers to pay for the cost of an energy efficient purchase through their utility bill, with no upfront payment required. CUB notes that the General Assembly created the OBF program in 2009, and in 2013, the General Assembly expanded the pool of eligible customers and measures and programs. Alongside residential customers, small commercial and multifamily customers with up to fifty units may now participate. According to Section 19-140 (c), customers may now receive financing on measures or programs where 1) the projected gas savings are sufficient to cover the costs of implementing the measures, or 2) if the measure or programs are part of a Commission-approved energy efficiency plan. CUB states that eligible OBF measures can include any 8-104 measures for residential, multifamily, and small commercial customers. However, CUB states there are some specific limitations on customers and the amount customers can finance; for example, only multifamily customers with 50 residential units or less can participate, and loan costs cannot exceed \$150,000 per customer.

CUB argues that OBF is a crucial accompaniment to Nicor Gas’ energy efficiency programs. While the incentives in this Plan make it more affordable for some customers to invest in energy efficient upgrades, CUB notes the cost of those upgrades remains a barrier for many other customers. On-Bill Financing allows customers to spread the cost of a purchase over several years and essentially offset the increase on their utility bills with savings on their utility bills. Together, CUB maintains, OBF and the 8-104 energy efficiency incentives enable Illinois customers to cost-effectively invest in and realize the benefits from purchasing energy efficient products, and help Nicor Gas achieve the savings targets. CUB believes that OBF is critical to Illinois consumers realizing the promise of energy efficiency; and noted that without a financing option, many low and moderate income customers may not be able to afford to invest in energy efficient products. Because OBF is so critical to ensuring that all Illinois ratepayers who are eligible for the program can also access programs via the EEP, CUB finds it is consequential that Nicor and other utilities discuss the relationship between the EEPs

and OBF at the SAG. Increasing participation in OBF could also mean that participation—and savings—are increased in the EEPS programs.

Despite this, Nicor's plan does not mention how OBF and its energy efficiency measures can be coordinated. Nicor agreed with CUB that "there could be a barrier to some customers' involvement" in energy efficiency projects "due to a lack of financial resources to overcome first costs of some energy efficiency measures." The Company maintains there is no "merit" to CUB's recommendation that the SAG discuss how best to integrate OBF with the EEPS programs, claiming "it is rather late for any meaningful SAG discussion of the Company's OBF Program" because the program is "well underway." CUB counters by stating, the fact that the program is currently available to consumers actually makes this the perfect time to discuss how best to integrate OBF with the EEP programs. For example, Nicor should discuss with the SAG how vendors and contractors implementing the EEPS programs make customers aware of the OBF program, and how vendors and contractors implementing the OBF program make customers aware of the EEPS programs. CUB finds that discussions regarding how to increase participation in and savings achieved through the EEP are most germane to the SAG. CUB concludes the Commission should order Nicor to discuss the OBF program with the SAG to ensure that the Company is coordinating the implementation of the OBF and EEPS programs in order to maximize participation in both.

Nicor also claims that the Commission may reject CUB's recommendations due to "CUB's lack of understanding of the Company's OBF Program." CUB counters by stating that Nicor cannot point to any evidence that shows CUB's "lack of understanding" on the topic. The Company forgets that the burden of proof for providing information about the Plan is on the Company. The Company's arguments against CUB's recommendation for the Company to discuss the OBF program with the SAG are ineffective, and only bolster CUB's position that discussions of OBF are germane to this proceeding since the OBF program can serve to increase participation in the EEP programs.

C. Commission Analysis and Conclusion

The OBF and other energy efficiency incentives could allow certain customers to afford the costs of upgrades, which in turn may yield an immediate benefit to these customers in the form of energy savings. The OBF is a useful program that has merit to these customers as well as the Company's overall savings goals. As such, Nicor should discuss the pertinent issues related to implementing On-Bill Financing with the SAG to ensure the Company can incorporate this program in the EEP and maximize customer participation overall.

XI. 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) Northern Illinois Gas Company is a corporation engaged in the sale and distribution of natural gas in Illinois and, as such, is a gas utility within the meaning of Section 3-105 of the Public Utilities Act;
- (2) the Commission has subject matter jurisdiction in this proceeding over Northern Illinois Gas Company;
- (3) the recitals of fact and the conclusions reached in the prefatory portion of this Order are supported by the record and are hereby adopted as findings of fact;
- (4) all of the findings and conclusions of this Order describing or defining the parameters of evaluation of the Northern Illinois Gas Company Energy Efficiency Plan are supported by the record;
- (5) Northern Illinois Gas Company shall continue to participate in an advisory SAG;
- (6) Northern Illinois Gas Company shall file the independent evaluation contracts and scope of work in this docket within fourteen days of execution;
- (7) Northern Illinois Gas Company shall include language in the independent evaluation contracts such that the Commission can: (1) terminate the contract if the Commission determines the evaluators were not acting independently; and (2) prevent the Company from terminating the contracts without Commission approval;
- (8) Northern Illinois Gas Company is directed to stay apprised of and respond prudently and reasonably to information concerning measure and program level cost-effectiveness while implementing its Plan to help ensure the Plan produces and maximizes the net benefits to Illinois ratepayers envisioned by Section 8-104 of the Act and remains in compliance with all other statutory objectives including the portfolio-level cost-effectiveness requirement;
- (9) Northern Illinois Gas Company is directed to include a discussion of how it utilized the flexibility it was granted in its quarterly reports filed with the Commission in this docket;
- (10) the quarterly reports of Northern Illinois Gas Company shall summarize program activities, implementation modifications, additions or discontinuations of specific measures or programs, spending and savings amounts compared to the Plan filing, how the Company responds to past evaluators' recommendations and changes in the IL-TRM, NTG ratios, market research findings, and other relevant information the Company relies upon in making its decisions;
- (11) Northern Illinois Gas Company is required to provide cost-effectiveness screening results in its quarterly reports filed with the Commission in this docket for new energy efficiency measures the Northern Illinois Gas Company adds to its Plan during implementation;

- (12) Northern Illinois Gas Company shall explain in its quarterly reports filed with the Commission in this docket the extenuating circumstances for each new cost-ineffective measure Nicor Gas adds to its Plan after Commission approval and the extenuating circumstances surrounding exceeding the participation estimates included in the Plan for cost-ineffective measures;
- (13) Northern Illinois Gas Company shall continue its existing reporting practices to the SAG involving program changes and budget shifts in relation to flexibility that were adopted in the Company's first Plan filing, ICC Docket No. 10-0562;
- (14) the Modified Illinois NTG Framework proposed by Northern Illinois Gas Company is adopted;
- (15) Northern Illinois Gas Company shall include provisions within its contracts with its implementers that expressly prohibit the contractors and any of their subcontractors from obstructing the consensus seeking IL-TRM and NTG Update processes;
- (16) Northern Illinois Gas Company shall require its evaluators to collaborate with the other Illinois evaluators and the SAG to reach consensus on the most defensible and well-vetted methodologies for assessing net-to-gross ratios in particular markets for both residential and non-residential energy efficiency programs in a manner consistent with the direction provided herein;
- (17) ICC Staff shall file the agreed-upon consensus statewide NTG methodologies with the Commission as an attachment to the Updated IL-TRM, and if consensus is not reached on a certain component of the statewide NTG methodologies, that particular non-consensus component should be submitted in a manner consistent with the approach used for non-consensus IL-TRM Updates;
- (18) Northern Illinois Gas Company shall take ICC Staff's non-participant spillover proposal to its evaluators and the SAG for further development and implementation as soon as practicable;
- (19) the independent evaluator is responsible for performing the three-year *ex post* cost-effectiveness analysis per Section 8-104(f)(8) of the Act but this requirement may be satisfied by the evaluator's review and confirmation of data provided by Northern Illinois Gas Company;
- (20) the three-year cost-effectiveness results by program shall be reviewed and reported to the Commission by the evaluator in the three-year savings goal compliance proceeding per Section 8-104(f)(8) of the Act;
- (21) Northern Illinois Gas Company shall petition the Commission to initiate the three-year savings goal compliance proceeding and cost-effectiveness review of its Plan performance within 60 days of receipt of the final evaluation reports;

- (22) Northern Illinois Gas Company's proposed savings goals are as modified herein;
- (23) the testimony and exhibits admitted into the record provide substantial evidence that the Energy Efficiency Plan filed by the Northern Illinois Gas Company will meet the filing requirements of Section 8-104(f) of the Public Utilities Act, if Northern Illinois Gas 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; and
- (24) all motions, petitions, objections or other matters in this proceeding which remain unresolved should be disposed of consistent with the findings and conclusions of this Order.

IT IS THEREFORE ORDERED that the Petition filed by Northern Illinois Gas Company requesting approval of its Energy Efficiency Plan and budget filed in compliance with Section 8-104 of the Act is conditionally approved, subject to the Northern Illinois Gas Company filing a compliance filing that incorporates and is consistent with the findings and conclusions contained in this Order.

IT IS FURTHER ORDERED that Northern Illinois Gas Company is authorized and directed to file within 30 days of the date of this Order, a Revised Energy Efficiency Plan pursuant to Section 8-104 of the Act which contains terms and provisions consistent with and reflective of the findings and conclusions of this Order.

IT IS FURTHER ORDERED by the Illinois Commerce Commission that the Northern Illinois Gas Company shall comply with findings five (5) through twenty-four (24).

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

By Order of the Commission this 20th day of May, 2014.

(SIGNED) DOUGLAS P. SCOTT

Chairman