

Policy Division Staff Report

October 7, 2021

Subject:

Sections 8-103B(b-5) and 8-103B(b-15) of the Illinois Public Utilities Act (“Act”), 220 ILCS 5/8-103B(b-5) and (b-15), require the Commission to establish cumulative persisting annual savings (“CPAS”) goals for Commonwealth Edison Company (“ComEd”) and Ameren Illinois Company (“Ameren”) for the years 2031 through 2035 by December 31, 2021.

Recommended Action:

Staff recommends the Commission decline to initiate proceedings to establish CPAS goals for 2031-2035 for ComEd and Ameren and instead allow the default statutory CPAS goals set forth in Sections 8-103B(b-5) and 8-103B(b-15) of the Act to take effect by operation of law. As discussed further below, Staff considers it very unlikely that an evidentiary record could be made before the December 31, 2021 deadline that would enable the Commission to support alteration of the default statutory CPAS goals. Further, the statutorily contemplated “potential study” and “independent analysis” are not available at this time to assist and inform the Commission in adopting an alternative to the default CPAS goals. Accordingly, Staff recommends the Commission decline to initiate a proceeding at this time and instead allow the default statutory CPAS goals to take effect.

Based upon Staff’s consultation with interested stakeholders and the utilities, Staff understands there is a desire to revisit whether the default statutory CPAS goals should be altered once additional relevant information and analyses are available but in advance of the energy efficiency plan filings to which the statutory goals relate. Accordingly, Staff further recommends the Commission direct Staff to continue discussions with interested stakeholders and the utilities on a process by which a utility might at a future date seek adoption of goals different from the default statutory CPAS goals and include such a process in the Illinois Energy Efficiency Policy Manual Version 3.0, or such other forum, venue, proceeding, or process the Staff deems appropriate.

Summary

On September 15, 2021, Illinois legislation concerning the electric utilities’ energy efficiency programs was signed into law, effective immediately (Public Act 102-0662). Included within that legislation is a new requirement that the Commission establish CPAS goals for ComEd and Ameren for the years 2031 through 2035 by December 31, 2021, as set forth in Sections 8-103B(b-5) and 8-103B(b-15) of the Act. Staff coordinated with Ameren, ComEd, and the Stakeholder Advisory Group (“SAG”) Facilitator to schedule two workshops related to 2031-2035 CPAS goals prior to submitting this Staff Report. Workshop participation was robust with approximately 100 participants at each meeting. On September 27, 2021, Ameren and ComEd presented information related to CPAS

goals for the years of 2031-2035, and on September 30, 2021, interested parties were provided an opportunity to respond to the utilities' presentations. Staff and the Natural Resources Defense Council provided presentations with initial responses to the utilities' presentations.

The utilities believe it may be impossible to meet even the lower threshold percentage point increases to the CPAS goals set forth in Sections 8-103B(b-5) and 8-103B(b-15) of the Act (i.e., 0.4 and 0.5 percentage point annual increases) because there are significant savings expiring in future years from previously installed energy efficiency measures. Importantly, the statute imposes a higher burden of proof (i.e., "clear and convincing evidence") for the Commission to establish CPAS goals below the lower threshold percentage point increases to the CPAS goals. Similarly, if the Commission wants to set goals at more than 0.5% or 0.4% increases, the record must reflect the Commission's "best estimate of the maximum amount of additional savings that are forecast to be cost effectively achievable." Specifically, Section 8-103B(b-5) of the Act states:

No later than December 31, 2021, the Illinois Commerce Commission shall establish additional cumulative persisting annual savings goals for the years 2031 through 2035. No later than December 31, 2024, the Illinois Commerce Commission shall establish additional cumulative persisting annual savings goals for the years 2036 through 2040. The Commission shall also establish additional cumulative persisting annual savings goals every 5 years thereafter to ensure that utilities always have goals that extend at least 11 years into the future. The cumulative persisting annual savings goals beyond the year 2030 shall increase by 0.9 percentage points per year, absent a Commission decision to initiate a proceeding to consider establishing goals that increase by more or less than that amount. Such a proceeding must be conducted in accordance with the procedures described in subsection (f) of this Section. If such a proceeding is initiated, the cumulative persisting annual savings goals established by the Commission through that proceeding shall reflect the Commission's best estimate of the maximum amount of additional savings that are forecast to be cost-effectively achievable unless such best estimates would result in goals that represent less than 0.5 percentage point annual increases in total cumulative persisting annual savings. The Commission may only establish goals that represent less than 0.5 percentage point annual increases in cumulative persisting annual savings if it can demonstrate, based on clear and convincing evidence and through independent analysis, that 0.5 percentage point increases are not cost-effectively achievable. The Commission shall inform its decision based on an energy efficiency potential study that conforms to the requirements of this Section.

220 ILCS 5/8-103B(b-5) (emphasis added). Section 8-103B(b-15) states, in relevant part:

No later than December 31, 2021, the Illinois Commerce Commission shall establish additional cumulative persisting annual savings goals for the years 2031 through 2035.

....

The cumulative persisting annual savings goals beyond the year 2030 shall increase by 0.6 percentage points per year, absent a Commission decision to initiate a proceeding to consider establishing goals that increase by more or less than that amount. Such a proceeding must be conducted in accordance with the procedures described in subsection (f) of this Section. If such a proceeding is initiated, the cumulative persisting annual savings goals established by the Commission through that proceeding shall reflect the Commission's best estimate of the maximum amount of additional savings that are forecast to be cost-effectively achievable unless such best estimates would result in goals that represent less than 0.4 percentage point annual increases in total cumulative persisting annual savings. The Commission may only establish goals that represent less than 0.4 percentage point annual increases in cumulative persisting annual savings if it can demonstrate, based on clear and convincing evidence and through independent analysis, that 0.4 percentage point increases are not cost-effectively achievable. The Commission shall inform its decision based on an energy efficiency potential study that conforms to the requirements of this Section.

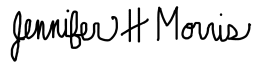
220 ILCS 5/8-103B(b-15) (emphasis added).

As shown above, both Sections 8-103B(b-5) and 8-103B(b-15) change the standard of proof upon which the Commission makes a decision if it is to establish CPAS goals less than certain percentage point annual increases (i.e., 0.4 and 0.5 percentage point annual increases); in particular, it requires the Commission to rely upon “clear and convincing evidence,” which is a higher standard than the preponderance of evidence standard usual in Illinois administrative proceedings and before the Commission. 5 ILCS 100/10-15. Staff considers it very unlikely that an evidentiary record could be made before the December 31, 2021 deadline that would enable the Commission to find that there is “clear and convincing evidence” to support alteration of the statutory goals, and indeed conducting any such proceeding at all, even if lesser decreases were sought, would be extraordinarily difficult in the time available. This is exacerbated by the fact that, as set forth above, the statute also call for an “independent analysis” and that the Commission should inform its decision based on an energy efficiency “potential study” – neither of which is currently available, nor will either be available by year’s end. Therefore, Staff concludes the Commission should not open a docket at this time to alter

the default statutory CPAS goals because Staff is of the opinion that it is impossible to develop the required evidentiary record upon which to base its decision on CPAS goals due to the time constraint and the fact the independent analysis and energy efficiency potential study are not available. Staff recommends the Commission specifically decline to initiate proceedings to establish CPAS goals for 2031-2035 for ComEd and Ameren. Declining to initiating proceedings at this time will result in default statutory CPAS goals taking effect by operation of law.

Based on discussions at the workshops, Staff understands there to be a desire to consider whether the default statutory CPAS goals should be altered once additional relevant information and analysis are available (e.g., potential study, magnitude of expiring savings that need offsetting, emergence of new technology and/or new program design approaches), but in advance of the energy efficiency plan filing in which the statutory goals relate. Accordingly, Staff recommends the Commission direct Staff to continue discussions with interested stakeholders and the utilities on a process by which the default statutory CPAS goals could be altered at a future date and include such a process in the Illinois Energy Efficiency Policy Manual Version 3.0, or such other forum, venue, proceeding, or process that the Staff deems appropriate.

Prepared by:



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Approved by:



10/7/21

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Date