

STATE OF ILLINOIS



ILLINOIS COMMERCE COMMISSION

TO: All Interested Parties

FROM: Jennifer Hinman, ICC Staff

SUBJECT: Public Notice of June 25, 2014 Deadline for Objections to the June 18, 2014 Consensus Language for Section 16-111.5B Oversight and Evaluation Responsibility Energy Efficiency Issues

DATE: June 18, 2014

The Illinois Commerce Commission's December 18, 2013 [Final Order](#) in ICC Docket No. 13-0546 directed ICC Staff and any interested parties to conduct workshops, as needed, to address certain outstanding energy efficiency ("EE") issues pertaining to the Oversight and Evaluation Responsibility of the Section 16-111.5B EE programs. In addition to providing all interested parties the opportunity to provide input on these issues through a series of written commenting opportunities starting as early as March 27, 2014, public teleconference workshops were also held on May 12, 2014, May 28, 2014, June 9, 2014, and June 18, 2014 to review and discuss interested parties' Oversight and Evaluation Responsibility questions and informal comments submitted, drafts of proposed consensus language, and interested parties' comments submitted on the drafts of proposed consensus language.

The June 18, 2014 Consensus Language, attached hereto, reflects the input received from interested parties through written comments on proposed consensus language as well as the input received from interested parties during the June 9, 2014 and the June 18, 2014 public teleconference workshops. The June 18, 2014 Consensus Language is not intended to capture interested parties' preferred positions on every issue, rather it is intended to capture interested parties' acceptable positions such that consensus can be reached on certain important Oversight and Evaluation Responsibility issues for the Section 16-111.5B EE programs that need to be resolved in order to provide greater certainty to all parties. Although the June 18, 2014 Consensus Language is identical in almost all cases for the items previously determined to be consensus (#1, 2, 3, 5, and 6), given the explanation sections that previously accompanied that consensus language have been deleted based upon requests by certain parties, the already consensus language is being presented again to provide all interested parties another opportunity to object to it in the event it is believed deletion of the explanations that previously accompanied the consensus language change parties' interpretation of the consensus language or underlying intent.

All interested parties are urged to review the attached June 18, 2014 Consensus Language with their respective leadership and counsel to make certain that it represents the consensus view from the 2014 Section 16-111.5B Oversight and Evaluation Responsibility EE workshops. Interested parties should submit any objections to the June 18, 2014 Consensus Language to Jennifer Hinman at jhinman@icc.illinois.gov (copying the Illinois Energy Efficiency Stakeholder Advisory Group ("SAG")¹ e-mail distribution list) by close of business on Wednesday, June 25, 2014. In the event that no objections to the June 18, 2014 Consensus Language are received by Wednesday, June 25, 2014, ICC Staff will interpret the lack of objections as confirmation that the June 18, 2014 Consensus Language indeed reflects the consensus of all interested parties and may represent it as such when summarizing the outcome of the 2014 Section 16-111.5B EE workshops. Given the utilities' EE assessments to the Illinois Power Agency are due July 15, 2014, ICC Staff has not scheduled any additional Section 16-111.5B EE workshops to address, in the unlikely event, any objections to the June 18, 2014 Consensus Language that conceivably could be received by Wednesday, June 25, 2014. Parties are encouraged to contact Jennifer Hinman at jhinman@icc.illinois.gov or (217) 785-1078 with any questions or concerns about this process or about the June 18, 2014 Consensus Language itself.

¹ Consistent with the agreement reached at the May 28, 2014 workshop, parties' objections will not be posted on the Commission's website, but they will be circulated with the SAG e-mail distribution list. This ICC Staff Memorandum: "Public Notice of June 25, 2014 Deadline for Objections to the June 18, 2014 Consensus Language for Section 16-111.5B Oversight and Evaluation Responsibility Energy Efficiency Issues" will be posted on the Commission's website to ensure all interested parties are made aware of the June 25, 2014 deadline for objections. <http://www.icc.illinois.gov/electricity/EnergyEfficiencyWorkshops161115B.aspx>

1. Deeming and Evaluation for Future Section 16-111.5B Energy Efficiency (“EE”) Programs

Consensus Language:

Deeming should be permitted for the Section 16-111.5B energy efficiency programs just as it is for the Section 8-103 energy efficiency programs. Annual updates to the deemed Illinois Statewide Technical Reference Manual for Energy Efficiency (“[IL-TRM](#)”) and net-to-gross (“NTG”) ratio values should occur for the Section 16-111.5B energy efficiency programs, and as a result, reasonable changes to the vendors’ savings goals and/or cost structure are permitted during contract negotiations based in part on these updates to the IL-TRM and NTG. Multi-year contracts should be constructed to re-negotiate savings calculations based on annual IL-TRM and NTG updates and should leave open the possibility for utilities to update savings calculations and contract terms based in part on IL-TRM updates or errata and NTG updates. The [IL-TRM Policies](#)² adopted in ICC Docket No. 13-0077 should apply for the Section 16-111.5B energy efficiency programs (e.g., applicability and effective dates for updated versions of the [IL-TRM](#) should be consistent for both Section 16-111.5B and Section 8-103 energy efficiency programs). Prospective application of standard measure-level savings values from the updated IL-TRM and NTG values recommended by the evaluator that are available prior to the start of a program year should be deemed for one program year. Evaluators should perform IL-TRM savings verification for the Section 16-111.5B energy efficiency programs in a manner consistent with that performed for the Section 8-103 energy efficiency programs. Ex-post evaluation results for gross savings calculations should be applied retrospectively for custom measures, behavioral measures, and for EE measures with uncertain savings, which is consistent with the approach used for these types of energy efficiency measures under the Section 8-103 energy efficiency programs.

2. Deeming and Evaluation for Previously Approved Section 16-111.5B EE Programs, Program Year (“PY”) 6 and PY7

Consensus Language:

Ex-post evaluation results for gross savings calculations should be applied retrospectively for custom measures, behavioral measures, and for energy efficiency measures with uncertain savings, which is consistent with the approach used for these types of EE measures under the Section 8-103 energy efficiency programs.

For PY6, the statements set forth in the utilities’ contracts with energy efficiency program vendors are the overriding factors in relation to deeming and evaluation for previously approved and implemented Section 16-111.5B energy efficiency programs.

For Ameren in PY7, the NTG and IL-TRM included in the procurement plan filing should be deemed per ICC Order Docket No. 13-0546.

For ComEd in PY7, the evaluator recommended NTG values intended to represent their best estimates of future actual NTG values likely to occur for the program year should be deemed for PY7. The ICC-approved [IL-TRM Version 3.0](#)

² “Policy Document for the Illinois Statewide Technical Reference Manual for Energy Efficiency” Final As of October 25th, 2012.

should be deemed for PY7 for ComEd's Section 16-111.5B energy efficiency programs, which is consistent with the deeming approach and version of the IL-TRM deemed for PY7 for the Section 8-103 energy efficiency programs.

3. Responsible Entity

Consensus Language:

The utilities have primary responsibility for prudently administering the contracts with the vendors approved by the Commission for the Section 16-111.5B energy efficiency programs.

4. Policy or Clarity on Status of Bid Accepted into IPA Procurement Plan and Approved by the Commission and Flexibility

Consensus Language:

Once the Commission approves the procurement of energy efficiency pursuant to Section 16-111.5B(a)(5) of the PUA, the utilities and approved vendors should move forward in negotiating the exact terms of the contract based on the terms of the Request for Proposal ("RFP") and the bid itself (and that are "not significantly different" from the initial bid), with the clarification that negotiation around other details of the contract/scope of work/ implementation plan still might need to occur depending on a variety of factors (e.g., lessons learned since bid submittal, updates to the IL-TRM and NTG, changes in the market, desire to add new energy efficiency measures). The utilities should use reasonable and prudent judgment in negotiating the exact terms of the contract after Commission approval and should rely upon the best available information and ensure any modifications continue to result in a cost-effective energy efficiency program. Negotiations may result in reasonable adjustments to savings goals for the energy efficiency program in comparison to the amount proposed in the bid and reasonable and prudent modifications to the cost structure (e.g., price paid per kWh) that are in line with the original design. Some degree of flexibility within an energy efficiency program should be allowed for vendors implementing energy efficiency programs under Section 16-111.5B of the PUA. Flexibility should not be allowed insofar as the modifications to the EE program result in the following: (1) less confidence in the quality of service, (2) the addition of new energy efficiency measures with no confidence in the savings, (3) duplicates or competes with other energy efficiency programs, (4) cost-ineffective energy efficiency program, or (5) a completely different energy efficiency program proposed in comparison to what was bid and approved. The utilities/IPA should share the description of the vendor's energy efficiency program included in the draft procurement plan with the vendor to help ensure the energy efficiency program is accurately characterized. An understood process for vendors to submit program changes should be clearly conveyed to all vendors by the utilities. If a vendor decides to add (or remove) EE measures midstream, they should seek approval from the utility for such changes prior to implementing the change in order to allow for possible contract renegotiations. Vendors are allowed to receive credit for energy savings from implementing new EE measures if they have received pre-approval from the utility for adding that

new EE measure. To help protect against gaming, any EE measure that has not received pre-approval from the utility or is not included in the vendor's approved proposal should not be considered for energy savings. The utility should notify the IPA, ICC, and the SAG when it has stopped negotiations with an approved Section 16-111.5B energy efficiency program vendor and a contract agreement cannot be reached, and if it has terminated a contract with an approved Section 16-111.5B energy efficiency program vendor. The utility should notify the Commission in a filing in the procurement plan docket for which the energy efficiency program was approved (similar to the approach ComEd used for PY7 and the approach proposed by Ameren in ICC Docket No. 13-0546 (Order at 112; Ameren RBOE at 14)). The utilities should notify SAG and keep the IPA apprised of any expected shortfalls in savings. The utility should notify the ICC of changes made (e.g., savings goal changes) in comparison to the approved energy efficiency programs.

5. Continuity for Multi-Year EE Programs

Consensus Language:

The utilities should have the capability for any of the Section 16-111.5B energy efficiency programs to have the option to expand into the Section 8-103 energy efficiency portfolio for a given program year (at the utility's discretion) if (1) the Section 16-111.5B savings goal for the energy efficiency program (from the ICC Order in the procurement plan docket or compliance filing/contract) is achieved and the approved budget (from ICC Order in the procurement plan docket) is exhausted and (2) the utility has budget available in the Section 8-103 energy efficiency portfolio. The utilities should make the vendor aware of this option in advance so as to help avoid stopping and re-starting the energy efficiency program (i.e., avoid program disruption).

The Commission could pre-authorize up to a 20% budget shift across program years for multi-year programs (assuming remains within total approved multi-year program budget) to allow for successful energy efficiency programs to continue operation in the early (or later) program years of the multi-year contract. In such a situation, it is assumed that the kilowatt-hour ("kWh") savings goals and budgets would be cumulative for the number of years of the contract. The utilities should make the vendor aware of this option in advance so as to help avoid energy efficiency program disruption.

6. Evaluation Budget and Process Evaluations

Consensus Language:

Consistent with the Section 8-103 evaluation process, Evaluators may conduct process evaluations where justified to encourage improvement in the implementation of the Section 16-111.5B energy efficiency programs.

Expenditures on evaluation should be capped for the Section 16-111.5B energy efficiency programs as they are for the Section 8-103 EE programs. Each energy efficiency program's evaluation budget should not necessarily be restricted to 3% of the energy efficiency program budget, but evaluation costs

should be limited to 3% of the combined Section 16-111.5B energy efficiency programs' budget.³

To the extent that certain third-party EE programs have innovative delivery mechanisms and potential to achieve significant savings, either generally or from key targets, a process evaluation may be justified, where the value of this effort must be weighed against the cost of conducting such an evaluation for an EE program that is a) not unique or innovative, b) achieves very small savings, or c) is not likely to gain traction as an ongoing EE program either in future Section 16-111.5B EE processes or as part of the Section 8-103 EE portfolio.

³ This was a consensus issue from last year's workshops. "Expenditures on evaluation should be capped for the Section 16-111.5B EE programs as they are for the Section 8-103 EE programs."⁶⁹ ([2013 ICC Staff Report Summary of Section 16-111.5B EE Workshops](#), p. 7) "There must be a balance in the evaluation of Section 16-111.5B EE programs between the degree of evaluation and the size of the program, wherein larger programs justify more complete evaluations."⁴⁰ ([2013 ICC Staff Report Summary of Section 16-111.5B EE Workshops](#), p. 7)