

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

Post-Workshop Section 16-111.5B Energy)
Efficiency Questions)

RESPONSE COMMENTS ON BEHALF OF THE ILLINOIS POWER AGENCY

Pursuant to Staff’s April 24, 2013 Notice of Comment Period Regarding Post-Workshop Section 16-111.5B Energy Efficiency Questions and the schedule supplemented by Staff on May 13, 2013, the Illinois Power Agency (“IPA”) respectfully submits its Response Comments.

GENERAL RESPONSE

As an initial matter, the IPA would like to further clarify its statutory authority and legally prescribed role in the energy efficiency procurement process pursuant to Section 16-111.5B of the Public Utilities Act (220 ILCS 5/16-111.5B, hereinafter “Section 16-111.5B”). Like all other procurements authorized by Section 16 of the Public Utilities Act, the IPA is not a contractual counterparty, nor are there IPA “funds” to be spent.¹ The IPA simply acts as a procurement agent on behalf of participating utilities. Furthermore, although Section 16-111.5B does require the IPA to add certain efficiency programs to the IPA’s Procurement Plan, the IPA cannot procure energy efficiency (or any other resource) on behalf of the utility without Commission approval. Thus, although the IPA is required to make determinations about which programs to include in its Procurement Plan (subject to, at minimum, the criteria in Section 16-111.5B(a)(4) and (b)), the IPA itself does not select which energy efficiency programs the utilities must buy. Finally, although both utilities have voluntarily allowed the IPA to comment on RFP documents, and the IPA is available to provide additional guidance to utilities about the

¹ The only procurements where the IPA is the contractual counterparty that administers and pays under the contract are those authorized by Section 1-56 of the Illinois Power Agency Act (20 ILCS 3855/1-56). In those contracts, the participating utilities are not counterparties.

RFP process, the IPA has no statutory authority to alter the utilities' RFP or to conduct parallel or additional energy efficiency RFPs.

RESPONSES TO OTHER INTERESTED PARTIES' ANSWERS TO QUESTIONS

1. Is it feasible for the energy efficiency ("EE") programs and measures procured by the Illinois Power Agency ("IPA") pursuant to Section 16-111.5B to include expansions of Section 8-103 EE programs and measures? If yes, please explain how, describe the benefits and costs of doing so, and explain whether expansions of Section 8-103 EE programs and measures should be included in IPA procurements of EE pursuant to Section 16-111.5B.

IPA Response: Several interested parties described different visions regarding consolidating or separating Section 16-111.5B and 8-103 programs. The IPA takes no position on the best approach among the several proposals, but strongly recommends that any construct allow the utilities and IPA to meet the statutory requirements of Section 16-111.5B(a).

1.1. Should the Section 16-111.5B EE programs be limited to new or different EE programs than those included in a utility's Section 8-103 EE portfolio? What are the benefits and costs of such an approach?

IPA Response: See the IPA's response to Question 1 above.

2. Should expansion of existing Section 8-103 EE programs under Section 16-111.5B also include expansion of DCEO's Section 8-103 EE programs? If yes, please explain how and describe the benefits and costs of such an approach.

IPA Response: The IPA agrees with the Attorney General and the Natural Resources Defense Council ("AG/NRDC"), who collectively pointed out that any DCEO program must conform to the statutory requirement of 16-111.5B(a)(3)(C). (*See* AG/NRDC Comments at 3.) The IPA wishes to emphasize, however, that these programs should come through the ComEd and Ameren RFP process, because the IPA does not at this time have the authority to separately solicit programs nor does the IPA have the authority to consider a DCEO-run RFP. The IPA also notes that the standard for evaluation of DCEO programs would be the same standard as for other respondents to the RFP processes -- the standard in Section 16-111.5B(a)(4) -- which incorporates the Total Resource Cost test by reference. The alternative standard for low income programs in Section 16-111.5B(a)(4) would not apply in this case.

3. Given the existing EE statutes, should the Commission treat Sections 8-103 (EEPS) and 16-111.5B (IPA) EE portfolios as separate portfolios (e.g., separate EE goals, separate budgets, separate sets of standards) or as a combined portfolio (e.g., single EE goal, single budget, single set of harmonized standards)? Please explain which approach (i.e., separate or combined EE portfolios) is preferred and provide rationale.

IPA Response: The IPA took no position on this question in its Initial Comments, and continues to take no position.

3.1. How would the preferred approach (i.e., separate or combined EE portfolios) actually work in practice (in terms of EE evaluation, tracking, reporting, portfolio administration, goals, banking, flexibility, merged or separate budget, and other overlap with Section 8-103)? Please be very specific.

IPA Response: The IPA took no position on this question in its Initial Comments, and continues to take no position.

3.2. Under what circumstances (if any) could you support the alternative approach (i.e., separate or combined EE portfolios), and how would the alternative approach actually work in practice (in terms of EE evaluation, tracking, reporting, portfolio administration, goals, banking, flexibility, merged or separate budget, and other overlap with Section 8-103)? Please be specific.

IPA Response: The IPA took no position on this question in its Initial Comments, and continues to take no position.

4. How should EE programs be procured by the IPA?

IPA Response: As noted above in the IPA's General Response, the IPA wishes to clarify its limited statutory role in recommending for procurement a subset of programs that are presented by the utilities pursuant to their RFPs. The IPA does not separately issue an RFP or add programs or measures beyond those in the utilities' RFP. However, nothing prevents the IPA from consulting with utilities regarding opportunities in future years.

4.1. For example, should the IPA procurement allow for multi-year EE programs? Can the number of years that the utilities propose for IPA EE programs be flexible (1, 2, 3, 4 or 5 years)?

IPA Response: There appeared to be a consensus in comments that the IPA is authorized to propose for inclusion in its Procurement Plan any multi-year programs from the utility RFPs that otherwise meet the standards of 16-111.5B. As noted in its Initial Comments, the IPA agrees with this consensus.

4.2. How should payments be structured?

IPA Response: IPA took no position on this question in its Initial Comments, but wishes to respond to a point made by AG/NRDC. AG/NRDC stated in part that: "It should be noted that there is no need (or legal requirement) for IPA program payments to be performance-based." The IPA does not have a position as to whether there is a legal requirement and the IPA is not directly involved in payments. However, the IPA notes that energy efficiency programs under Section 16-111.5B are in many ways similar to the long-term renewable energy resources procured by the IPA on behalf of utilities, in the sense that both are "speculative" resources in that a successful vendor bids a certain volume but cannot (nor are they forced to) guarantee delivery of that exact volume. Given that similarity, the IPA suggests that a performance-based payment system

recognizes that on one hand it may not be practical to penalize vendors for unrealized savings but on the other hand it would not be financially responsible to rate payers to fully compensate a vendor that fails to deliver. The IPA finally notes that performance-based payments need not be solely on a per-kWh of savings delivered, and could be a hybrid of upfront payment and per-kWh payment. The IPA is willing to provide input to the Commission or utilities on contract structuring issues in the appropriate venue.

5. How should Section 16-111.5B EE programs be evaluated (e.g., using IL-TRM in effect at time of submission, using IL-TRM in effect at time of implementation, deemed NTG) and what is appropriate forum for review (e.g., docketed proceeding, SAG)?

IPA Response: The IPA has reviewed the Initial Comments of the other parties, and has not changed its position.

5.1. Do EE programs and measures procured by the IPA pursuant to Section 16-111.5B require evaluation, measurement and verification? If yes, please answer the following as well:

IPA Response: The IPA has reviewed the Initial Comments of the other parties, and has not changed its position.

5.1.1. Should assessments of IPA EE programs be included as part of the work done assessing Section 8-103 EE programs and measures through the Technical Reference Manual (“TRM”)? Should the processes now completed for the evaluation of Section 8-103 EE programs, including the TRM and net-to-gross (“NTG”) ratio development, also be done for Section 16-111.5B EE programs?

IPA Response: The IPA took no position on this question in its Initial Comments, and continues to take no position.

5.1.2. Should the same NTG ratios and savings values, methodologies and assumptions be applied to both Section 8-103 EE programs and Section 16-111.5B EE programs?

IPA Response: The IPA has reviewed the Initial Comments of the other parties, and has not changed its position.

6. Is it reasonable to hold utilities (or third party vendors) accountable for annual EE savings goals (EE program-level or portfolio-level goals) established pursuant to Section 16-111.5B?

IPA Response: The IPA took no position on this question in its Initial Comments, and continues to take no position.

6.1. How should failure of any party to fulfill its Section 16-111.5B obligations be dealt with in the context of Section 16-111.5B EE goals, budgets, and affected supply requirements?

IPA Response: The IPA appreciates comments regarding the effects on the load forecast from failure of a vendor to fulfill its obligations under a contract procured pursuant to Section 16-111.5B. The IPA noted in its Initial Comments that any shortfall would be unlikely to trigger a contingency event pursuant to Section 16-111.5(e), and that any

shortfall (or possibly overachievement) would be addressed through day-ahead balancing. The IPA continues to believe that any changes in load shape will be dealt with through day-ahead balancing.

6.2. What are the consequences, if any, should an ex-post evaluation of an EE program or measure procured by the IPA pursuant to Section 16-111.5B fail to show the expected savings?

IPA Response: In its Initial Comments, the IPA stated that it does not believe there are any goals, budgets, or affected supply requirements in Section 16-111.5B. The IPA has reviewed the other parties' Initial Comments, and has not changed its position.

The IPA wishes to specifically respond to a contention from AG/NRDC in response to this Question, which stated in part (referring to the concept of combining goals for Section 8-103 and 16-111.5B):

IPA programs be planned and implemented in an integrated way (i.e. as if the IPA is simply another source of external funds available to support the attainment of statutory goals) with a single savings target and essentially a combined budget (with some limitations discussed above). If that proposal is adopted, there would be no purely "IPA savings". In that context, the utilities would have the same accountability for meeting a single "combined" savings goal that they have today for meeting Section 8-103 goals.

(AG/NRDC at 9.) The IPA appreciates that if both programs were to be somehow combined in a manner consistent with the two statutes, there would be significant accounting issues to resolve. However, the IPA is not clear how the AG/NRDC proposal would work in practice, given that: (1) the statutory cost cap under Section 8-103 does not apply to Section 16-111.5B procurements, (2) the IPA itself is not simply a source of funds, rather the costs of energy efficiency procured as a result of contracts resulting from proposals approved by the Commission in the IPA's procurement plan are recovered from customers, and (3) there are no utility goals or utility accountability for savings "goals" under 16-111.5B. The statutory requirements for the IPA Procurement Plan approval process does not easily comport with the timing and requirements of Section 8-103 for the purposes recommended by AG/NRDC.

7. Can utilities and third party vendors adjust (EE program and portfolio) goals or budgets after the IPA order but prior to implementation reflecting changes in values and the market given the over one year time lag between RFP submission and implementation? If yes, please answer the following as well:

IPA Response: The IPA has reviewed the other parties' Initial Comments, and the IPA continues to hold the same views as expressed in the IPA's Initial Comments. However, the IPA wishes to emphasize that although it has no explicit statutory requirement to review or approve contracts, the IPA is happy to participate with other stakeholders to ensure that contracts with third-party vendors best balance the interests of all of the

stakeholders, on issues including those categorized as “flexibility” and updates to contract quantities.

7.1. Under what circumstances can the utilities and third party vendors make such adjustments? Please be specific.

IPA Response: Please see the IPA’s response to Question 7 above.

7.2. What guidelines or rules should govern how such adjustments are made? Please be specific.

IPA Response: Please see the IPA’s response to Question 7 above. .

7.3. What is the appropriate forum for review (e.g., docketed proceeding, SAG) and approval (e.g., docketed proceeding) of such adjustments, if any?

IPA Response: Please see the IPA’s response to Question 7 above.

7.4. Should previously approved EE programs that undergo goal or budget adjustments after approval be rescreened prior to implementation with revised cost-effectiveness estimates submitted to the IPA and the Commission? What should happen if the revised EE program goal (and budget) results in the EE program screening as cost-ineffective?

IPA Response: Please see the IPA’s response to Question 7 above.

8. What type and amount of flexibility is allowed or appropriate for EE programs approved in an IPA procurement plan under Section 16-111.5B (for one year, and for multiple years, and flexibility between the Sections 16-111.5B and 8-103 EE portfolios)?

IPA Response: Please see the IPA’s response to Questions 1, 3, 3.1, 3.2, and 4.1 above.

8.1. For example, can or should resources be transferred between and among Section 16-111.5B EE programs in order to maximize cost-effective savings?

IPA Response: The IPA took no position on this question in its Initial Comments, and continues to take no position.

8.2. Can or should resources be transferred between the Section 16-111.5B EE portfolio and the Section 8-103 EE portfolio in order to maximize cost-effective savings?

IPA Response: The IPA took no position on this question in its Initial Comments, and continues to take no position.

9. What criteria of cost-effectiveness is appropriate for EE programs and measures procured by the IPA pursuant to Section 16-111.5B?

IPA Response: In its Initial Comments, the IPA noted the application of the TRC test and that the IPA did not have a position on whether the Commission could in its evaluation of IPA-suggested programs apply additional standards. The IPA has reviewed the other Initial Comments, and has not changed its opinion.

The IPA wishes to respond to what the IPA understands as AG/NRDC's contention that the TRC test applies at the portfolio level rather than at the individual program or measure level. The term "portfolio" is used extensively in Section 8-103, but is not used in Section 16-111.5B. Therefore while the IPA appreciates the parallel that AG/NRDC wish to make between the portfolio of programs and measures that are developed under Section 8-103 and the overall set of programs and measures that the IPA includes in its Procurement Plan under Section 16-111.5B, the comparison is not fully applicable. The portfolio under Section 8-103 is a stand-alone amalgamation of programs and measures that is assembled to meet statutory goals. Ultimately, the utilities are measured on the kWh savings delivered, but the portfolio must also address additional concerns such as the carve outs that are administered by DCEO. Therefore, the consideration of a portfolio of programs can appropriately consider measures that may not on their own be cost effective. Under Section 16-111.5B there are no such carve outs and also no kWh goals to meet and thus there is no portfolio to construct that balances out those considerations. In addition, Section 8-103 plans must adhere to a capped budget, while Section 16-111.5B procurements have no budget cap. As a result, the IPA believes it is sound policy to avoid over-construing Section 16-111.5B in favor of program and measure inclusion given the lack of other limiting factors such as savings goals, carve-outs, and budgets.

While it appears the Commission may have the authority to approve a set of programs and measures that include a subset that are not cost effective so long as they in total fully capture the potential of all achievable cost-effective savings, the IPA does not in practice see how that would be possible. The IPA interprets Section 16-111.5B(a)(4) to mean that it cannot include individual programs and measures in its Procurement Plan that are not cost effective. Therefore the inclusion of such programs or measures would have to be a decision made by the Commission to alter the Procurement Plan.

The IPA agrees with AG/NRDC that allowing vendors some form of access to the TRC screening tool would be beneficial in that it would remove a significant degree of uncertainty and risk from the bidding process. This is underscored by the importance of the TRC at the program and measure level. The IPA would be happy to participate in further discussions prior to the 2014 RFP process in order to develop such a system or process that appropriately balances protection of confidential information such as utility avoided costs and the potential of gaming of the TRC test with the ability for prospective bidders to pre-validate their proposed programs. The IPA notes, however, that parties were not barred last year from litigating whether the utilities accurately applied the TRC test as part of the Procurement Plan approval docket.

10. What is the meaning of 220 ILCS 5/16-111.5B(a)(3)(D)-(E) in terms of which statistics or cost-effectiveness tests should be used to comply with each of the two requirements? Please be specific.

(D) Analysis showing that the new or expanded cost-effective EE programs or measures would lead to a reduction in the overall cost of electric service.

(E) Analysis of how the cost of procuring additional cost-effective EE measures compares over the life of the measures to the prevailing cost of comparable supply.

IPA Response: The IPA has not changed its understanding since its Initial Comments.

10.1. How should the additional information required of the utilities in the IPA's procurement of EE programs and measures under Section 16-111.5B(a)(3)(D)-(E) be used? For example, should this additional information be used to exclude EE programs from IPA consideration?

IPA Response: The IPA believes that this question is best addressed in litigation before the Commission where parties can present full legal and policy arguments.

Respectfully submitted,

ILLINOIS POWER AGENCY

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