STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

# Staff Report

# Summary of 2014 Section 16-111.5B Energy Efficiency Workshops Required by ICC Order Docket No. 13-0546

July 9, 2014

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# Staff Report: Summary of 2014 Section 16-111.5B EE Workshops

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## ATTACHMENTS


Attachment A: June 18, 2014 Consensus Language for Section 16-111.5B Oversight and Evaluation Responsibility Energy Efficiency Issues

Attachment B: Consensus Marginal Economic Potential Study Scope 6-11-14

## Disclaimer

The Illinois Commerce Commission's ("ICC" or "Commission") December 18, 2013 Final Order in ICC Docket No. 13-0546 directed ICC Staff ("Staff") and any interested parties to conduct workshops to address certain outstanding Section 16-111.5B energy efficiency ("EE") issues. The Commission requested parties to report to the Commission in the next available Illinois Power Agency ("IPA") procurement plan proceeding on the results of the workshop.

This report conveys Staff's summary of the results of the workshops and the consensus positions reached through the 2014 Section 16-111.5B EE workshops. The summaries contained herein are solely those of Staff and are based on discussion during the workshops, comments received from interested parties, and language previously summarized in ICC Staff Memos distributed during the workshop process. All errors and omissions can only be attributed to the author. In contrast, the consensus documents attached to this Staff Report were developed and edited with input from all interested parties through the workshop process. The language contained in the consensus document Attachment A to this Staff Report is not intended to capture interested parties' preferred positions on every issue, rather it is intended to capture interested parties' acceptable positions at the time of the workshops such that consensus could be reached on certain important outstanding issues that need to be resolved in order to provide greater certainty to all parties involved with the Section 16-111.5B EE programs.

The June 18, 2014 Consensus Language for the Section 16-111.5B Oversight and Evaluation Responsibility EE Issues ("June 18, 2014 Consensus Language"), attached hereto as Attachment A, was circulated to the Illinois Energy Efficiency Stakeholder Advisory Group ("SAG") e-mail distribution list and posted on the Commission's website with a request for any interested party to submit objections if a party disagreed with the drafted consensus language representing the consensus view from the 2014 Section 16-111.5B EE workshops. During the workshop process, interested parties were urged to review drafted consensus language with their respective leadership and counsel on more than one occasion to make certain that the final consensus language represented the consensus view from the workshops. It was specified that failure of parties to submit objections by June 25, 2014 will be interpreted by Staff as confirmation that the June 18, 2014 Consensus Language indeed reflects the consensus of all interested parties, and it was further noted that ICC Staff may represent it as such when summarizing the outcome of the 2014 Section 16-111.5B EE workshops. No objections were received by July 25, 2014 on the June 18, 2014 Consensus Language for Section 16-111.5B Oversight and Evaluation Responsibility EE Issues. Although not specifically requested, Staff received one comment in support of the June 18, 2014 Consensus Language document as written, but the party also noted that they reserve all of their legal rights to seek further clarification and resolution of language and/or issues contained therein in the future. Finally, parties reserved the right to change, alter, or modify without prejudice their position in respect to any issue contained in their written comments, presented during the workshop process, and/or the consensus language resulting from the workshop process.

## Acknowledgements

ICC Staff thanks all the workshop participants, including representatives from: 360 Energy Group (on behalf of DCEO, formally SEDAC); Ameren Illinois Company ("Ameren"); the Cadmus Group; the Citizens Utility Board ("CUB"); the City of Chicago; the Coalition to Request Equitable Allocation of Costs Together ("REACT"); Commonwealth Edison Company ("ComEd"); Conservation Services Group ("CSG"); Elevate Energy; Energy Futures Group (on behalf of NRDC); Energy Resources Center ("ERC")/University of Illinois at Chicago (on behalf of DCEO); Enernoc; Future Energy Enterprises (on behalf of the SAG facilitator); the Illinois Attorney General's Office ("AG"); the Illinois Department of Commerce and Economic Opportunity ("DCEO"); the Illinois Industrial Energy Consumers ("IIEC"); the Illinois Power Agency ("IPA"); Lockheed Martin Energy Solutions; MC Squared; the Midwest Energy Efficiency Alliance ("MEEA"); the Natural Resources Defense Council ("NRDC"); Navigant Consulting ("Navigant"); Opinion Dynamics Corporation ("ODC"); Optimal Energy (on behalf of the AG);; the University of Chicago Law School (on behalf of NRDC); Verde Energy; and Vermont Energy Investment Corporation ("VEIC") (on behalf of the IL-TRM Administrator). Please note that the listing of an entity here indicates that a representative from that entity attended some portion of at least one of the eight 2014 Section 16-111.5B EE workshops. The listing of a specific entity here should not be interpreted to mean that the entity necessarily supports all of the consensus positions attached to this report.

## Web Access

This report along with certain other materials[1] related to the Section 16-111.5B EE Workshops can be found in electronic form by using the following link to the Commission's website: http://www.icc.illinois.gov/electricity/EnergyEfficiencyWorkshops161115B.aspx

[1] At the May 28, 2014 workshop, parties agreed that informal comments and draft consensus language (as opposed to finalized consensus language) should not be posted on the Commission's website, but that instead the documents should be circulated through the SAG e-mail distribution list.

# Executive Summary

The Illinois Commerce Commission's ("ICC" or "Commission") December 18, 2013 Final Order in ICC Docket No. 13-0546 ("2014 Procurement Order") directed ICC Staff and any interested parties to conduct workshops, as needed, to address certain outstanding Section 16-111.5B energy efficiency ("EE") issues.[2] Specifically, the 2014 Procurement Order outlined the following general topics to address for the Section 16-111.5B EE programs: (a) Oversight and Evaluation Responsibility, (b) Potential Studies, and (c) Request for Proposal ("RFP") Process including the Illinois Department of Commerce and Economic Opportunity's ("DCEO") barriers to participating in the third-party RFP Process. The Commission also requested parties to report to the Commission in the next available Illinois Power Agency ("IPA") procurement plan proceeding on the results of the workshop.[3]

Eight Section 16-111.5B EE Workshops were held via teleconference in 2014: (a) four Oversight and Evaluation Responsibility Workshops; (b) two Potential Studies Workshops; and (c) two RFP Process and DCEO Participation Workshops. Not every issue raised by parties was resolved through the Section 16-111.5B EE Workshop process. Certain issues raised by parties were considered broader in scope than the Section 16-111.5B EE Workshops because the issues have implications unrelated to power procurement (i.e., they have implications for gas utilities administering EE programs in Illinois); therefore, parties determined that these broader issues should be addressed through future Illinois Energy Efficiency Stakeholder Advisory Group ("SAG") meetings, where both gas and electric program administrators might attend. Finally, Staff notes that the outcome of the workshop process includes a number of consensus statements concerning Section 16-111.5B EE issues where parties participating in the workshops reached consensus (i.e., no party opposed the statement).

Below is a brief summary of the results of the workshops as to the Commission directives related to EE in the 2014 Procurement Order. A more detailed summary can be found in the main body of this report. Staff looks forward to answering any questions that the Commission may have about this report.

**(a) Oversight and Evaluation Responsibility Workshops.**

The 2014 Procurement Order states:

> The AG recommends, if the IPA does not intend to assume an oversight role for energy efficiency programs, then the IPA should request that the Commission enter an Order that makes clear that the utilities will assume responsibility for the evaluation and successful delivery of these programs, consistent with, to the extent practicable, the evaluation practices followed under Section 8-103 of the PUA… [T]he

[2] Ill. Power Agency, ICC Order Docket No. 13-0546, 144-149 (Dec. 18, 2013) ("2014 Procurement Order").
[3] Id. at 146.

> Commission… directs interested parties to address this issue at the workshops discussed above.

2014 Procurement Order at 149.

***Outcome of the Oversight and Evaluation Responsibility Workshops**:* Significant progress was made through the workshops on the Oversight and Evaluation Responsibility front. Please refer to the June 18, 2014 Consensus Language for Section 16-111.5B Oversight and Evaluation Responsibility Energy Efficiency Issues ("June 18, 2014 Consensus Language"), attached hereto as Attachment A, for the consensus reached through the workshops. In many cases the consensus reached through the workshops on evaluation policies for the Section 16-111.5B EE programs mirrors the existing Commission-approved evaluation policies for the Section 8-103 EE programs. With respect to the oversight issue for the Section 16-111.5B EE programs raised in the 2014 Procurement Order, consensus was reached that 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. As reflected in Attachment A to this report, parties reached consensus with respect to the following issues: (1) Deeming and Evaluation for Future Section 16-111.5B EE Programs; (2) Deeming and Evaluation for Previously Approved Section 16-111.5B EE Programs, Program Year ("PY") 6 and PY7; (3) Responsible Entity; (4) Policy or Clarity on Status of Bid Accepted into IPA Procurement Plan and Approved by the Commission and Flexibility; (5) Continuity for Multi-Year EE Programs; and (6) Evaluation Budget and Process Evaluations. The Oversight and Evaluation Responsibility outstanding issues have been thoroughly addressed by interested parties through the workshops[4] and a Commission decision in the next IPA procurement plan proceeding on the issues set forth in the July 18, 2014 Consensus Language document would provide greater certainty to all parties involved with the Section 16-111.5B EE programs.

**(b) Potential Studies Workshops.**

The 2014 Procurement Order states:

> [T]he Commission directs Staff to work with CUB, the AG, and any other interested parties to conduct workshops, as needed, to determine what improvements, if any, can be incorporated into the potential studies, [and] the timing of any filings related thereto...

2014 Procurement Order at 147.

***Outcome of the Potential Studies Workshops**:* For timing of potential study completion issue, consensus was reached early in the workshop process that the potential studies

[4] A number of these issues were also addressed through workshops held in 2013. *See* ICC Staff Report Summary of the 2013 Section 16-111.5B EE Workshops.

should be completed approximately 6-8 months (January-March 2016) before the next Section 8-103 EE plan filings (September 2016).

The parties also reached consensus regarding general language that could be incorporated into a larger scope of work for a potential study related to the economically efficient potential issue raised by Staff in the last procurement plan proceeding, ICC Docket No. 13-0546.[5] The consensus language for the marginal economic potential study scope, attached to this report as Attachment B, is designed to clarify the limited scope of such analysis and help ensure the costs of such analysis would be reasonable.

**(c) RFP Process and DCEO Participation.**

The 2014 Procurement Order states:

> [T]he Commission directs Staff to work with CUB, the AG, and any other interested parties to conduct workshops, as needed, to determine what improvements, if any, can be incorporated into… the RFP process.

2014 Procurement Order at 147. The Order also states:

> Thus, the Commission directs that a workshop should be held to address the barriers to DCEO's participation through the third-party RFP process... Although the Commission cannot mandate that DCEO take part in this workshop, in the interest of including energy efficiency programs to address the needs of low income customers in the IPA's future procurement plans, it would encourage DCEO's participation. The Commission urges the parties to hold any workshops in the timeliest manner practicable and to report to the Commission in the next available IPA procurement proceeding on the results of the workshop. Alternatively, the Commission welcomes DCEO's participation in a formal docketed proceeding or in informal discussions about these barriers, if DCEO considers that to be a more fitting way to address the issue.

2014 Procurement Order at 145-146.

***Outcome of RFP Process and DCEO Participation Workshops**:* In terms of improvements to the third-party RFP Process, the utilities agreed to consider including illustrative examples of EE programs that could be considered "duplicative" versus "competing" in future RFPs in order to provide greater clarity to bidders regarding the types of EE programs that would be considered "duplicative" versus "competing" as those terms are defined in the 2014 Procurement Order.

DCEO produced a memorandum addressing interested parties' questions related to DCEO's barriers to participating in the Section 16-111.5B EE procurement process. In summary, the barriers to DCEO's participation in the Section 16-111.5B EE procurement

[5] The Consensus Marginal Economic Potential Study Scope (June 11, 2014) may be accessed via the following link: http://www.icc.illinois.gov/downloads/public/Consensus%20Marginal%20Economic%20Potential%20Study%20Scope%206-11-14.pdf The exact language of the marginal economic potential study scope may change based in part on future review by the utilities' legal counsel.

process include the following: Performance Contracting and Funding; Lack of Additional Gas Funding for Low-Income Projects; Total Resource Cost ("TRC") Test; Public Sector Eligibility for Section 16-111.5B EE Programs; and Legal Issues. Additional detail can be found in the Summary of the Results of the 2014 Section 16-111.5B EE Workshops section of this report and the June 17, 2014 memorandum from DCEO.

# Staff Report
## Summary of 2014 Section 16-111.5B Energy Efficiency Workshops Required by the Commission's Order in ICC Docket No. 13-0546

## I. Introduction

The Illinois Commerce Commission's ("ICC" or "Commission") December 18, 2013 Final Order in ICC Docket No. 13-0546[6] ("2014 Procurement Order") directed ICC Staff ("Staff") and any interested parties to conduct workshops, as needed, to address certain outstanding Section 16-111.5B energy efficiency ("EE") issues. The Commission requested parties to report to the Commission in the next available Illinois Power Agency ("IPA") procurement plan proceeding on the results of the workshop. This report conveys Staff's summary of the results of the 2014 Section 16-111.5B EE Workshops. The Oversight and Evaluation Responsibility outstanding issues have been thoroughly addressed by interested parties through the workshops[7] and Commission resolution of these issues in the next IPA procurement plan proceeding would provide greater certainty to all parties involved with the Section 16-111.5B EE programs.

## II. Background

On September 30, 2013, pursuant to the Illinois Power Agency Act ("IPA Act"), 20 ILCS 3855/1-1, *et seq.*, and the Illinois Public Utilities Act ("PUA"), 220 ILCS 5/1-101, *et seq.*, the IPA filed a petition with the Commission requesting approval of the 2014 Procurement Plan, ICC Docket No. 13-0546. Section 16-111.5B of the PUA outlines the provisions related to EE procurement and the specific requirements for the consideration of cost-effective EE in the power and energy procurement plan. Section 16-111.5B of the PUA requires the IPA to consider the utilities' annual assessment of cost-effective EE programs or measures that are incremental to those included in the Commission-approved Section 8-103 EE and demand-response plans that could be included in the procurement plan. Section 16-111.5B(a)(4) of the PUA directs the IPA to include in the procurement plan beginning in 2012, EE "programs and measures it determines are cost-effective and the associated annual energy savings goal included in the annual solicitation process [(i.e., third-party Request for Proposals ("RFP") Process)] and assessment submitted pursuant to" Section 16-111.5B(a)(3) of the PUA. As noted above, the Commission's 2014 Procurement Order directed ICC Staff and any interested parties to conduct workshops, as needed, to address certain outstanding Section 16-111.5B EE issues.

[6] Ill. Power Agency, ICC Order Docket No. 13-0546, 144-149 (Dec. 18, 2013) ("2014 Procurement Order").
[7] A number of these issues were also addressed through workshops held in 2013. *See* ICC Staff Report Summary of the 2013 Section 16-111.5B EE Workshops.

## III. Overview of the Workshops

The 2014 Procurement Order outlined the following general topics to address through workshops for the Section 16-111.5B EE programs: (a) Oversight and Evaluation Responsibility, (b) Potential Studies, and (c) RFP Process including the Illinois Department of Commerce and Economic Opportunity's ("DCEO") barriers to participating in the third-party RFP Process. On March 27, 2014, Staff requested input from interested parties regarding the questions to have addressed through workshops for each of these general topics outlined in the 2014 Procurement Order. Staff also noted that if there are other Section 16-111.5B EE questions and issues that parties believe need to be addressed through workshops that do not pertain to those three issues, parties should send those questions along with an explanation of the importance of addressing the issue this year through workshops. The questions received in response to that request and comments received in response to those questions both formed the basis of the initial discussions at the 2014 Section 16-111.5B EE workshops. The stakeholder-proposed questions addressed through the workshops are set forth below by topic.

### A. Oversight and Evaluation Responsibility Questions

1. What kind of oversight mechanisms are in place currently for Section 16-111.5B energy efficiency ("EE") programs?

2. How do the utilities monitor the day-to-day operations of Section 16-111.5B EE programs?

3. Who should assume responsibility for the successful delivery of Section 16-111.5B EE programs?

4. Who should assume responsibility for ensuring the Section 16-111.5B EE programs are presenting accurate information to customers?

5. What steps, if any, need to be taken to ensure that Section 16-111.5B EE programs are delivering the energy savings promised in a cost-effective manner?

6. Who should assume responsibility for the evaluation of Section 16-111.5B EE programs?

7. How are the Section 16-111.5B EE programs evaluated currently? To what extent do existing evaluation practices mirror evaluation practices conducted for Section 8-103 EE programs?

   7.1. Do the utilities direct/oversee evaluation of all EE programs offered through Section 16-111.5B?

   7.2. Are net-to-gross ("NTG") assessments made that mirror the NTG evaluation practices conducted for Section 8-103 EE programs?

7.3. How is the current Illinois Statewide Technical Reference Manual ("IL-TRM") used in the evaluation of Section 16-111.5B EE programs?

8. What level of certainty can/should be provided to third parties submitting proposals for consideration under the Illinois Power Agency ("IPA") procurement process (e.g., prospective NTG, application of the IL-TRM values)?

8.1. Should the evaluation of Section 16-111.5B EE programs use the IL-TRM, and if so, should it be used in the same manner that it is used to evaluate EE programs under Section 8-103?

8.2. Should the evaluation of Section 16-111.5B EE programs parallel the evaluation of similar EE programs under the Section 8-103 (EEPS) portfolio and, if there are consistent differences, what will those differences be?

9. How can better continuity be provided for multi-year EE project pipelines and program participation while maintaining annual budget limits?

10. To what extent should approved multi-year Section 16-111.5B EE programs be allowed to maximize annual spending and carry leftover (positive or negative) kWh savings to the following program year?

### B. Potential Studies Questions

1. How can the timing of EE potential study completion be addressed to provide parties with useful data while ensuring that the same data is not stale by the time the 3-year EEPS Plan is filed?

2. Are all of the benefits and costs of efficiency being captured in total resource cost ("TRC") cost-effectiveness screening? Which are missing, if any, and how might they be included?

3. How can the concept of "economically efficient potential"[8] be handled in the utilities' EE potential studies?

3.1. What levels of granularity of the analysis and comprehensiveness are appropriate? Should the parameters of the study include all EE measures or EE measures that make up a certain percentage of usage? What kind of breakdown within the EE measure should be looked at?

3.2. What metric is appropriate (marginal TRC, marginal utility cost test/program administrator cost test, etc.)?

3.3. How would this result be used, and how does it square with existing statutory requirements for either Section 8-103 (EEPS) or Section 16-111.5B (IPA)?

[8] Please see pages 19-24 of Staff Exhibit 2.0 filed in ICC Docket No. 13-0495 for a discussion of "economically efficient potential." (ICC Docket No. 13-0495, Staff Ex. 2.0, 19-24.)

### C. Request for Proposal Process and DCEO Participation Questions

1. What process changes, if any, would make the TRC calculation process more transparent for bidders without slowing the RFP process?

2. What process changes, if any, could help catch inadvertent errors in the TRC calculations quickly?

3. What is the appropriate balance between 100% pure performance based compensation for contractors (i.e., all of the contractor's payment is conditioned on delivery of energy savings and thus a risk premium may be incorporated into price bid) and maximizing the attractiveness of bidding to maximize the acquisition of cost-effective savings?

4. What barriers or bidding difficulties have prevented the Illinois Department of Commerce and Economic Opportunity ("DCEO") from participating in the annual third-party RFP process conducted pursuant to Section 16-111.5B of the Illinois Public Utilities Act? How could/should they be addressed? How can DCEO participation in the Section 16-111.5B EE process be facilitated? Is there anything about the competitive procurement process that could be modified to facilitate DCEO's participation?

5. Could expansion of existing DCEO Section 8-103 EE programs, which are funded by the utilities and referenced in their Section 8-103 EE Plans, be another path for DCEO participation (i.e., treating expansion of the DCEO Section 8-103 EE programs in the same way that expansion of existing utility Section 8-103 EE programs are treated) in the Section 16-111.5B EE process?

6. What are the barriers, if any, to DCEO and the utilities jointly or severally administering a new EE program proposed pursuant to Section 16-111.5B that targets in whole or in part customers that are eligible for DCEO Section 8-103 EE programs? How could/should they be addressed?

7. If a utility receives a bid through the Section 16-111.5B process that in whole or in part targets customers potentially eligible for DCEO Section 8-103 EE programs, would DCEO's participation in the Procurement Plan approval docket be sufficient to ensure that the EE program is not "duplicative" or "competing," as defined in the Commission's Final Order in ICC Docket No. 13-0546?[9]

[9] The 2014 Procurement Order states: "It appears to the Commission that the existing practices with respect to duplicative and competing programs are working effectively. The Commission believes the description in the IPA's Reply of how duplicative and competing programs should be handled is reasonable and directs the parties to present proposals in compliance with that procedure. (See IPA Reply at 10-11) The Commission notes that much of what the IPA, the utilities, the AG, and CUB recommended appear to memorialize current practice. However, the Commission agrees with the IPA that formal standards for "duplicative" and "competitive" would help both stakeholders and potential bidders, and thus adopts the IPA's recommended definitions." 2014 Procurement Order at 149. The IPA's Reply to Responses to Objections cited in the 2014 Procurement Order states: "The IPA proposes that the Commission approve the following procedure for dealing with duplicative or competitive programs, which was followed in the development of this Procurement Plan:
• The utilities receive and review the third party RFP results, and determine which bids are, in the utility's estimation, duplicative or competing. The utilities are under no obligation to identify any programs in this manner.
• In the annual July 15 assessment submitted to the IPA, the utility may exclude programs it has determined are duplicative or competing from the estimated savings calculation (and associated adjustments to the load forecast). However, in their submittals to the IPA, the utilities

8. How can clearer guidance be provided to prospective bidders on what is considered a competing and/or duplicative EE program?

## IV. Facilitated Collaborative Process

Consistent with the workshop process for the 2013 Section 16-111.5B EE Workshops, the workshop process for the 2014 Section 16-111.5B EE Workshops was largely driven by stakeholder feedback. Opportunities were provided to all interested parties to comment regularly. Staff coordinated with interested parties to ensure that the dates and times set for the workshops would enable the greatest participation by parties that expressed an interest in the subject matter. The workshops were a success. Parties exchanged lengthy dialogue and reached consensus on a number of important issues. Not every issue raised by parties was resolved through the Section 16-111.5B EE Workshop process. Certain issues raised by parties were considered broader in scope than the Section 16-111.5B EE Workshops because the issues have implications unrelated to power procurement (i.e., they have implications for gas utilities administering EE programs in Illinois); therefore, parties determined that these broader issues should be addressed through future Illinois Energy Efficiency Stakeholder Advisory Group ("SAG") meetings, where both gas and electric EE program administrators would be in attendance. Below is a timeline of events for the 2014 Section 16-111.5B EE Workshops.

**Timeline for the 2014 Section 16-111.5B EE Workshops**

| Date | Subject | Type | Workshop Topic |
|---|---|---|---|
| 3/27/2014 | Request for Questions to Address through Section 16-111.5B Energy Efficiency Workshops Required by the Illinois Commerce Commission's Final Order in ICC Docket No. 13-0546. Questions due April 2, 2014. | ICC Staff Memo | All |
| 4/1/2014 | ComEd submitted Questions | Stakeholder Input | Oversight and Evaluation Responsibility; Potential Studies |
| 4/2/2014 | ComEd, Elevate Energy, and NRDC submitted Questions | Stakeholder Input | All |
| 4/3/2014 | IPA submitted Questions | Stakeholder Input | RFP Process and DCEO Participation |

must: (1) describe the duplicative or competing program; (2) explain why the utility believes it is competing or duplicative; and (3) provide the IPA with all of the underlying documents as it would for any other bid.

• The IPA will independently review all of the bids submitted by the utilities and determine which the IPA believes are duplicative or competing. The IPA will identify all programs to the Commission in its Procurement Plan filing, along with a recommendation that some programs should be discarded as duplicative or competing.

• The parties to the Procurement Plan approval litigation—including the IPA—may opine on whether a particular program is duplicative or competing, and the Commission will make the final determination. To the extent that a utility had previously determined that a program is duplicative or competing but the Commission disagrees, the utility will update the estimated energy savings and load forecast to reflect the readmission of the program."

(ICC Docket No. 13-0546, IPA Reply, 10-11.)

| Timeline for the 2014 Section 16-111.5B EE Workshops | | | |
|---|---|---|---|
| **Date** | **Subject** | **Type** | **Workshop Topic** |
| 4/4/2014 | AG submitted Questions | Stakeholder Input | Oversight and Evaluation Responsibility; RFP Process and DCEO Participation |
| 4/7/2014 | Request for Comments on Section 16-111.5B Energy Efficiency Questions to be Addressed in Workshops Required by the Illinois Commerce Commission's Final Order in ICC Docket No. 13-0546. Responses due April 16, 2014. | ICC Staff Memo | All |
| 4/15/2014 | Elevate Energy submitted Comments | Stakeholder Input | Oversight and Evaluation Responsibility; RFP Process and DCEO Participation |
| 4/16/2014 | ComEd submitted Comments | Stakeholder Input | Oversight and Evaluation Responsibility; Potential Studies |
| 4/22/2014 | Notice of May 2014 Section 16-111.5B Energy Efficiency Workshops Required by the Illinois Commerce Commission's Final Order in ICC Docket No. 13-0546. | ICC Staff Memo | All |
| 5/12/2014, 1:00 p.m. - 4:41 p.m. | Oversight and Evaluation Responsibility Workshop #1 | Workshop/ Stakeholder Input | Oversight and Evaluation Responsibility |
| 5/14/2014, 1:00 p.m. - 3:52 p.m. | Potential Studies Workshop #1 | Workshop/ Stakeholder Input | Potential Studies |
| 5/16/2014 | Notice of Comment Period and May 28, 2014 Workshop Regarding Oversight and Evaluation Issues: Informal Comments due by noon on May 22, 2014. | ICC Staff Memo | Oversight and Evaluation Responsibility |
| 5/19/2014, 1:00 p.m. - 3:53 p.m. | RFP Process and DCEO Participation Workshop #1 | Workshop/ Stakeholder Input | RFP Process and DCEO Participation |
| 5/22/2014 | AG, ComEd, and Elevate Energy submitted Comments | Stakeholder Input | Oversight and Evaluation Responsibility |
| 5/23/2014 | CUB submitted Comments | Stakeholder Input | Oversight and Evaluation Responsibility |

| Timeline for the 2014 Section 16-111.5B EE Workshops | | | |
|---|---|---|---|
| **Date** | **Subject** | **Type** | **Workshop Topic** |
| 5/23/2014 | ComEd submitted Strawman Scope for Economically Efficient Potential Marginal Analysis Component of Large Potential Study Scope of Work | Stakeholder Input | Potential Studies |
| 5/23/2014 | Notice of Comment Period and June 11, 2014 Workshop Regarding Potential Study Issues: Informal Comments due by noon on June 5, 2014. | ICC Staff Memo | Potential Studies |
| 5/28/2014, 10:30 a.m. - 11:45 a.m. | Oversight and Evaluation Responsibility Workshop #2 | Workshop/ Stakeholder Input | Oversight and Evaluation Responsibility |
| 6/6/2014 | NRDC submitted Comments | Stakeholder Input | Potential Studies |
| 6/9/2014 | Notice of Proposed Consensus Language for Discussion at the June 9, 2014 Workshop Regarding Oversight and Evaluation Responsibility Issues. | ICC Staff Memo | Oversight and Evaluation Responsibility |
| 6/9/2014, 1:00 p.m. - 3:02 p.m. | Oversight and Evaluation Responsibility Workshop #3 | Workshop/ Stakeholder Input | Oversight and Evaluation Responsibility |
| 6/11/2014 | Notice of June 17, 2014 Deadline for Objections to the Proposed Consensus Language Regarding Section 16-111.5B Oversight and Evaluation Responsibility Issues; Notice of June 18, 2014 Workshop. | ICC Staff Memo | Oversight and Evaluation Responsibility |
| 6/11/2014 | AG submitted Comments | Stakeholder Input | Potential Studies |
| 6/11/2014, 1:45 p.m. - 2:12 p.m. | Potential Studies Workshop #2 | Workshop/ Stakeholder Input | Potential Studies |
| 6/13/2014 | ICC Staff submitted Comments | Stakeholder Input | Oversight and Evaluation Responsibility |
| 6/14/2014 | Ameren submitted Comments | Stakeholder Input | Oversight and Evaluation Responsibility |
| 6/17/2014 | DCEO submitted Comments | Stakeholder Input | RFP Process and DCEO Participation |
| 6/17/2014 | ComEd submitted Comments | Stakeholder Input | Oversight and Evaluation Responsibility |

| Timeline for the 2014 Section 16-111.5B EE Workshops | | | |
|---|---|---|---|
| **Date** | **Subject** | **Type** | **Workshop Topic** |
| 6/18/2014, 1:00 p.m. - 3:00 p.m. | Oversight and Evaluation Responsibility Workshop #4 | Workshop/ Stakeholder Input | Oversight and Evaluation Responsibility |
| 6/18/2014, 3:00 p.m. - 4:00 p.m. | RFP Process and DCEO Participation Workshop #2 | Workshop/ Stakeholder Input | RFP Process and DCEO Participation |
| 6/18/2014 | 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. | ICC Staff Memo | Oversight and Evaluation Responsibility |
| 6/25/2014 | ComEd submitted Comments | Stakeholder Input | Oversight and Evaluation Responsibility |

## V. Summary of the Results of the 2014 Section 16-111.5B EE Workshops

Below is Staff's summary of the results of the 2014 Section 16-111.5B EE workshops as to the Commission directives related to EE in the 2014 Procurement Order.

### A. Oversight and Evaluation Responsibility Workshops[10]

The 2014 Procurement Order states:

> The AG recommends, if the IPA does not intend to assume an oversight role for energy efficiency programs, then the IPA should request that the Commission enter an Order that makes clear that the utilities will assume responsibility for the evaluation and successful delivery of these programs, consistent with, to the extent practicable, the evaluation practices followed under Section 8-103 of the PUA… [T]he Commission… directs interested parties to address this issue at the workshops discussed above.

2014 Procurement Order at 149.

Significant progress was made on the Oversight and Evaluation Responsibility front. Please refer to the June 18, 2014 Consensus Language for Section 16-111.5B Oversight and Evaluation Responsibility Energy Efficiency Issues ("June 18, 2014 Consensus Language"), attached hereto as Attachment A, for the consensus reached through the workshops. Staff

[10] Oversight and Evaluation Responsibility Workshop #1 (5/12/2014, 1:00 p.m. – 4:41 p.m.); Oversight and Evaluation Responsibility Workshop #2 (5/28/14, 10:30 a.m. – 11:52 a.m.); Oversight and Evaluation Responsibility Workshop #3 (6/9/2014, 1:00 p.m. – 3:02 p.m.); Oversight and Evaluation Responsibility Workshop #4 (6/18/2014, 1:00 p.m. – 3:00 p.m.).

notes that in many cases the consensus reached through the workshops on evaluation policies for the Section 16-111.5B EE programs mirrors the existing Commission-approved evaluation policies for the Section 8-103 EE programs. Having consistent evaluation policies for the Section 8-103 and Section 16-111.5B EE programs, where appropriate, may avoid unnecessary complexities and costs for EE program implementers that administer EE programs under both Sections of the PUA. With respect to the oversight role for the Section 16-111.5B EE programs raised in the 2014 Procurement Order, consensus was reached that 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. As reflected in Attachment A to this report, parties reached consensus with respect to the following issues: (1) Deeming and Evaluation for Future Section 16-111.5B EE Programs; (2) Deeming and Evaluation for Previously Approved Section 16-111.5B EE Programs, Program Year ("PY") 6 and PY7; (3) Responsible Entity; (4) Policy or Clarity on Status of Bid Accepted into IPA Procurement Plan and Approved by the Commission and Flexibility; (5) Continuity for Multi-Year EE Programs; and (6) Evaluation Budget and Process Evaluations. A Commission decision in the next IPA procurement plan proceeding on the issues set forth in the July 18, 2014 Consensus Language document (Attachment A) has the potential to reduce future controversy and litigation in the planning, implementation, and evaluation stages of the Section 16-111.5B EE programs. It would also provide greater certainty to potential EE program vendors, which could encourage greater participation in the annual third-party RFP Process conducted by the utilities.

There was one area that underwent a lot of discussion within the Oversight and Evaluation Responsibility Workshops where consensus could not be reached and this concerns the issue of "savings shortfalls." Ignoring the numerous complexities associated with this issue, in short, a "savings shortfall" could potentially occur if contract negotiations with an approved Section 16-111.5B EE program vendor are not successful and thus no contract is executed with that particular vendor for the amount of "savings" approved by the Commission in the procurement plan order.[11] In the event of this "savings shortfall", the non-consensus issue involves whether the utilities should be required to take steps (or whether the utilities are even legally allowed to take steps) to "make-up" such "savings shortfalls" whether this be from other approved Section 16-111.5B EE program vendors or some other method.

[11] Given the current practice is that the utilities update their load forecasts in mid-March of each year, if utility contract negotiations with an approved third-party EE program vendor breakdown after mid-March, such loss of anticipated energy savings from the third-party vendor will not be taken into consideration in the procurement plan. Failure of third-party EE vendors to perform will likely not trigger a contingency event pursuant to Section 16-111.5(e)(5)(ii) of the PUA, and instead will be handled by day-ahead balancing pursuant to Section 16-111.5(e)(5)(iii) (similar to other imbalances, such as oversupply).

## B. Potential Studies Workshops[12]

The 2014 Procurement Order states:

> [T]he Commission directs Staff to work with CUB, the AG, and any other interested parties to conduct workshops, as needed, to determine what improvements, if any, can be incorporated into the potential studies, [and] the timing of any filings related thereto...

2014 Procurement Order at 147.

A public teleconference workshop was held May 14, 2014 to review the potential study questions and informal comments submitted by interested parties that pertained to three distinct issues: (1) timing of potential study completion, (2) precision in the estimation of factors impacting benefits and costs in the total resource cost ("TRC") analysis, and (3) economically efficient potential. It was decided to have the third issue addressed further through the 2014 Section 16-111.5B EE workshop process. Staff's summary of the status of the first two issues as determined by the end of the May 14, 2014 workshop is provided below for informational purposes.

For timing of potential study completion, the participating stakeholders agreed to have the potential studies completed 6-8 months (January-March 2016) prior to the next three-year 8-103 EE plan filings (September 2016). This timeframe may also allow bidders to have access to the updated potential studies when preparing their bids during the Section 16-111.5B annual solicitation process for that year, which would be beneficial if the potential studies contain information useful for bidders (e.g., list of economically efficient cost-effective measures) and if the bidders review the potential studies in preparing their bids. It was discussed that potential studies generally take a year to complete if relying on existing data. If primary data is going to be collected for the potential study, the study could be completed within 18 months. Therefore, finalization of the utilities' RFPs for the potential studies should occur late 2014/early 2015 such that a contract can be in place for the potential studies in February/March 2015. Given this agreed timeframe, if parties want the Commission to order that certain information be included within the next potential studies completed pursuant to Section 16-111.5B, then this upcoming procurement plan proceeding would be the appropriate docket for this to occur.

For precision in the estimation of factors impacting benefits and costs in the TRC analysis, the participating stakeholders determined that this issue could have implications for all the Illinois utilities, and not solely those impacted by Section 16-111.5B; therefore, this issue will be addressed at a future Illinois Energy Efficiency Stakeholder Advisory Group ("SAG") meeting. At the time of the May 14, 2014 workshop, ComEd and Ameren were already performing the cost-effectiveness analyses for their July 15, 2014 energy efficiency

[12] Potential Studies Workshop #1 (5/14/2014, 1:00 p.m. – 3:52 p.m.);
Potential Studies Workshop #2 (6/11/2014, 1:45 a.m. – 2:12 p.m.).

assessment submittals to the IPA and there was no expectation that they would make any adjustments to this year's analysis based on the SAG discussions.

The parties reached consensus regarding general language that could be incorporated into a larger scope of work for a potential study related to the marginal analysis economically efficient potential issue raised by Staff in the last procurement proceeding, ICC Docket No. 13-0546.[13] It should be noted that the exact language of the marginal economic potential study scope, attached hereto as Attachment B, may change based in part on future review by the utilities' legal counsel. Further, such consensus language is not intended to replace existing scope of work language regarding economic, market, and program potential analyses. The consensus language is designed to clarify the limited scope of such marginal analysis and help ensure the costs of such analysis would be reasonable.

### C. RFP Process and DCEO Participation Workshops[14]

The 2014 Procurement Order states:

> [T]he Commission directs Staff to work with CUB, the AG, and any other interested parties to conduct workshops, as needed, to determine what improvements, if any, can be incorporated into… the RFP process.

2014 Procurement Order at 147. The 2014 Procurement Order also states:

> Thus, the Commission directs that a workshop should be held to address the barriers to DCEO's participation through the third-party RFP process... Although the Commission cannot mandate that DCEO take part in this workshop, in the interest of including energy efficiency programs to address the needs of low income customers in the IPA's future procurement plans, it would encourage DCEO's participation. The Commission urges the parties to hold any workshops in the timeliest manner practicable and to report to the Commission in the next available IPA procurement proceeding on the results of the workshop. Alternatively, the Commission welcomes DCEO's participation in a formal docketed proceeding or in informal discussions about these barriers, if DCEO considers that to be a more fitting way to address the issue.

2014 Procurement Order at 145-146.

#### (1) RFP Process

In terms of improvements to the third-party RFP Process, the utilities agreed to consider including illustrative examples of EE programs that could be considered "duplicative" versus "competing" in future RFPs in order to provide greater clarity to bidders regarding the types of EE programs that would be considered "duplicative" versus "competing" as those

[13] Consensus Marginal Economic Potential Study Scope (June 11, 2014)
[14] RFP Process and DCEO Participation Workshop #1 (5/19/2014, 1:00 p.m. – 3:53 p.m.);
RFP Process and DCEO Participation Workshop #2 (6/18/2014, 3:00 p.m. – 4:00 p.m.).

terms are defined in the 2014 Procurement Order.[15] Participating parties seemed to be in agreement that at this stage the utilities providing illustrative examples of "duplicative" and "competing" EE programs in the RFP would be preferable to having the Commission adopt a more detailed definition for the terms "duplicative" versus "competing" in the upcoming procurement plan proceeding.

With respect to the issue of TRC test transparency and process improvements to catch inadvertent errors in the TRC analysis, the utilities agreed to provide feedback to vendors on changes the utilities make to inputs used in bid submissions when performing the TRC cost-effectiveness analysis, especially for bidders whose bids do not pass the TRC. The preferred approach is for the utilities to work with bidders on a one-on-one basis.

With respect to the issue of providing the appropriate balance between 100% pure performance based compensation for contractors (i.e., all of the contractor's payment is conditioned on delivery of energy savings and thus in theory a risk premium may be incorporated into price bid) and maximizing the attractiveness of bidding to maximize the acquisition of cost-effective savings, it was discussed at the workshops that there exists negligible evidence that 100% pay-for-performance is discouraging vendors from participating in the RFP Process. Given it was not clear at the time of the workshops how much of an issue the risk premium is, the issue was not addressed further through the workshops. It is expected that more will be known on this risk premium issue after this upcoming procurement cycle. If a risk premium is discovered to be a major issue after this upcoming procurement cycle, certain parties suggested that this issue may need to be revisited in the future before the next RFPs are released next year.

### (2) DCEO Participation

DCEO produced a memorandum addressing interested parties' questions related to DCEO's participation in the Section 16-111.5B EE procurement process. In summary, the barriers to DCEO's participation in the Section 16-111.5B EE procurement process include the following: Performance Contracting and Funding; Lack of Additional Gas Funding for Low-Income Projects; Total Resource Cost ("TRC") Test; Public Sector Eligibility for Section 16-111.5B EE Programs; and Legal Issues.

- **Performance Contracting and Funding:**[16] Section 16-111.5B's emphasis on assured savings, while necessary, creates a scenario where generally projects are reimbursed based on performance. In the absence of a dedicated fund, DCEO does not have the means to incur expenses that may not be reimbursed.

[15] 2014 Procurement Order at 149.

[16] For background, the following language was consensus from last year's workshops. "Utilities should have flexibility to structure Section 16-111.5B EE contracts in a manner which best balances the potentially competing objectives of making the procurement process attractive to as many bidders as possible and providing confidence that the savings which are proposed/bid will actually be delivered.[57]" "It's appropriate to structure Section 16-111.5B EE contracts as "pay-for-performance".[56]" "There are no legal requirements for Section 16-111.5B EE contracts to be structured around a "pay-for performance" structure.[59]" (2013 ICC Staff Report Summary of Section 16-111.5B EE Workshops, p. 6)

- **Lack of Additional Gas Funding for Low-Income Projects:** The expansion of DCEO's low-income EE programs would be difficult to implement without additional funding for natural gas EE projects, because the bulk of energy savings in low-income houses comes from natural gas EE projects and the gas budgets are already constrained under Section 8-104 of the PUA.
- **Total Resource Cost Test:**[17] Section 16-111.5B of the PUA requires all eligible EE programs or measures to pass the TRC test. While prudent and necessary, this test inhibits the incorporation of DCEO's low-income EE programs since many EE measures DCEO has chosen to implement under the comprehensive whole-building approach used by DCEO do not pass the TRC test under Sections 8-103 and 8-104 of the PUA.
- **Public Sector Eligibility for Section 16-111.5B EE Programs:** Many governmental entities served by DCEO under Sections 8-103 and 8-104 are in competitive classes not eligible for the Section 16-111.5B EE programs.[18] DCEO does not know which public sector utility customers are eligible for the Section 16-111.5B EE programs because DCEO does not have direct access to utility customer account data. Given that DCEO does not know which public sector customers have not been declared competitive under Section 16-113 of the PUA, this makes designing an EE program to target that sector component difficult. Some interest was expressed in trying to resolve this issue at a later date and Staff understands that the AG, DCEO, and the utilities may lead the effort to resolve this issue in the future.
- **Legal Issues:** The Commission determined in the 2014 Procurement Order[19] that it cannot treat DCEO as a utility under Section 16-111.5B of the Act; therefore, the Commission did not approve DCEO's EE programs submitted to the IPA, only the cost-effective EE programs submitted by the utilities to the IPA. Accordingly, the EE programs that may be considered under Section 16-111.5B in the procurement plan docket are those that are included in the utilities' annual EE assessments submitted to the IPA by July 15 of each year. The utilities include two sets of EE programs in the annual EE assessments submitted to the IPA: (i) expanded Section 8-103 EE programs and (ii) EE programs submitted by vendors through the annual third-party RFP Process conducted pursuant to Section 16-111.5B of the PUA. The Commission's Order in ICC Docket No. 13-0546 directed that workshops be held to address the barriers to DCEO's participation through the third-party RFP Process. DCEO states that it is uncertain about its ability to bid into the utilities' annual third-party RFP Process conducted by the utilities pursuant to Section 16-111.5B of the PUA. In particular, the performance-based nature of the EE program contracts is a

[17] For background, the following language was consensus from last year's workshops. "Expansion of DCEO's Section 8-103 EE programs would need to be shown to be cost-effective per Section 16-111.5B requirements.[16]" (2013 ICC Staff Report Summary of Section 16-111.5B EE Workshops, p. 5) "The Total Resource Cost ("TRC") test should be calculated at the program or measure level.[102]" (2013 ICC Staff Report Summary of Section 16-111.5B EE Workshops, p. 9)

[18] Section 16-111.5B EE programs are to be "offered to all retail customers whose electric service has not been declared competitive under Section 16-113 of this Act and who are eligible to purchase power and energy from the utility under fixed-price bundled service tariffs, regardless of whether such customers actually do purchase such power and energy from the utility." 220 ILCS 5/16-111.5B(a)(3)(C).

[19] 2014 Procurement Order at 145.

potential problem as to whether the state could sign a contract where the reimbursement of funds is uncertain. DCEO states that it would need a dedicated funding source to operate EE programs under Section 16-111.5B of the PUA.

DCEO is well-suited to play a consulting role for the low-income or public sector EE programs, and DCEO could encourage its existing grantees/subcontractors to bid into the utilities' annual third-party RFP Process conducted pursuant to Section 16-111.5B of the PUA. Therefore, should the vendors running DCEO's EE programs believe they have the capacity to expand the EE programs in a cost-effective manner, the vendors have an avenue under which to propose such EE programs, by bidding in those EE programs into the utilities' third-party RFP Process. DCEO's grantees/subcontractors that bid EE program expansions into the utilities' third-party RFP Process need to ensure adequate tracking mechanisms are in place to separately track expenses and savings for the original Section 8-103 portion versus expanded Section 16-111.5B portion of any expanded EE program.[20]

## VI. Conclusion

The Oversight and Evaluation Responsibility outstanding issues have been thoroughly addressed by interested parties through the workshops[21] and Commission resolution on the issues set forth in Attachment A in the next procurement plan proceeding would provide greater certainty to all parties involved with the Section 16-111.5B EE programs. Staff looks forward to answering any questions that the Commission may have about this report.

[20] For background, the following language was consensus from last year's workshops. "Sections 8-103 and 16-111.5B EE portfolios can be kept separate.[17]" "Sections 8-103 and 16-111.5B EE budgets would be kept separate.[28]" "EE program expansions would be expanded in such a way as to facilitate utility tracking of the original Section 8-103 portion and the Section 16-111.5B portion of the expanded EE program. (not expanded in exactly the same manner)[30]" "Savings from the Section 8-103 portion of an expanded EE program would count toward achievement of a utility's Section 8-103 savings goal.[21]" "Savings from the Section 16-111.5B portion of an expanded EE program would count toward achievement of a utility's Section 16-111.5B savings goal, not the Section 8-103 savings goal.[23]" (2013 ICC Staff Report Summary of Section 16-111.5B EE Workshops, p. 5)

[21] A number of these issues were also addressed through workshops held in 2013. *See* ICC Staff Report Summary of the 2013 Section 16-111.5B EE Workshops.

**JUNE 18, 2014 CONSENSUS LANGUAGE**
**FOR SECTION 16-111.5B OVERSIGHT AND EVALUATION RESPONSIBILITY ENERGY EFFICIENCY ISSUES**

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.**

DISCLAIMER:
The June 18, 2014 Consensus Language for Section 16-111.5B Oversight and Evaluation Responsibility Energy Efficiency Issues ("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 at the time of the 2014 Section 16-111.5B EE workshops such that consensus could be reached on certain important outstanding issues that need to be resolved in order to provide greater certainty to all parties involved with the Section 16-111.5B EE programs. On more than one occasion during the workshop process, all interested parties were urged to review drafted consensus language with their respective leadership and counsel to make certain that it accurately portrays the consensus view from the workshops. The June 18, 2014 Consensus Language was circulated to the Illinois Energy Efficiency Stakeholder Advisory Group ("SAG") e-mail distribution list and posted on the Commission's website with a public notice requesting that any interested party submit objections if they disagreed with the June 18, 2014 Consensus Language representing the consensus view from the 2014 Section 16-111.5B EE workshops. The public notice specified that failure of parties to submit objections by June 25, 2014 will be interpreted by ICC Staff as confirmation that the June 18, 2014 Consensus Language indeed reflects the consensus of all interested parties and it was further noted that ICC Staff may represent it as such when summarizing the outcome of the 2014 Section 16-111.5B EE workshops. No objections were received by the July 25, 2014 deadline for objections to the June 18, 2014 Consensus Language, thus confirming that the June 18, 2014 Consensus Language indeed reflects the consensus of all interested parties at the time of the workshops per the terms of the public notice. Please note that parties reserved all of their legal rights to seek further clarification and resolution of language and/or issues contained in the June 18, 2014 Consensus Language in the future. In addition, parties reserved the right to change, alter, or modify without prejudice their position in respect to any issue contained in their written comments, presented during the workshop process, and/or the consensus language resulting from the workshop process.

[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)

**Consensus Marginal Economic Potential Study Scope (June 11, 2014) - Energy Efficient Potential:**

**{This text would be incorporated into a larger scope of work for a potential study. The exact language may change based in part on future review by the utilities' legal counsel. It is not intended to replace existing scope language regarding economic, market and program potential analyses.}**

In addition to the traditional analyses, vendor should also propose a marginal benefit-cost analysis as described below. This analysis would compare the marginal benefit against the marginal cost for incremental improvements in measure efficiency. It is expected that such an analysis may not be appropriate for the entire universe of measures that a typical potential study contains, either because some categories of measures may have no correlation between incremental measure cost and marginal savings, because the quality of available data on incremental costs and savings for different levels of efficiency is inadequate, and/or because the level of savings potential from some categories of measures is not great enough to warrant this level of analysis. Thus, the vendor should identify a subset of measures for which such an analysis would yield useful results, focusing in particular on measures with the highest contribution to the overall savings potential.

The objective of this marginal analysis is to more accurately estimate the economic energy efficiency potential; this level identifies, using a bottom-up approach, the level of energy efficiency that maximizes the available net benefits under the prevailing cost-benefit structure.

The proposal should include a description of the vendor's approach toward a marginal analysis; this approach should:

1) Identify likely candidate technologies/end uses for which a marginal analysis would be suitable,
2) Identify sources of data that the vendor would rely upon to support such an analysis, and
3) Provide a separate estimate of costs to conduct such an analysis.

An illustrative example of marginal analysis of residential air-source heat pump is provided here:

| # | Measure Efficiency Scenario | NPV of Lifetime Incremental Benefits over Baseline | marginal benefit | Incremental Cost per Unit over Baseline | marginal cost | Net Benefit versus baseline | Marginal Net Benefit versus Previous Scenario |
|---|---|---|---|---|---|---|---|
| 1 | ASHP 14.5- 14.9 SEEER | $669 | $669 | $473 | $473 | $196 | $196 |
| 2 | ASHP 15.0- 15.9 SEER | $930 | $261 | $629 | $156 | $301 | $105 |
| 3 | ASHP 16.0+ SEER | $1,131 | $200 | $944 | $315 | $187 | -$115 |

In this example, all three scenarios provide net benefits versus the baseline; however, the third scenario (ASHP 16.0+ SEER) yields negative incremental net benefits relative to the second scenario. Under some approaches to estimating economic potential, the third scenario would qualify as the most efficient

technology; however, under the marginal analysis the second scenario would be considered the most efficient qualifying technology. Its unit savings and costs would be utilized in a similar manner to scenario 3, except that the result of such an analysis would yield a maximum-benefits potential.