

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

Illinois Power Agency)	
)	
)	Docket No. 16-0453
Petition for Approval of Procurement Plan)	

**AMEREN ILLINOIS COMPANY’S VERIFIED COMMENTS AND OBJECTIONS
TO THE ILLINOIS POWER AGENCY’S PROPOSED PROCUREMENT PLAN**

The Illinois Power Agency (“IPA”) filed a petition for approval of its 2017 Procurement Plan (“IPA Plan”) with the Illinois Commerce Commission (“Commission”) on September 27, 2016. Ameren Illinois Company (“Ameren Illinois” or “AIC”) offers the following comments and objections pursuant to Section 5/16-111.5(d)(3) of the Illinois Public Utilities Act (“Act”), 220 ILCS 5/16-111.5(d)(3). AIC commends the IPA for developing its Plan and appreciated the opportunity to file informal comments on the draft IPA Plan before it was submitted to the Commission for approval. But, while some of the comments provided by AIC were addressed by the IPA, others were not. Moreover, certain of the issues raised by the IPA Plan relate to the Commission’s discretion in deciding whether or not to *approve* the programs contained therein for implementation, rather than to the IPA’s decision whether or not to *include* those programs in its submission to the Commission, and are therefore best addressed in this forum. AIC respectfully requests that the Commission order the IPA to submit a modified IPA Plan consistent with the positions set forth below. These comments and objections track the order in which the issues first appear in the IPA Plan.

I. COMMENTS AND OBJECTIONS

A. Section 8.4.3: Credit Requirement and Bidder/Supplier Fees

In Section 8.4.3 of the IPA Plan,¹ the IPA provides its proposals for fees and credit requirements associated with the Distributed Generation Renewable Energy Credit (“DG REC”) procurement. Ultimately, the IPA proposes that:

To encourage increased participation[], to lower the barriers for smaller local installers, to reduce administrative burdens on the utility, and in recognition that the greatest risk of non-delivery resides in the inability to successfully develop a DG system (rather than in the system’s ability to delivery RECs once energized and interconnected), there will not be credit requirements, including credit requirements with the utilities, other than those described above. Should the IPA draw on the letters of credit for non-performance, the IPA will use those funds collected to lower the supplier fees for future DG procurements. Failure for a system to begin REC deliveries will impact the given utility’s achievement of its DG goals under Section 1-75(c) of the IPA Act and the IPA will adjust procurement targets for future DG procurements to reflect those changes.

IPA Plan at 110.

Ameren Illinois takes no position on the IPA’s proposal regarding the removal of DG REC credit provisions for the utilities, but provides the following observations for the record. First, in the event of contractual default, the replacement DG RECs, if required, may be at a different price relative to the price associated with the defaulted DG RECs. In the event replacement DG RECs are at a higher price, the funds already collected and held by the utility may eliminate or reduce any incremental cost to customers. The same is not true of energy and capacity contracts where costs for contracts are not collected in advance of delivery. While Ameren Illinois recognizes that the IPA is not making a recommendation to change credit provisions under energy and capacity contracts, we believe it is important to highlight that the

¹ All citations herein to the “IPA Plan” refer to the first and second attachments to the docket entry titled “(PART 1) Illinois Power Agency’s Verified Petition for Approval of its 2017 Procurement Plan pursuant to Section 16-111.5(d)(4) of the Public Utilities Act,” which was filed on September 27, 2015. The attachments are themselves titled “2017 Procurement Plan (Part 1)” and “2017 Procurement Plan (Part 2).”

DG REC credit proposal is unique to a situation where funds have already been collected from customers. The same is not true for energy and capacity contracts where elimination of credit provisions in those contracts would result in incrementally higher customer costs under a scenario where default occurs and replacement prices are higher relative to the defaulted price.

B. Section 9.3: Consensus Items

The IPA Plan includes “specific consensus items agreed to by participants to the 2016 Section 16-111.5B Workshops,” which the IPA submits for the Commission’s approval so that they are “binding upon the energy efficiency programs approved as part of the IPA’s 2017 Procurement Plan for the planning of, implementation of, reporting on, and evaluation, measurement and verification of savings achieved by such programs, as well as binding upon parties up to the development of the IPA’s 2018 Procurement Plan (at which time any changes to the list below may be considered).” IPA Plan at 107. Ameren Illinois agrees that the consensus items from the 2016 Section 5/16-111.5B workshops should be adopted by the Commission.

That said, the IPA Plan should remove all doubt and be clear that *all* of the consensus language reached by the stakeholders (after many hours of meetings and a substantial amount of work) is being approved by the Commission. The IPA has included language in Section 9.3 that is apparently intended to accomplish that goal.² But the IPA’s commentary elsewhere continues to suggest that it believes *some* of the consensus language reached by the SAG in the workshop process does not apply at all, or at least does not apply to the IPA, despite the IPA’s participation in the process.

² See IPA Plan at 110 (“In addition, the 2016 Workshop report produced consensus language regarding the specific issues that the Commission asked for SAG workshops to consider in the Commission’s Order in Docket No. 15-0541. While the application of that language is in many instances designed to be more specific to this year’s Plan and associated circumstances than the broader principles governing implementation of Section 16-111.5B outlined above, the Agency requests the same express approval of that consensus language as well.”)

For example, as will be discussed hereafter, in Section 9.5.8 of the IPA Plan, the IPA criticizes Ameren Illinois for reserving the right to “adjust any terms or conditions with any selected implementers to account for its upcoming Section 5/8-103 and Section 5/8-104 integrated energy efficiency and demand response Plan 4 filing, any pertinent ICC Orders, including those addressing customer data and privacy, or other relevant matters” and to account for the facts that “AIC may seek approval of programs as part of its Section 5/8-103 and Section 5/8-104 Plan that would render certain programs to be approved as a part of the Procurement Plan duplicative, and may seek conditional findings in this docket to provide for such an outcome.” IPA Plan at 122-23. The IPA claims that this “changes the playing field for bidders after the fact through allowing a participating utility to receive bids under an open-ended RFP, but then to potentially shape its Section 8-103 portfolio so as to disqualify certain third-party bids after their receipt and analysis.” IPA Plan at 123. Furthermore, throughout the IPA Plan, the IPA criticizes Ameren Illinois for determining that bids that produce primarily gas savings are not responsive to this year’s RFP.

These IPA positions are directly contrary to the consensus language which the IPA has (perhaps inadvertently) omitted from the IPA Plan. The manner in which AIC conducted the bidding process, and everything that it said in conjunction with its reservation of rights, was entirely consistent with the consensus reached in the SAG workshops. Specifically, the SAG 2016 Section 16-111.5B Workshop Subcommittee Report provides that the following is a consensus item:

Ameren Illinois Approach to IPA 2017 Electricity Procurement Plan Process

Ameren Illinois will take a consistent approach to the Section 16-111.5B programs for the 2017 Procurement Plan that it has taken with each of its past Section 16-111.5B RFPs. However, the RFP may vary from previous RFPs in order to incorporate applicable terms resulting from the recent Commission Orders or directives, the IPA Workshop Subcommittee or SAG plan development

process, and to account for the fact that there are no Section 8-103 programs currently approved for the applicable program year(s). The RFP seeks bid responses for programs that reduce electric consumption for electric ratepayers. Copies of all bids will be provided to IPA, as well as an assessment of bids and a recommendation as to whether each bid should be approved.

Specifically:

- For third-party programs, Ameren Illinois will use the same process that has been in place for the last several years. An RFP solicitation will be issued. A team of internal and external individuals will be formed to review the bids. All bids will be sent to the IPA.
- For third-party programs that would duplicate programs Ameren Illinois plans to propose for inclusion in its Section 8-103 / 8-104 Plan, Ameren Illinois may request that the potentially duplicative third-party program only be conditionally approved or approved with conditions pursuant to Section 16-111.5B in the event that the Commission does not approve a duplicative Section 8-103 / 8-104 program in Ameren Illinois' Section 8-103 / 8-104 Plan proceeding.

IPA Plan Appendix H at 6-7.

The IPA's selective highlighting of consensus items has apparently allowed the IPA to assume that the consensus language which it has *not* highlighted does not apply to or bind the IPA, or at least does not restrict the IPA from abandoning the SAG consensus and criticizing AIC for conduct to which the IPA itself previously agreed. AIC therefore requests that the Commission order the IPA to either incorporate all of the consensus language from Appendix H into the IPA Plan itself, or to incorporate none of it and simply make clear in its Final Order that *all* of the consensus language in Appendix H is approved by the Commission, so that it is abundantly clear that the various consensus items and consensus language are on equal footing and are universally approved.

C. Section 9.4.1: Scale of Section 16-111.5B Programs

Section 9.4.1 of the IPA Plan introduces a theme to which the IPA returns occasionally throughout the portions of the IPA Plan devoted to the procurement of Incremental Energy

Efficiency (“IEE”). The IPA claims that “the size of the Section 16-111.5B programs may have peaked in the 2016-2017 delivery year,” that the alleged peak “could be an indicator of barriers to participation by potential bidders,” and that something should be done to reduce or mitigate the impact of those barriers. *See* IPA Plan at 111. AIC respectfully submits that there are several reasons why IEE programs appear to be smaller this year, and that this new development may in fact mean the process is working exactly as designed—not that it is broken, as the IPA appears to suggest. For example:

- There are practical limits to the amount of achievable energy savings that can be obtained from the market. Given that this is the fifth plan to include IEE, growth in the first few years should not be expected to continue indefinitely.
- This is a more challenging environment for bidders, given lower downstate market prices and more stringent codes and standards.
- Changes in the Illinois Technical Resource Manual reflect higher baselines for several measures, reducing overall savings.
- After 8 years of energy efficiency investment for residential and small business customers, it stands to reason that more easily achieved energy savings opportunities are declining—in other words, the low-hanging fruit have already been picked.
- Bidders’ past performance failures have driven the utilities to develop contract terms that protect ratepayers. Such terms may discourage overly aggressive bids or bidders that do not possess knowledge and/or experience with the delivery of high quality programs.
- 2017 is the first year of a Section 5/8-103 and Section 5/8-104 three-year plan cycle, while 2016 was the last year of a three-year plan cycle. Last year’s projected savings total for the IPA was therefore inflated by the inclusion of substantial savings from longer-run programs approved in earlier years of the third three-year plan cycle, as well as by programs moved over to the IPA from Ameren Illinois’ Section 5/8-103 portfolio.³
- Last year, the IPA procurement process represented the only way for Illinois energy efficiency vendors to bid programs. This year, the utilities were developing their

³ Indeed, when these particularities are taken into account, it is even not clear that there will be a decrease in savings achieved as a result of this year’s procurement process (even if there is a decrease in the number of programs).

Section 5/8-103 and Section 5/8-104 plans in tandem with the IPA procurement process, providing an additional marketplace for vendors and implementers.

- This is the first IPA energy efficiency procurement cycle for which behavioral modification programs no longer count as 100% first year savings. This change in the TRM gives the appearance of declining savings compared to previous years of the IPA procurement.

As set forth in AIC's comments to the IPA with respect to its draft Plan, all of these factors likely contributed to the IPA energy efficiency procurement bidding process looking different this year than it did last year, and for that reason, there very well may not be an issue with the procurement process that needs to be addressed.

However, in an effort to minimize the contested issues in this docket, AIC does not object to the IPA's proposal that the Commission: (a) require SAG workshops after the conclusion of the proceeding approving the IPA Plan, at which the utilities and stakeholders can discuss more effective strategies for marketing Section 5/16-111.5B RFPs; and (b) require that the utilities' potential studies and stakeholder feedback be utilized in ensuring that the RFPs, while remaining open-ended, specifically identify any program areas for which bids should be actively sought. *See* IPA Plan at 111. As long as the Commission's directive leaves the utilities the flexibility contemplated by the IPA, AIC believes this approach is workable. Indeed, AIC already provides specific direction to bidders based on the potential study and the larger energy efficiency environment in Illinois—for example, this year AIC provided specific details in its RFP regarding the interplay between Sections 5/16-111.5B, 5/8-103, and 5/8-104—and does not object to continuing to do so in appropriate contexts in the future. AIC further agrees that the details are best addressed in workshops and that the results of those workshops, if consensus is reached, can be incorporated into the RFP for the next IPA Plan.

D. Section 9.4.2: Improving/Refining Bids

1. Post-Bid Negotiations/Bidder Participation

During the informal comment process, the IPA solicited feedback regarding the extent to which utilities can or should engage in post-bid negotiations to refine/improve the scope, scale, price, etc. of bids. *See* IPA Plan at 111. At that time, the IPA appeared interested in advancing a model where the utilities are tasked with taking on additional administrative duties currently allocated to the bidders themselves, which could mean increased costs to ratepayers. The IPA Plan filed with the Commission rightly recognizes, however, that “[p]ost-bid negotiations . . . could create significant challenges with successful implementation.” IPA Plan at 111. Thus, the IPA takes the position that the bid refinement process could benefit from “clear and explicit processes and rules,” from “increase[ed] participation to encourage competition between bidders,” and from “improvements to the RFP process suggested [in Section 9.4.1].” IPA Plan at 112. The IPA further suggests that “communications to bidders about their bids [could be] clarified to make clear to those bidders that they have the right to participate in either the comment process or the docketed proceeding, and that such participation will not prejudice the evaluation of their bid.” IPA Plan at 112.

AIC appreciates that the IPA has identified what it believes to be improvements to the process, and that the IPA is not seeking a Commission directive regarding any of its suggestions. But AIC respectfully requests that the Commission make clear that the IPA’s proposals on this point are just that—proposals—and that those proposals could be addressed at the SAG workshop series to be convened in response to the IPA’s proposal in Section 9.4.1. Issues like these are best reviewed in the workshop context, where the stakeholders can consider all of the relevant facts and circumstances in a collaborative environment, rather than in an expedited approval docket.

2. Gas Savings Issue

The IPA notes in this section that “[f]or the past two years, the extent to which programs can include gas savings has been an issue for some of Ameren Illinois’ bids.” IPA Plan at 112. That is accurate. The IPA then goes on to note that it “believes that programs (as opposed to specific measures within the program) should be evaluated in their entirety using both the gas and electric savings—as done in each year prior to this year, as done by ComEd in its submission, and in the view of the IPA, as intended by the plain language of the law.” IPA Plan at 112-113. In support of its statement, the IPA refers to the provisions of the Act which define “cost-effective”:

Section 16-111.5B(b) expressly requires that “the term ‘cost-effective’ shall have the meaning set forth in subsection (a) of Section 8-103” (i.e., “means that the measures satisfy the total resource cost test”), which in turn expressly requires that “avoided natural gas utility costs” be included in a cost-effectiveness calculation.

IPA Plan at 113 n. 243. In contrast, while AIC has *always* calculated the cost-effectiveness test in compliance with the law (and considering both electric *and gas* benefits), AIC maintains that programs which produce primarily gas savings should not be a part of the Section 5/16-111.5B electricity procurement plan approved by the Commission. This position comports with the law and with good policy.

Pursuant to Section 5/16-111.5B(a)(4), “The Illinois Power Agency shall include in the procurement plan prepared pursuant to paragraph (2) of subsection (d) of Section 16-111.5 of this Act energy efficiency programs and measures *it determines are cost-effective*[.]” 220 ILCS 5/16-111.5B(a)(4) (emphasis added). And, as rightly noted by the IPA, a program is “cost-effective” if it passes the TRC test, a measure which includes gas savings. Thus, the IPA can—and should—include in its proposed procurement plan *all* cost-effective programs and measures,

even those programs and measures which are rendered cost-effective in part by the gas savings they produce. Moreover, as noted above, AIC has always included gas savings in its own TRC calculations provided to the IPA, and did so this year, as well. There is no debate in this proceeding whatsoever regarding how the TRC value should be calculated, or whether AIC calculated it in the manner required by statute.⁴

That said, unlike the IPA, the Commission considers more than just cost-effectiveness when it ultimately decides whether to approve or reject the programs submitted to the Commission for review. The Commission approves cost-effective programs and measures for inclusion in the IPA Plan “to the extent practicable,” *see* 220 ILCS 5/16-111.5B(a)(5), and the Commission has previously held that the quoted language “gives [the] Commission the authority to set practical limits on the procurement of EE.” Docket No. 15-0541, Final Order (December 16, 2015) at 100. “If the General Assembly had intended to require all EE [programs or measures] that passed the TRC Test to be included in an IPA Plan, it would not have used any qualifier at all.” Docket No. 15-0541, Final Order (December 16, 2015) at 100-101. “The phrase ‘to the extent practicable’ is a qualifying phrase that allows th[e] Commission to exercise judgment and flexibility.” Docket No. 15-0541, Final Order (December 16, 2015) at 101.

The utilities are therefore mandated by the Act to provide the Commission with additional information that aids the Commission in its exercise of judgment and flexibility. Among other things, as a part of their assessments, the utilities are required to prepare:

- An “[a]nalysis of how the cost of procuring additional cost-effective energy efficiency measures compares over the life of the measures to the prevailing cost of comparable supply,” *see* 220 ILCS 5/16-111.5B(a)(3)(E); and

⁴ To the extent AIC provided electric-only TRC values for some programs, it did so after consultation with stakeholders and the analysis was provided in addition to, instead of as a replacement for, the TRC calculated with gas savings included.

- “For each expanded or new program, the estimated amount that the program may reduce the agency’s need to procure supply,” *see* 220 ILCS 5/16-111.5B(a)(3)(G).

It is easy to see how a program that produces primarily gas savings can run afoul of these cost-of-electricity-focused guideposts, regardless of whether a program passes the TRC test. For example, a combined gas-and-electric energy efficiency program that serves both electric-only and dual-fuel customers in AIC’s service territory might pass the TRC test in part because of the gas savings it produces for the dual-fuel customers. But the same program may not look like a good deal for AIC’s electric-only ratepayers if, when those gas savings are stripped out pursuant to the Cost of Supply (“COS”) analysis (*see* 220 ILCS 5/16-111.5B(a)(3)(E)),⁵ it turns out that the electric-only ratepayers are paying more for those savings than they would to procure comparable supply.

Moreover, the costs of the programs procured by the IPA Plan are borne exclusively by electric ratepayers and are passed through via AIC’s Rider EDR. *See* 220 ILCS 5/16-111.5B(a)(6). So, if an electric-only ratepayer is paying more than \$1 dollar for each \$1 dollar reduction in the cost of his or her electric service that results from a combined gas-and-electric energy efficiency program, that means the customer is subsidizing the gas savings accruing to the benefit of other, dual-fuel, customers. This would run afoul of a cardinal principle of the Act, which is that the State’s regulation of public utilities shall ensure “[e]quity,” meaning “the

⁵ Based on the informal comments filed with the IPA, it appears that several parties may still be confused about the nature of the COS analysis (220 ILCS 5/16-111.5B(a)(3)(E)), which calculates the cost of comparable electric supply exclusive of transmission and distribution costs. Certain parties appear to advocate for a “cost of supply” measure would *include* transmission and distribution costs, but that cannot be correct. It would make the COS analysis too similar to the UCT. *See Blum v. Koster*, 235 Ill. 2d 21, 29 (2009) (explaining that a statute must be construed in a manner to avoid rendering any part of it meaningless or superfluous).

fair treatment of consumers and investors in order that . . . the cost of supplying public utility services is allocated to those who cause the costs to be incurred[.]” 220 ILCS 5/1-102(d)(iii).⁶

Thus, while the IPA correctly notes that gas savings are a part of the statutory test for cost-effectiveness, and correctly asserts that the IPA can and should include *all* cost-effective programs in its submission to the Commission, the Commission is *not* bound to *approve* all cost-effective programs and measures. Moreover, under the Act, AIC can identify for the Commission those programs which rely too heavily on gas savings. And it can recommend rejection of those programs for which the COS analysis indicates the program is more expensive than supply, or for which it is clear that to approve the program for inclusion under Section 5/16-111.5B would mean a violation of the longstanding principle of cost causation. In short, approving those programs simply would not make sense. The Commission should not instruct the IPA to procure *gas* programs via an *electricity* procurement plan, not only because it violates the principle of cost causation, but because they simply are not related to, or responsive to, the purpose of the IPA Plan.⁷

Notwithstanding the above, the language included by the IPA in Section 9.4.2 does not appear to set forth anything other than the IPA’s own understanding of the issue. It does not appear to set forth a rule or an action item for the Commission, and therefore AIC does not propose any corrections in this section. However, the foregoing explanation helps to clarify the

⁶ This principle, referred to as the principle of cost-causation, has traditionally been ubiquitous in Commission cases. And, as recently as September 2014, the Commission reaffirmed its belief “that there are policy reasons” for increasing the focus on “traditional ratemaking principles like cost causation.” AIC, Revenue-Neutral Tariff Changes Related to Rate Design, No. 13-0476, 2014 Ill. PUC LEXIS 570, *114 (Sept. 30, 2014).

⁷ Indeed, it is far more efficient for all parties involved if AIC screens out programs which should fail for this reason at the bidding stage.

context in which AIC will present its positions on which programs the Commission should and should not approve in the exercise of its discretion, as explained below.

E. Section 9.5.3: Review of Ameren Illinois TRC Analysis

AIC comments on Section 9.5.3 only to note that, during the informal comment process, certain parties mistakenly challenged AIC's inclusion of an evaluation, measurement and verification ("EM&V") cost adder higher than 3% in its TRC analysis. The IPA rightly cut through the issue, noting that "[a]gainst the backdrop of the Commission's Order in Docket No. 14-0588 . . . the IPA's primary concern is whether the adder reflects actual costs." IPA Plan at 115 n. 249. It does. Moreover, the purported 3% cap on EM&V costs comes from 220 ILCS 5/8-103(f)(7); there is no corresponding 3% cap set forth in Section 5/16-111.5B.

F. Section 9.5.4.1: Policy Implications

In this section, the IPA again takes issue with AIC's position regarding the relevance of gas savings in the Section 16-111.5B IEE procurement context. As set forth above, the IPA appears unwilling to acknowledge the distinction between its role and the role of the Commission, and the fact that the Commission can and does consider more than just baseline cost-effectiveness when deciding whether to include the programs and measures submitted by the IPA in the final procurement plan. For example, there can be no reasonable dispute that the Commission can and should consider the longstanding principle of cost causation, embodied in the language of the Act, *see* 220 ILCS 5/1-102(d)(iii), when it makes the ultimate decision whether or not to approve a program for inclusion in the IPA Plan. AIC discussed this issue in more detail above, in relation to Section 9.4.2, and those comments apply equally to this section as well.

G. Section 9.5.4.2: Demand Based Ventilation Control Program

During the informal comment process, AIC explained to the IPA that the Demand Based Ventilation Control Program discussed in Section 9.5.4.2 would be duplicative of programs included in AIC’s Energy Efficiency and Demand Response Plan 4. Specifically, the program is duplicative of both the Section 5/8-103 and, perhaps surprisingly, Section 5/8-104 portions of a Gas Small Business Direct Install Program that has been included in Ameren Illinois’ Plan 4, which was filed with the Commission on August 30, 2016.⁸ See ICC Docket No. 16-0413, AIC Exhibit 1.1 (8/30/2016) at 93. In recognition of that reality, the IPA Plan now acknowledges that the best way to proceed is a “conditional approval,” in which the Commission makes its approval of the duplicative program in this docket contingent—and revocable—based on its decision whether to approve the similar programs in Docket No. 16-0413. When the similar programs are approved in Docket No. 16-0413, AIC will drop the duplicative program contemplated here from its Section 5/16-111.5B implementation plans. See IPA Plan at 117.

AIC does not object to the approach recommended by the IPA, should the Commission ultimately decide that a conditional approval is necessary in this docket.⁹ And, as further support for AIC’s duplicative program determination, AIC provides the following, focused on the Commission’s seven-factor test:

FACTOR	ANALYSIS
Similarity in Product/Service Offered	Both this program and the Small Business Direct Install and the Business Standard

⁸ Again, Section 5/8-104 is designed to encourage natural gas energy efficiency programs and measures, while the province of the IPA is electricity.

⁹ Staff pointed out in its informal comments that this program raises numerous other concerns, including whether the Commission should reject it pursuant to (1) the Utility Cost Test (“UCT”) results (220 ILCS 5/16-111.5B(a)(3)(D)), (2) the cost of supply results (220 ILCS 5/16-111.5B(a)(3)(E)), or (3) a TRC estimate that takes into consideration past vendor performance and savings that are realistically achievable. See Staff Comments to IPA, p. 21.

	programs in AIC's Plan 4 offer demand-based ventilation fan controls on HVAC fans and VFD controls on kitchen exhaust fans in qualifying facilities. Product estimates for each program are similar, at around 2000 DBVFC units and 1000 DBV controls for kitchen and exhaust fans.
Market Segment Targeted, Including Geographic, Economic, and Customer Class	Both this program and the Small Business Direct Install and the Business Standard programs in AIC's Plan 4 target small business customers with electric demand less than 150 kW (DS2 customers) and gas usage less than 1,000 therms per day (GDS-2 and GDS-3 customers) in the Ameren Illinois service territory. Specifically, around 1100 small restaurants with long operating hours (12 hours per day or longer).
Program Delivery Approach	Each program relies on the same approach, which includes marketing the program, scheduling and performing audits, and reporting proposed measures, savings, cost and the payback period to the customer. Once the customer enrolls, materials will be purchased, installations will be scheduled, completed work will be checked, and results will be reported.
Compatibility with Other Programs	This program is not compatible with the Small Business Direct Install Program and the Business Standard Program in AIC's Section 5/8-103 and 5/8-104 Plan. It will make it difficult to achieve AIC's Section 5/8-104 gas savings projections for GDS-2 and GDS-3 customers.
Likelihood of Program Success	Ameren Illinois notes that this vendor has not appeared to perform up to expectations in an IPA program run in another part of the State, and was also flagged as a potential performance risk by ComEd in their bid assessment process. ¹⁰
Effect on Utility Joint Program Coordination	Running this program in the IPA would be in conflict with achieving the projected gas

¹⁰ While this program vendor appears to be a performance risk, AIC notes that it believes the program design contemplated in its Plan 4 will be successful with a different implementer and an expanded target market including larger customers.

	savings through the Small Business Direct Install Program and the Business Standard Program in AIC’s Section 5/8-103 and 5/8-104 Plan.
Impact on Section 5/8-103 Portfolio Performance	The Demand Based Ventilation Program is of the same size, scope, targets the same market, and includes the same measures as the Small Business Direct Install Program and the Business Standard Program in AIC’s Section 5/8-103 and 5/8-104 Plan. It has a direct negative impact on AIC’s ability to effectively implement the Plan 4 programs.

In light of the foregoing, AIC continues to believe that this program should not be approved for inclusion in the Section 5/16-111.5B portfolio, but to the extent the Commission disagrees, it should be conditionally approved as suggested by the IPA.

H. Section 9.5.3: Behavioral Program (OPower)

In Section 9.5.3, the IPA advocates for the Commission’s approval of a behavioral modification program bid by OPower. The IPA’s basis for its request focuses almost exclusively on the TRC test. *See* IPA Plan at 117-119. Again, while it is the IPA’s responsibility to include programs that are “cost-effective” for the Commission’s review, the Commission analyzes many other factors when determining whether the program, should be included in the IPA Plan. When all of the relevant information is considered, it is clear that this particular gas-and-electric program should not be approved.

By way of background, the most recent iteration of the OPower behavioral modification program was approved as a part of AIC’s Plan 3, and it commenced in AIC Program Year (“PY”) 7. AIC offered the program in its Plan 3 proposal as a combined gas-and-electric program, funded by both the gas and electric budgets derived from Sections 5/8-103 and 5/8-104. In the Plan 3 approval docket, however, certain parties advocated that the electric component of

the OPower program be shifted to the IPA via Section 5/16-111.5B in PY8 and PY9. The Commission accepted that recommendation. *See* ICC Docket No. 13-0498, Final Order (Jan. 28, 2014) at 62. Thus, generally speaking, electric ratepayers have been funding (through Section 5/16-111.5B) the electric savings accrued through the program, and gas ratepayers have been funding (through Section 5/8-104) the gas savings. With AIC's Plan 3 ending on June 30, 2017, OPower has now bid its combined electric-and-gas behavioral modification program as a Section 5/16-111.5B program, exclusively. Thus, while the program is not new, the proposed funding arrangement is, and OPower now asks that electric ratepayers fund the entire program—both the gas and electric portions—through Section 5/16-111.5B for three years

For a variety of reasons, the Commission should reject inclusion of the OPower bid in its entirety. *First*, the bid runs afoul of the cost-causation principles set forth above, in that it has electric customers paying for a program that is designed to achieve significant gas savings for gas customers. Such a result should not be endorsed. *Second*, the OPower bid raises significant concerns with respect to whether procurement of the OPower programs will actually and practically benefit AIC customers. The OPower bid seeks to continue the dual fuel program that it currently implements, as well as run an expansion program through one of three options. And, critically, OPower makes clear in its bid that the baseline continuation program is necessary in order to run any expansion option. But the baseline continuation program does not pass the cost of supply analysis, in that the program would cost more to procure than the cost of comparable electric supply. Moreover, while the baseline continuation program is cost-effective when considering both gas and electric savings, the program is *not* cost-effective for the electric ratepayers who will pay for the program based on the electric benefits that they would be planned to receive. These qualitative analyses reveal that procurement of the baseline

continuation program would not be practical nor in the interests of the electric customers who would be paying for it. And because OPower's bid requires the acceptance of the baseline continuation program in order to implement any expansion program, the bid as a whole should not be included in the IPA Plan.

In addition to the foregoing, AIC would note that stopping OPower this year would also be beneficial for energy efficiency in Illinois as a whole. One of the continuing difficulties with evaluating dual fuel behavioral programs like the ones presented in the OPower bid is that there is limited research available regarding the persistence of the savings achieved. When the program reaches its endpoint, and the customers stop receiving usage reports or other information from the implementer, to what extent do the behavioral changes that were prompted by those reports and information persist? Excluding OPower for this next year would give AIC's independent evaluator an opportunity to measure and analyze the persistence of savings for these types of behavioral programs, which would in turn inform the continued development of the related measures in an updated version of the Illinois Technical Reference Manual and, if helpful, in the evaluations themselves.

In summary, the Commission should exercise its discretion to exclude otherwise cost-effective programs, and should refuse to approve the OPower behavioral modification programs for inclusion in this year's IPA Plan.¹¹

I. Section 9.5.5: Duplicative Programs

During the informal comment process, AIC identified the Franklin Energy—Small Business Direct Install Program which was bid for inclusion in this year's IPA energy efficiency

¹¹ If the Commission does decide to follow the IPA's recommendation, however, it should include a clear finding that it will be reasonable and prudent for Ameren Illinois to collect the costs of the entire OPower program—gas components included—from AIC electric ratepayers, as the IPA demands.

procurement as duplicative of the Section 5/8-103 portion of the Small Business Direct Install Program included in Ameren Illinois’ Plan 4, noting that it should no longer be recommended to the Commission for inclusion in the Section 5/16-111.5B IPA Plan. *See* ICC Docket No. 16-0413, AIC Exhibit 2.0 (8/30/2016) at 13-16. The IPA now suggests that the Commission can take the conditional approval approach to this program as well, offering approval “contingent on the Small Business Direct Install program not being approved in Docket No. 16-0413.” IPA Plan at 120. If, on the other hand, the Small Business Direct Install program *is* approved in Docket No. 16-0413, then the Franklin Energy program will not be procured pursuant to Section 5/16-111.5B. AIC does not object to this approach.

As further support for AIC’s duplicative program determination, AIC provides the following, focused on the Commission’s seven-factor test:

FACTOR	ANALYSIS
Similarity in Product/Service Offered	“The Franklin program offers measures that address lighting, water heating, and miscellaneous end uses, with lighting accounting for over 99% of the program savings. The Plan 4 program offers measures that address lighting, HVAC, water heating, and miscellaneous end uses, with lighting accounting for over 91% of the program savings. Focusing specifically on the lighting end use due to the large contribution it makes to each program, there is heavy measure overlap where LED lamps, linear LEDs, permanent fixture removal (de-lamping), lighting controls, light sensors, LED fixtures, and exit signs are offered in both programs.” <u>Staff Comments</u> ¹² (9/14/2016) at 29.
Market Segment Targeted, Including Geographic, Economic, and Customer Class	“both programs focus specifically on business customers with electric demand less than 150

¹² Accessible at <https://www.illinois.gov/sites/ipa/Documents/2017ProcurementPlan/Comments/ICC%20Staff%20Comments%20on%202017%20IPA%20Plan%20FINAL.pdf>.

	kW (DS2 customers) in the Ameren Illinois service territory. Small-Business customers including commercial restaurants, grocery, service, convenience stores, small healthcare, private schools, banks, motels, and small industrial” <u>Staff Comments</u> (9/14/2016) at 29.
Program Delivery Approach	“Both programs rely on the same delivery strategy that utilizes a network of registered and trained program allies that recruit customers, perform assessments, and directly install pre-approved measures with instant program discounts/rebates for customers.” <u>Staff Comments</u> (9/14/2016) at 29.
Compatibility with Other Programs	No comment.
Likelihood of Program Success	No comment.
Effect on Utility Joint Program Coordination	This program will impact AIC’s ability to provide gas savings to GDS-2 and GDS-3 customers.
Impact on Section 5/8-103 Portfolio Performance	“The Franklin program is of the same size, scope, targets the same market, and includes the same measures as the Plan 4 program. This has a direct negative impact on the Plan 4 program being able to effectively implement the Small Business Direct Install program.” <u>Staff Comments</u> (9/14/2016) at 29-30.

Ameren Illinois therefore believes that the Franklin Energy—Small Business Direct Install Program should be approved only conditionally, pending the outcome of AIC’s Plan 4 proceeding, as proposed by the IPA.

J. Section 9.5.6: Additional Conditions Requested by Ameren Illinois

In this Section, the IPA continues to disagree with AIC’s proposal to limit the Community LED Distribution Program to one year, rather than three years. *See* IPA Plan at 121. The IPA proposes to treat the CLEAResult Community LED Distribution Program in the same way as the CLEAResult Residential Retail Lighting Program, granting AIC the ability to reopen the contract on an annual basis to review product type, product quantity and price to ensure the

customer is achieving a good value through the program. *See* IPA Plan at 121. But, as set forth in AIC's informal comments, the dynamics of the two Programs are not identical.

AIC's concern regarding the Residential Retail Lighting Program relates to the fact that LED prices are dropping continuously, which means the marketplace will need to be reviewed to ensure the program is performing as intended. AIC is not concerned there will be a need for a new program design.

On the other hand, AIC has two concerns regarding the Community Based LED Distribution Program. The first relates to whether the current Community Based CFL Distribution Program, approved in the 2016 IPA Electricity Procurement Plan and being implemented during PY9, will achieve market saturation at the targeted segment such that the Community Based LED Distribution Program essentially becomes duplicative and, accordingly, not needed beyond the first year of its bid. The second relates to the specifics of the program design. The program design needs to be evaluated by the independent evaluator to gather meaningful and reliable information on the amount of product leakage to regions not served by AIC, whether the product is actually being installed, and what technology (CFL or incandescent) is being replaced.

The difference is that, in the former scenario, AIC may need to intervene and renegotiate some pricing provisions to ensure that the program operates in a manner that is in the interest of customers, while, in the latter scenario, AIC is concerned that, due to market behavior and evaluator feedback, the vendor should revise their program design and re-submit the program in subsequent IPA procurement processes. In short, the Commission should order the IPA to revise the IPA Plan so that Community LED Distribution Program is limited to one year.

K. Section 9.5.8: Ameren Illinois Reservations and Requested Determinations

In this Section, the IPA takes issue with Ameren Illinois' reservation of rights related to the coincidental development of its Plan 4 and the IPA's 2017 IPA Electricity Procurement Plan. IPA Plan at 122-123. In its Assessment, Ameren Illinois "reserve[d] the right to adjust any terms or conditions with any selected implementers to account for its upcoming Section 5/8-103 and Section 5/8-104 integrated energy efficiency and demand response Plan 4 filing[.]" AIC Submittal at Page 8. But the IPA rejected that request. The IPA claims, "the Agency is concerned that bidders had a reasonable expectation that the provisions of the RFP would be applicable to the consideration of their bids, and after the fact changes could have a negative (or positive) impact on their desire to move forward and implement their proposed programs." *See* Plan at 125. AIC understands the IPA's sentiment, but continues to disagree with it.

First, AIC issued a transparent RFP that informed bidders of the misalignment of timing between Section 5/16-111.5B and Sections 5/8-103 and 5/8-104, as well as its potential impact on the bids. *See IPA Draft Plan Appendix B-Appendix 3_Final.pdf* (AIC RFP) at 8. And the bidders themselves acknowledged and accepted this reality when they responded to the RFP. *Id.*¹³ Accordingly, the reasonable expectation of the bidders at the time they placed their bids wholly aligns with AIC's requested reservation in its Submittal, and there should be no impact whatsoever on the bidders should their programs be approved or rejected.

¹³ Specifically, the RFP stated that "Bidder acknowledges that at the time of the AIC's submittal to the IPA by July 15, 2016, AIC will not have an approved AIC EE Plan for the plan period commencing June 1, 2017. Accordingly, AIC reserves the right to develop and propose programs that could be duplicative or competing to bidder's programs as part of its AIC EE Plan filing by September 1, 2016 pursuant to Section 8-103 of the Act. Accordingly, acceptance and implementation of those programs will be subject to the Commission's approval, which is expected within five months of the AIC EE Plan filing. Bidder further acknowledges and agrees that the ultimate approval or rejection of programs is a determination made by the Commission. Per the statute, all bids received are also shared with the IPA. AIC cannot guarantee the outcome of this process or any other future regulatory changes to proposed programs. Bidders submit proposals that may be subject to changes in regulations and laws, including any formal regulatory process. AIC makes no warranties to potential bidders in any way with respect to the proposed programs." *AIC RFP* at 8.

Second, Ameren Illinois conducted its RFP process for the IPA energy efficiency procurement in tandem with the development of its Section 5/8-103 and Section 5/8-104 Plan 4 as part of a holistic approach which was made clear to all stakeholders involved in the SAG Plan 4 Planning process, and as a part of the SAG IPA Subcommittee workshops, in which the IPA participated. And, as noted above, neither the submission of a bid nor the discussion of that bid in a utility's submittal creates any sort of legally enforceable expectation that the bid will ultimately be accepted, particularly because it is well known that the cost-effectiveness analysis must still be completed and verified by the IPA, and because other practical considerations go into the Commission's bid analysis. There is no element of surprise here, let alone unfair surprise. Indeed, AIC's process was vetted and approved as a consensus item by the SAG IPA Subcommittee, including the IPA itself. *See* IPA Plan Appendix H at 6-7. There is simply no factual basis for the IPA's criticisms and concerns.

Third, even if the bidders had not been informed of and accepted the potential for changes, the fact remains that the Act allocates such change risk onto bidders in the IPA electric energy efficiency procurement process, not onto the utilities. As the IPA recognizes, the Act is currently constructed in such a way as to allow for the simultaneous development of the utilities' Section 5/8-103 and 5/8-104 portfolios and the IPA's incremental electric energy efficiency procurement every three years. It is inevitable, under those circumstances, that some bids for inclusion in the utilities' Section 5/8-103 portfolios will overlap with some bids for inclusion in the IPA electric energy efficiency procurement process, especially because the bids in each category are generally developed with reference to the same potential study. Because duplicative programs are disfavored, and for good reason, there must be some flexibility in the regulatory process to ensure that ratepayers are protected.

The best way to protect ratepayers in a way that is consistent with the Act is through the regulatory approval process for those programs procured through the IPA electricity procurement process. The Act only provides for the procurement through the IPA process of “new or expanded cost-effective energy efficiency programs or measures that are *incremental to those included in energy efficiency and demand-response plans* approved by the Commission pursuant to Section 8-103” of the Act. *See* 220 ILCS 5/16-111.5B(a)(3)(C) (emphasis added). Thus, as a matter of categorical law, IPA programs which are duplicative of savings to be achieved by Section 5/8-103 (or Section 5/8-104) plan programs—and therefore not incremental—*do not qualify* for inclusion in the IPA Plan approved by the Commission. Ameren Illinois understands that the IPA may not agree that an IPA procurement bidder could be disqualified after-the-fact whenever a similar program is included in a utility’s energy efficiency plan, but the IPA’s disagreement on that point is with the General Assembly, not with Ameren Illinois. To adopt the approach the IPA appears to be suggesting would be to say that the contents of the utilities’ Section 5/8-103 plans are essentially dictated every three years by the terms of bids by unknown vendors that the utilities receive in that year’s IPA electric energy efficiency procurement process, and that would be to get the “incremental” analysis exactly backwards.¹⁴

In conclusion, the process was transparent and equitable—as it always has been—and, to the extent Ameren Illinois’ inclusion of certain programs in its Section 5/8-103 and Section 5/8-104 Plan means that those programs would be duplicative if they were also included in the IPA electricity energy efficiency procurement, that outcome is wholly consistent with the law and what was conveyed to bidders. The IPA’s negative commentary on AIC’s reservations of rights

¹⁴ Indeed, the IPA’s approach appears contrary to the consensus reached by the stakeholder group that included the IPA. *See* https://www.illinois.gov/sites/ipa/Documents/2017ProcurementPlan/Appendix%20H%20-%20SAG_2016_IPA_Workshop_Subcommittee_Report_Final_7-28-16.pdf, at pp. 6-7.

should be stricken from the Plan, and the IPA should be ordered to re-file a Plan endorsing AIC's reservations of rights.

II. CONCLUSION

For the reasons set forth above, Ameren Illinois Company respectfully requests that the Commission adopt the positions and modifications set forth herein, and grant any other such relief as is just and equitable.

Dated: October 3, 2016

Respectfully submitted,

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d/b/a Ameren Illinois

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VERIFICATION

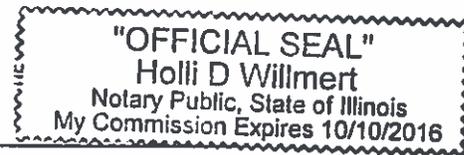
I, Keith E. Goerss, certify that: (i) I have read the attached Verified Comments and Objections; (ii) I am familiar with the facts stated therein; and (iii) the facts stated therein are true and correct to the best of my knowledge, information and belief.

Keith E Goerss
NAME

SUBSCRIBED and SWORN to before me this 3 day of October, 2016.

Holli D Willmert
Notary Public

My commission expires: _____



VERIFICATION

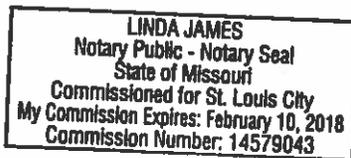
I, Richard L. McCartney, certify that: (i) I have read the attached Verified Comments and Objections; (ii) I am familiar with the facts stated therein; and (iii) the facts stated therein are true and correct to the best of my knowledge, information and belief.

Richard L. McCartney
NAME

Director, Power Supply
Ameren Illinois Company

SUBSCRIBED and SWORN to before
me this 29 day of September, 2016.

Linda James
Notary Public



My commission expires: 2/10/18

CERTIFICATE OF SERVICE

I, Daniel V. Bradley, an attorney, certify that a copy of the foregoing Verified Comments and Objections were filed on the Illinois Commerce Commission's e-docket and was served electronically to all parties of record in this docket on this 3rd day of October, 2016.

/s/ Daniel V Bradley
Daniel V. Bradley
Attorney for Ameren Illinois Company