

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

Illinois Power Agency

Docket No. 16-0453

Petition for Approval of the 2017 IPA
Procurement Plan Pursuant to 200 ILCS 5/16-
111.5(d)(4).

**IPA 2017 Procurement Plan
NRDC Verified Responses to Objections of Other Parties
October 21, 2016**

A. Approach to Programs with Gas Savings (IPA Plan Section 9.5.4)

Response to Ameren Objections (pp. 9-13)

Response to Staff Objections (p. 14)

Ameren has argued that the IPA Plan should exclude a program that produces gas savings that are not “incidental” to the production of electricity savings.¹ Staff says that it agrees with that approach.

NRDC concurs with the IPA that such a standard would be inconsistent with the intent of law. As the IPA noted in its plan, 16-111.5B makes clear that the objective is to acquire all residential and small business electric savings that are cost-effective under the Total Resource

¹ In its RFP Ameren used the “only incidental gas savings” standard, defining “incidental” as savings from electric efficiency measures that also save gas (i.e. measures that simultaneously save multiple fuels). In its objections, Ameren also argued that programs that “produce primarily gas savings” should be rejected – the corollary being that only programs that produce primarily electric savings should be accepted. This is a different standard as it is possible to have a program that: (1) has only measures that save multiple fuels, but save more gas than electricity, and would therefore be acceptable under an “incidental gas savings only” standard but not under a “primarily electric savings” standard; or (2) has a combination of electric only and gas only measures, but saves more electricity than gas and is therefore acceptable under a “primarily electric savings” standard but not under a “incidental gas savings only” standard. It is also important to note that a “primarily electric savings” standard would need care in defining, to be clear about whether it is based on: (A) site energy savings; (B) source energy savings, adjusting for losses in the electric generation, transmission and distribution system processes; or (C) the economic value of the savings. Ameren appears to be using the site energy savings standard. However, as the IPA has made clear in its report, even if one thought it appropriate to use a “primarily electric savings” standard – and NRDC concurs with the IPA that there is no justifiable legal or policy rationale for such a standard – it should be based on the economic value rather than any measure of energy consumption. Though we frame our response to Ameren and Staff objections in the context of their arguments in favor of an “incremental gas savings only” standard, our response applies equally and just as well (if not more so) to a “primarily electric savings” standard.

Cost (TRC) test (which assigns economic value to gas saving). Ameren has observed that the all cost-effective efficiency objective of the law has a “...to the extent practicable” qualifier. Ameren further suggests that this qualifier gives the Commission the flexibility to reject programs that produce both electric and gas savings. However, it is not at all clear why procurement of electric savings through a program that provides both electric and gas savings would not be “practicable”.

Just as importantly, even if the Commission disagrees with the IPA’s and NRDC’s interpretation of the law and agrees with Ameren’s and Staff’s conclusion that there are conditions under which cost-effective programs that produce gas savings can be rejected, the specific standard for rejecting such programs that both Ameren and Staff are proposing would represent bad policy. The principal argument that Ameren has offered for why the Commission should reject a program that provides both electric and gas savings is that the program “may not look like a good deal for AIC’s electric only ratepayers” if those customers had to pay more for the portion of the program benefits that were associated with electricity savings “than they would to procure comparable supply.” There are at least two fundamental problems with this argument.

First, because of the way Ameren defines the “cost of comparable supply” – i.e. excluding avoided transmission and distribution (T&D) system costs and other electric system benefits provided by efficiency measures – a comparison of electric benefits to the cost of comparable supply will not tell you whether a program is a good deal for electric ratepayers. Put another way, a program can provide more electric benefits than electric costs and fail Ameren’s version of a “cost of comparable supply” test. A more detailed discussion of this issue is presented in Section C below.

Second, Ameren is not even asking the Commission to adopt a standard for rejecting programs that is based on the cost to procure comparable supply. Instead, it included in its RFP – and wants the Commission to endorse – a standard that would reject any program producing any amount of gas savings that were not “incidental” to the acquisition of electric savings (i.e. through efficiency measures that simultaneously produce both electric and gas savings by the very nature of the measure). That is an extremely “blunt instrument” for guarding against cross-subsidization of gas ratepayers by electric ratepayers. Indeed, under this standard, a program could be rejected even if the electric benefits it provided were greater than Ameren’s conservatively flawed computation of the cost of procuring comparable electric supply. In fact, under Ameren’s proposed standard, we would accept a program that had \$1 million in electric benefits and \$0.5 million in costs but reject a program that was identical except that it also provided \$0.5 million in gas savings. In other words, under Ameren’s proposed standard, even if the gas savings were “gravity” – i.e. not even needed to make a program cost-effective – we should reject it. This makes no sense. It is clearly a standard that would harm electric ratepayers by increasing their total electric costs.

If the Commission believes that it has the legal authority to reject gas programs in order to guard against any cross-subsidization of other fuels by electric ratepayers, it should set the only standard that would ensure that would happen without simultaneously harming electric ratepayers: a requirement that the electric ratepayer benefits exceed electric ratepayer costs.

There is a nationally-recognized energy efficiency cost-effectiveness test which was designed to examine that very question: the utility cost test (UCT). Put simply, if the Commission believes it has the authority and wants to impose a standard to preclude cross-subsidization by electric ratepayers of non-electric savings, the standard should be passing the UCT.

B. “Bundled Bidding” (related to IPA Plan Section 9.5.4)

Response to Staff Objections (p. 17)

Staff argues that programs which have two (or more components) and which are cost-effective only when the components are bundled together (i.e. with the cost-effectiveness of one component being enough to offset the lack of cost-effectiveness of the other) should be discouraged because such “bundling” reduces net benefits. This proposal is fundamentally flawed because it ignores the often critically important connections between different components of a program. Consider the following conceptual examples:

1. A program includes both marketing and rebates – both of which are necessary to persuade customers to invest in cost-effective efficiency measures.
2. A program includes some measures that are not cost-effective on their own, but are necessary (kind of like “loss leaders” in retail business parlance) to engage customers and persuade them to invest in other measures which are cost-effective with the end result being a package of measures that is cost-effective in aggregate;
3. A program that treats two groups of customers, neither of which is cost-effective to treat individually because fixed program costs are too large to be offset by the savings either group would provide, but which is cost-effective in aggregate – when both groups are “bundled” together – because together they create enough savings to offset fixed costs.

In all three of these conceptual examples “bundling” of program components is necessary to deliver savings cost-effectively. Thus, for all three, any policy that precludes “bundling” would mean rejecting cost-effective savings, thereby increasing electric system costs for electric ratepayers.

“Bundling” of efficiency program components would only reduce net benefits or increase the cost of electric service, as Staff has argued, when the bundled program components are truly separable – i.e. when the cost-effectiveness of each component is not affected by whether it is bundled with the other component(s).

C. Defining Cost of Supply (IPA Plan Section 9.5.3)

Response to Ameren Objections (p. 11, footnote 5)

Ameren relies, in part, on its analysis of the cost of supply (COS) to consider whether an efficiency program is in the best interest of electric ratepayers. However, Ameren’s definition of

COS is fundamentally flawed because it does not include all of the costs of supplying electricity to consumers and therefore does not capture all of the benefits to electric ratepayers that efficiency programs can provide. As a result, it has no value as a metric for whether electric ratepayers would or would not be better off as a result of implementing an efficiency program.

In particular, Ameren’s calculation of the cost of supply excludes transmission and distribution (T&D) system costs. The implicit suggestion that T&D costs are not part of the “cost of supply” fails any test of logic or reason. You cannot supply electricity without adequate T&D capacity. Thus, any comparison of the cost of acquiring efficiency resources to the cost of comparable supply must include not only the electric energy and capacity cost savings that efficiency programs provide, but also the T&D cost savings such programs provide.²

In its Objections, Ameren argues that to include avoided T&D costs would render a calculation of the cost of comparable supply too similar to the Utility Cost Test (UCT) and that would, in turn, violate a legal standard which says that a statute “must be construed in a manner to avoid rendering any part of it meaningless or superfluous.” While it is true that including avoided T&D costs would render a cost of supply calculation similar (or even equal) to the UCT, we don’t see how that concern could or should lead to a computation that excludes an absolutely essential component of what is necessary to supply electricity from an analysis of the comparable cost of supply. If it is necessary to differentiate the calculation of available cost of supply from the electric UCT, a more logical approach would be to add to the electric UCT the impacts of other fuel savings. That would at least be more consistent with the plain meaning of the terms “cost of supply”. It would also be more consistent with the legislative language which describes the cost of supply analysis utilities are expected to perform.³

D. Post-RFP Introduction of Duplicative EEPS Programs (IPA Plan Section 9.5.8)

Response to Ameren Objections (pp. 20-21)

In its Plan, the IPA notes that Ameren has asked to reserve the right to seek approval for programs that it may put forward in its Energy Efficiency Portfolio Standards (EEPS) plan (i.e. their Section 8-103 Plan) that are similar to programs bid by vendors many months earlier in

² Our comments in this section focus on the exclusion of T&D benefits because there is consensus among all parties, including Ameren, that some T&D costs are avoided as a result of efficiency programs. Indeed, Ameren includes avoided T&D costs in its analyses of the TRC cost-effectiveness of its efficiency programs. However, it is worth noting that there are several other categories of electric system benefits that should ideally be included in any analysis comparing the cost of acquiring electric savings to the benefits such acquisition provides to electric ratepayers. Among these other benefits that are also not included in Ameren’s analysis are the effects of lowering market clearing prices for both electric and energy and capacity (the basic laws of supply and demand mean that lower demand leads to lower prices in competitive markets), any avoided credit and collection costs (as customers’ electric bills go down, they are more capable of paying them), and risk mitigating benefits of efficiency (e.g. reduced exposure to future fuel price volatility).

³ The legislative language regarding analysis of cost of supply references “cost-effective *energy* efficiency measures” (emphasis added), not *electric* efficiency measures. It also directs utilities to compare the cost of those measures to the “cost of comparable supply”, not the cost of comparable *electric* supply.

response to Ameren's RFP for IPA procurement. Ameren further argues that if it exercises that right the third-party vendor bids should be considered "duplicative" (after the fact) with its EEPS programs and therefore subject to rejection by the Commission. The IPA raised concerns about this request, suggesting that it wouldn't look favorably on an "assertion of duplicity" in the context of an RFP process "that took place without any such overlapping programs having been identified to bidders."

In its Objections, Ameren argues that there are no issues with it soliciting program proposals and then rejecting them later if it decides to include a similar program of its own in its EEPS portfolio. Ameren notes that its IPA Procurement RFP made clear this could happen. Ameren also argues that because the 16-111.5B statute explicitly calls for programs that are either 'new or expanded cost-effective programs or measures that are incremental to those included in energy efficiency and demand response programs approved by the Commission pursuant to Section 8-103', that IPA program proposals should always be considered to be secondary to those programs put forward by the utilities, even if they are put forward well after the IPA bids are received and even if the utilities' 8-103 program proposals have not yet been approved. Ameren further argues that to adopt an alternative view on this issue would result in the IPA program bids dictating what the utilities could include in the 8-103 portfolios.

NRDC acknowledges the challenges of the timing of IPA procurement and 8-103 plan approval processes. However, we do not share Ameren's interpretation of the law. The law is clear that the IPA programs must be incremental to 8-103 *approved* programs, not to programs that utilities have *submitted for approval*. Moreover, we do not see why it is a problem to have IPA program bids limiting what can be included in proposals for future 8-103 programs. If anything, that can only increase the range of economic benefits that accrue to ratepayers.⁴ Finally, we think that retroactively rejecting program proposals because a utility decides after an RFP has been issued to run its own similar program is bad public policy. For one thing, it would become just one more way in which the implementation of the IPA procurement process could put a chilling effect on potential cost-effective bids. At best, it would add a significant additional risk to prospective vendors that the time and effort they put into developing proposals would be wasted. That could lead to some vendors deciding not to submit program proposals, potentially including proposals for programs that the utility may have no interest in including in its EEPS portfolio (the bidding vendor cannot know for sure which programs the utility may want to include in its future EEPS plan). At worst, it would enable a utility that is interested in limiting efficiency program spending and savings to "take ideas" from potential vendors and "undercut" their efforts to introduce cost-effective programs. We're not saying that is what Ameren is doing here, but their proposed approach or rule would certainly allow that type of behavior.

In the end, because of an 8-103 Plan settlement recently reached between Ameren, NRDC and other parties that would have the Company both run a small business direct install program in its EEPS portfolio and support what would be treated as an "expansion" of that

⁴ If a program is included in the IPA's Procurement Plan instead of in a utility's EEPS portfolio, it effectively frees up EEPS funds that can be allocated to other programs. This will lead to greater cost-effective efficiency savings because, unlike the IPA Procurement Plan, EEPS portfolios are subject to total budget caps.

program through the IPA at budget and savings levels consistent with those bid by several vendors for the current IPA procurement process, we do not think that this is an issue in this proceeding anymore. However, we are very concerned that the policy proposal put forward by Ameren not be adopted because of the adverse effects it could have in the future.

E. SAG Workshop Consensus Items (IPA Plan Section 9.3)

Response to Ameren Objections (pp. 4-5)

Ameren suggests that the IPA was selective in its presentation of the SAG Workshop consensus conclusions in Section 9.3 of its Plan and that the consensus items should be adopted in their entirety. Ameren further suggests that when looked at in their entirety, some of the positions the IPA takes in its Plan – e.g. that Ameren’s approach to rejecting bids that provide gas savings was problematic and that Ameren’s request to reject proposed programs if the Company decides to include similar programs in its 8-103 portfolio is not fair to bidding vendors – would violate some of the SAG Workshop consensus conclusions. NRDC disagrees with Ameren’s conclusion that any of those conclusions are inconsistent with the IPA’s conclusions on gas savings or post-bid submittal rejection of programs on the grounds they are duplicative.

For example, Ameren notes that part of the consensus language not included in Section 9.3 of the IPA’s plan says that Ameren’s RFP for the 2017 IPA Procurement “seeks bid responses for programs that reduce electric consumption for electric ratepayers.” We cannot imagine that anyone would disagree with this statement. NRDC certainly does not. However, we also cannot imagine how anyone would read that statement as suggesting it is okay to reject programs that provide electric savings – particularly if the electric savings are substantial enough that their electric system benefits are greater than the cost to electric ratepayers of acquiring them – just because the programs also provide non-incidental gas savings.

Ameren also notes that part of the consensus language not included in Section 9.3 of the IPA’s plan says that “for third-party programs that would duplicate programs Ameren Illinois plans to propose for inclusion in its 8-103 / 8-104 Plan, Ameren Illinois may request the potentially duplicative program only be conditionally approved...” NRDC submits that the key phrase in this statement is “plans to propose”. That implies that a decision has been made by the company to include a particular type of program in its EEPS portfolio at the time of the IPA RFP being issued and that such an intention would be made clear to prospective bidders. Such determinations would be made in an integrated planning process – ideally collaboratively between the utility and other stakeholders, as did occur this year with Com Ed – with the outcome being clarity on which types of programs would be included solely in an 8-103 portfolio,⁵ solely in the IPA procurement portfolio or in both (i.e. with a core program in 8-103 and an expansion, or potential expansion depending on bids that are provided, in IPA). In such cases, NRDC would have no problem with a similar program bid into the IPA being only

⁵ This would require that they be designed to capture all cost-effective efficiency from a given market, leaving no “room” for cost-effective expansion under IPA.

conditionally accepted by the Commission (with the condition being that it proceeds only if the Ameren EEPS program proposal is rejected or if a determination is made that an expansion of the 8-103 effort could be accommodated by the market). However, Ameren appears to be asking for the ability to decide to include a program in its proposed EEPS portfolio long after IPA bids have been received and reviewed and to then render such IPA bids “duplicative” after the fact. That ability is not consistent with a reasonable read of the consensus language cited. If that were the intent of the language, NRDC would not support it as part of a consensus agreement.

F. Transparency of Cost-Effectiveness Analyses (IPA Plan Section 9.3)

Response to Attorney General (AG) Objections (pp. 9-10)

The AG raises concerns about the fact that the avoided costs and the tool used by Ameren to assess the cost-effectiveness of proposed efficiency programs are treated as confidential and not public. NRDC shares this concern. While the IPA had the opportunity to review Ameren’s avoided costs and pass its judgement as to their reasonableness, other parties did not. It is certainly plausible that other parties may find areas of concern that the IPA did not find. Indeed, after signing a non-disclosure agreement, NRDC had the opportunity to review and discuss with Ameren an earlier version of its avoided costs assumptions. We expressed several concerns about them to Ameren. While responses from Ameren to those concerns suggest that some of them were probably adequately addressed, it appears that others were not, though we cannot definitively confirm whether that was the case because Ameren did not provide to us the final avoided costs it used to screen IPA program proposals.

NRDC also contends that the short time periods available for commenting on the IPA’s plan do not allow for adequate investigation of the reasonableness of the utilities final cost-effectiveness analyses if avoided cost assumptions and cost-effectiveness analyses are considered confidential. Indeed, initial objections to the IPA’s plan were due on Monday October 3rd, just three business days after the Plan was filed (September 27th). That is not enough time to issue discovery and receive responses, let alone to analyze an issue as complex as avoided costs or cost-effectiveness screening. Thus, if Ameren or any other utility is going to contend that its avoided costs or its cost-effectiveness analyses are confidential, there needs to be a modification to the current process to enable third-party review. One option might be to require utilities to make available avoided cost and screening tools (to parties signing non-disclosure agreements if necessary) at the time that the IPA’s draft plan is submitted in mid-August.

Respectfully submitted,

A handwritten signature in blue ink that reads "Ann Alexander". The signature is written in a cursive style with a large initial "A".

Date: October 21, 2016

By: _____

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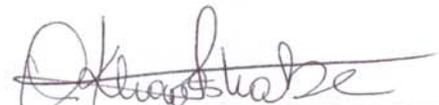
COUNTY OF COOK)

Verification

I, Ann Alexander, being first duly sworn, depose and state that I am counsel for the Natural Resources Defense Council and that I have read the foregoing *NRDC Responses to Objections of Other Parties* and know the contents thereof and the statements therein contained are true, to the best of my knowledge, information, and belief.


Ann Alexander
Natural Resources Defense Council

Subscribed and Sworn
to before me this 21st day
of October, 2016


Notary Public

