

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

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

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

Ameren Illinois Company (“Ameren Illinois” or “AIC”) hereby submits its Verified Response (“Response”) to the Comments and Objections to the Illinois Power Agency’s (“IPA”) Proposed Procurement Plan (“IPA Plan”).

I. RESPONSES TO COMMENTS AND OBJECTIONS

A. Section 8.3: Use of Alternative Compliance Payments (“ACP”) Held by the Utilities

1. Response to Renewables Suppliers

Renewables Suppliers state that the IPA Plan makes references to Hourly ACP Funds having been “committed” and “contractually committed” to the purchase of DG RECs procured in the 2015 and 2016 DG REC procurement events. Renewables Suppliers believe the IPA should clarify what it means by the “already contractually committed” use of the Hourly ACP funds for the DG procurement. Renewables Suppliers believe the use of accumulated Hourly ACP funds to pay for DG RECs should not be given priority over use of the accumulated Hourly ACP funds to purchase any curtailed LTPPA RECs. Renewables Suppliers recognize that existing DG REC contracts cannot be altered. However, for future DG REC procurements, Renewables Suppliers propose that the five year contracts should specify that the use of Hourly ACP funds for applicable LTPPA curtailment should take priority over use for the DG REC contracts. *See* Renewables Suppliers Objection at 4-6.

AIC agrees with Renewables Suppliers that the terms of existing DG REC contracts should not be altered. AIC takes no position regarding the Renewables Suppliers' position that future DG REC contracts should include a provision to reduce payment under a scenario where the LTPPAs are curtailed and the hourly ACP funds are not sufficient to cover the proportional curtailment of LTPPAs. However, AIC acknowledges that, without changes to the existing DG REC contract language, the utilities would not have the ability to reduce payment for future DG REC contracts under the scenario described by Renewables Suppliers. Ameren Illinois recommends that the IPA develop and evaluate several options for consideration, including but not necessarily limited to the Renewables Suppliers' position, and that the IPA subsequently make a recommendation to stakeholders and the Commission.

B. Section 9.3: Consensus Items

1. Response to Staff

In its Verified Comments and Objections, AIC noted that the IPA Plan includes a request that the Commission approve “specific consensus items agreed to by participants to the 2016 Section 16-111.5B Workshops” 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 . . . may be considered).” IPA Plan at 107. AIC agreed that all of the consensus from the 2016 Section 5/16-111.5B workshops should be adopted by the Commission, but noted that the IPA Plan later flatly contradicted some of that language by criticizing AIC’s reservation of rights in its Request For Proposals (“RFP”), reservations which were wholly consistent with the approach discussed in the SAG to soliciting programs for inclusion in the IPA Plan in this unusual year.

In its Objections, Staff supports the Commission “explicitly adopting the consensus language in relation to ‘Cost Tracking and Reporting’ at pages 11-12 of the 2016 SAG Workshop Report.” Staff Objections at 11. As was the case with respect to the IPA’s endorsement of specific provisions, AIC does not object to Staff’s request. Indeed, the Commission should explicitly adopt *all* of the consensus language developed in the 2016 SAG workshop process and reflected in the 2016 SAG Workshop Report. The consensus language represents the shared achievement of thousands of individual hours of work and a great deal of negotiation and compromise. If the SAG workshop process is to have any value, that shared effort must be given its intended effect. There is no reason to emphasize certain elements of the SAG consensus language over others, and all consensus language should be accepted with equal force and import.

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

1. Response to AG

The AG concurs with the IPA that workshops should be conducted to address the possibility of expanded outreach to find new bidders for inclusion in next year’s IPA Plan, and urges the Commission to require that the 2018 procurement process reflect the consensus of the SAG discussions to be convened on the subject. As set forth in AIC’s Verified Comments and Objections, AIC does not object to the IPA’s request that the Commission 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. *See* AIC Objections at 7. But the AG goes a step farther by demanding that the 2018 procurement process reflect any “consensus” achieved by the workshop process. To the extent consensus is reached, AIC will incorporate it into next year’s RFP. But as AIC set forth in detail

in its original filing, the obligation to run an RFP is AIC's, there is no real problem that needs to be solved and the concerns raised by the IPA are merely speculative. *See* AIC Objections at 6-7. The Commission should therefore make clear that the workshop process on this topic is merely an exploration, rather than a massive mandatory investment of time and resources towards finding a consensus “solution” to a “problem” that is particular to the circumstances of this year's procurement process¹ and that probably will not manifest again next year even if the parties do nothing.

The AG also asks that the Commission direct the utilities to “include in the Section 16-111.5B RFP process specific solicitations for programs that capture savings identified by the potential studies required under Section 16-111.5B(a)(3)(A) of the Act.” AG Objections at 2-3. Again, the AG is extending this demand beyond what was stated by the IPA. The IPA has asked that the Commission “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 (emphasis added). AIC did not object to the IPA's request, but there is a difference between using an RFP to identify particular program *areas* of promise, on the one hand, and narrowing the RFP process so that it solicits specific *programs* tailored to a stakeholder's preference. The AG's modification of the IPA's request shifts the burden of developing qualifying Incremental Energy Efficiency (“IEE”) programs and measures from the bidders onto the utilities in a manner not contemplated by the Act, and it strips bidders of the ability to be creative and innovative in the development of competitive bids designed to fill the gaps in the potential studies conducted by

¹ For a detailed explanation of why the particular circumstances of this year's procurement process could have resulted in a reduced number of bids, see AIC's Verified Comments and Objections at 6-7 (noting the timing issue that arises every three years between the IPA Procurement Plan and the Section 8-103 Plan)..

the utilities. As in the past, AIC will attach the potential study so that bidders will see what potential is in AIC's service territory and, to the extent there are programs being run pursuant to Section 8-103 (which for the next procurement year, PY11, there will be), AIC will identify those specific programs for bidders. This should go far to identify what programs are subject to expansion (or a duplicative determination) and help bidders target bids in the manner that is consistent with the Act's intent. Thus, while AIC does not object to the IPA's request, it does object to the AG's material alteration of it, and asks that the Commission disregard the language used by the AG.

D. Section 9.4.2: Improving/Refining Bids

1. Response to AG

(a) Levels of Scrutiny

The AG requests "Commission findings in this proceeding that will help ensure that the third-party efficiency program contracts procured pursuant to Section 16-111.5B of the Plan are negotiated by the Utilities with the same scrutiny that they apply to the contracts procured under Section 8-103 of the Act." AG Objections at 2. The AG seeks a Commission directive ordering the utilities to engage in a more extensive collaborative process with bidders to refine their bids, and to improve the cost-effectiveness of those bids, *after* the bids are accepted by the Commission for inclusion in the IPA Plan. *See* AG Objections at 5-6 (claiming that "no effort is made to negotiate prices or improve savings performance projections either before or after submission of the RFP responses to the IPA," and asking the Commission to order the utilities to change their practice). The AG seems to believe that the new restrictions for which it is advocating are consistent with a statement in the Commission's Final Order in the previous IPA Plan docket, Docket No. 15-0541:

It seems to be a simple matter to require the same level of scrutiny for Section 16-111.5B contracts as that which is imposed for Section 8-103 contracts. The utilities are directed to develop a plan to implement use of the same scrutiny for Section 16-111.5B contracts as that for Section 8-103 contracts through workshops conducted by the SAG.

ICC Docket No. 15-0541, Final Order (12/16/2015) at 110. And the AG seems to go so far as to accuse the utilities of some sort of delinquency. *See* AG Objections at 5 (“The fact is neither utility developed the plan requested by the Commission to ensure equivalent contract scrutiny.”).

The AG is wrong on all points. *First*, the AG appears to confuse the Commission’s directive that the utilities apply the same *level* of scrutiny to Section 5/16-111.5B contracts as to Section 5/8-103 contracts for a directive that the utilities employ the *exact same process* for scrutinizing *bids* in both contexts. The Commission declined to go that far, and for good reason. There are different statutory considerations at play when scrutinizing programs to be run under Section 5/16-111.5B and programs to be run under Section 5/8-103. For example, Section 5/16-111.5B programs and measures are, by law, subject to many different layers of scrutiny which are actually *more* exacting than those applied to Section 5/8-103 programs, such as (1) an analysis showing that the new or expanded cost-effective energy efficiency programs or measures would lead to a reduction in the overall cost of electric service (220 ILCS 5/16-111.5B(a)(3)(D)), and (2) an analysis 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 (220 ILCS 5/16-111.5B(a)(3)(E)). And Section 5/16-111.5B programs are subject to these additional layers of scrutiny for good reason: The Act does not contain the same ratepayer protections with respect to the cost of the IPA’s IEE procurement that it does with respect to Section 5/8-103. Specifically, there is no IPA corollary for the Section 5/8-103(d) tool capping the estimated annual rate increases associated with energy efficiency program and

measures. Thus, the process *cannot* be the same, and, consistent with the law, the Commission did not direct that it should be.

Second, the AG appears to confuse scrutiny of *contracts*, which is what the Commission referred to in last year's Final Order (Docket No. 15-0541 Final Order at 110), with scrutiny of future *performance*. The AG is demanding, in part, that the utilities "scrutinize the implementation strategy and program design, including the energy efficiency measure mix, to ensure that the program is consistent with best practices." AG Objections at 7. But the AG has provided no evidence that utilities do not already scrutinize bids or work with bidders to correct bids that are not, on their face, correct in light of prevailing standards like the Illinois Technical Reference Manual. In fact, AIC already does exactly that. *See* AIC Submittal at 14 (*located at* IPA's Petition/Application (PART 1), Attachment 7 (September 27, 2016)).² Moreover, the AG does not provide any explanation of how the vague directive it seeks could be implemented in a manner consistent with the law. It could not. Given the tight timeframe that is allowed for in the Act for the procurement process, the AG's proposal would be unworkable in practice because AIC has no control over when or how the bidders, who put together a bid they believe would be profitable for them, will react. And the law does not provide for a way for the utilities to control that reaction. There is simply no basis for the AG's demand, whether in fact, in prior Commission orders, in the Act, or anywhere else.

² During the bid review process, AIC's consultant, AEG, "reviewed the detailed savings calculations provided by the bidders and then independently calculated savings for each individual measure to verify compliance with IL-TRM Version 5.0 where an IL-TRM equation was applicable. If the results matched, compliance was verified. If AEG found minor discrepancies, AEG adjusted the savings so they were in compliance. If there were major discrepancies, AEG went back to the bidder to understand why there were differences between the bidder's savings calculations and AEG's savings calculations. In all but one case, the issues were resolved and AEG was able to verify correct application of IL-TRM algorithms where applicable. In the one unresolved case, the AEG independently calculated savings values were utilized." AIC Submittal at 14.

Third, the AG’s position is contradicted by its own assertions elsewhere in its Objections. The AG incorrectly holds up language from the “Report from the Illinois Energy Efficiency Stakeholder Advisory Group (IL EE SAG) 2016 Section 16-111.5B Workshop Subcommittee” (“2016 SAG Report”), attached to the IPA Plan as Appendix H, as an exemplar of what AIC *does* do for Section 5/8-103 programs but does *not* do for Section 5/16-111.5B:

Section 8-103 contracts between utilities and vendors include general conditions, price, holdback, savings, and implementation details. Utilities negotiate contract terms to ensure high-quality, well-priced programs.

2016 SAG Report at 19. Yet, elsewhere in its filing, the AG *criticizes* Ameren Illinois for employing holdbacks and surety bonds—measures designed to “ensure high-quality, well-priced programs”—in its Section 5/16-111.5B contracts, claiming without any cited evidence that “[u]pon information and belief, some local vendors of limited size have complained about their inability to compete against larger, national vendors who have the ability to absorb high priced surety bonds or extensive holdback provisions.” AG Objections at 8. This is a baffling inconsistency, and is likely due to the fact that the AG’s position is replete with aspirational generalities and very few specifics. The AG cannot demand greater scrutiny of Section 5/16-111.5B contracts while simultaneously demanding lesser scrutiny of Section 5/16-111.5B bids on the exact same issues.

Finally, it is simply inaccurate to portray the utilities—or any member of the SAG—as having failed to address this issue in workshops. The issue was addressed, the utilities did present their plans for providing the same level of scrutiny—a higher level, actually, in some contexts—and the process resulted in five *pages* of consensus information. *See* 2016 SAG Report at 14-19. But it also resulted in about six *lines* of non-consensus material relevant to AIC. *See* 2016 SAG Report at 19. The AG was a participant in the process, and knows why global

consensus was not reached. It is inaccurate and inappropriate to attempt to cast the utilities as having failed to comply with the Commission directive quoted above in light of a collaborative process that took thousands of individual hours to complete. The Commission should reject the AG's arguments on this point and decline to address the issue in this docket.

(b) Performance Provisions

As noted above, the AG appears to be concerned about contract terms which it refers to as "draconian" on two separate occasions. AG Objections at 8-9. The allegedly draconian measures are (1) AIC's employment of a holdback of five percent (5%), subject to final evaluation results; and (2) AIC's requirement that vendors obtain a surety bond for twenty-five percent (25%) of the annual contract cost. AG Objections at 8.

While the AG lumps holdbacks and surety bonds together, it is important to note the distinction between these two measures of protection and the purposes they serve. AIC requires surety bonds to ensure that a vendor has the ability to return dollars to AIC customers if actual savings, as determined by the independent evaluator, are less than the savings reported by the implementer. Implementers receive payment as they report savings. At the end of the implementation period, evaluators verify that the number of installed measures has been accurately reported. Evaluators also verify that implementers have correctly calculated the amount of savings for each measure installed. Finally, evaluators confirm that the correct measures were installed to eligible customers. The surety bond is set at a reasonable level (25% of the program cost) that balances risk versus decreased participation by vendors. This avoids a

scenario where the customers—or the utility—are left on the hook for a vendor’s intentional or unintentional over-reporting of savings, particularly in situations of vendor insolvency.³

Holdbacks, on the other hand, are not a method to return funds to ratepayers. Holdbacks are designed to encourage implementers to deliver the entire amount of the savings as promised in their bid. Implementers that fail to achieve at least 95% of their contractual commitment are subject to losing some or all of the 5% holdback. This important contract term ensures that bids do not include unrealistic savings targets and that there is a reasonable level of certainty that planned savings will be achieved.

In any event, the AG has claimed “[u]pon information and belief” that these contract terms are suppressing bidder participation. Yet the AG has not offered any proof to back this up. The Commission and the parties have too many legitimate issues to resolve in this docket to spend additional time addressing speculative arguments that have no evidentiary support. Moreover, it remains surprising to AIC that the AG would not advocate for ratepayer protections like holdbacks or surety bonds, particularly given the Commission’s recent guidance on the issue. *See* Docket No. 14-0567, Final Order (June 21, 2016) at 25. The AG should be joining the Commission and the utilities in trying to maximize ratepayer protections, instead of casting the issue aside in the name of procuring energy efficiency.

2. Response to ComEd

ComEd seeks Commission approval of its contract templates. ComEd Objections at 4-5. AIC does not object to the relief requested by ComEd and would welcome Commission guidance on acceptable contract terms for IPA vendors. That said, AIC appreciates Commission guidance

³ Indeed, the Commission recently addressed this issue in an energy efficiency reconciliation docket, so this concern is both timely and supported by actual evidence. *See* Docket No. 14-0567, Final Order (June 21, 2016) at 25.

on contracting terms and understands that Commission approval of ComEd’s request for approval of its contract templates would not *require* their use. Accordingly, AIC respectfully requests that the Commission make clear, if necessary, that ComEd’s form contracts are just one acceptable form of agreement, not the only acceptable form of agreement.

3. Response to Staff

Staff requests that the Commission direct the non-financially interested SAG parties to address ways in which the bid review process could be refined to insulate both the utilities and ratepayers from performance risks. Staff Objections at 20-21. In particular, Staff suggests that the past performance threshold—the amount of projected savings which a vendor must have actually achieved in a prior year in order to qualify for bid consideration in a later year—could be raised substantially from 5% in order to encourage bidders to bid realistic savings estimates. AIC concurs with Staff (and notes that the use of the 5% holdback is recognized by Staff to be a useful tool in protecting ratepayers) and notes that this issue should be the subject of workshops in the next IPA Plan cycle (i.e., after the Commission issues its Final Order in this docket).

E. Section 9.5.3: Review of Ameren Illinois TRC Analysis

1. Response to AG

(a) EM&V Cap

The AG argues that AIC’s 3.97% adder “exceeds the statutory cap for EM&V of 3 percent.” AG Objections at 9. There is no statutory cap for EM&V. The AG cites to Section 5/8-103(f)(7) as support, but this is an IPA Plan docket, and Section 5/8-103(f)(7) does not control. There is no such cap in Section 5/16-111.5B. The AG offers no legal argument beyond the unsupported assertion that a “cap . . . which the General Assembly deemed reasonable in its consideration of Section 8-103 programs” must also apply to Section 5/16-111.5B, because “[i]t is unclear why” the situations would be treated differently. If that is true, then the AG should

also be advocating that the cap on estimated average annual rate increases associated with energy efficiency measures, set forth in Section 5/8-103(d), should apply to the IPA IEE procurement. In any event, as the IPA Plan rightly recognizes, what matters is that the input used by AIC matches up with tracked costs. And it does. The Commission should therefore disregard the AG's statements on this issue as another non-issue that does not need resolution.

(b) Transparency of TRC Analyses

Here, the AG makes two points. The AG argues that AIC should include transmission and distribution costs in its comparison to the “analysis 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,” 220 ILCS 5/16-111.5B(a)(3)(E); *see* AG Objections at 9. And the AG further claims that “[i]n general, it is unclear what Ameren's assumptions were regarding avoided costs in its TRC calculation[,]” and that “it is unclear to the People why these inputs are kept confidential.” AG Objections at 9. Neither contention has any merit.

With respect to the Cost of Supply (“COS”) issue, the AG forgets that supply, transmission, and distribution are three different components of the electric service AIC provides to customers, and the associated *costs* are likewise three different components of the *cost* of the electric service AIC provides to customers. The Act provides that a utility must provide the IPA (and the Commission) with an “analysis 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*.” 220 ILCS 5/16-111.5B(a)(3)(E) (emphasis added). Elsewhere, it makes clear that the transmission and distribution should be considered, as well. For example, it also requires the utilities to provide the IPA (and the Commission) with an “[a]nalysis showing that the new or expanded cost-effective energy efficiency programs or measures would lead to a

reduction in the *overall cost of electric service.*” 220 ILCS 5/16-111.5B(a)(3)(D) (emphasis added). And the TRC test, as every stakeholder (including AIC) agrees, includes all of the above.

When one subpart of a particular statute references the “overall cost of *electric service*”—an amount that clearly includes the costs of supply, transmission *and* distribution—and the very next subpart references the “cost of comparable *supply*,” they cannot mean the same thing. *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). Instead, the plain meaning is that the term “cost of comparable supply” means what it says, and *not* “the cost of comparable supply plus transmission plus distribution,” as the AG now advocates. Moreover, the Commission already used AIC’s COS analysis as a basis for the exclusion of cost-effective programs in last year’s IPA Plan docket. *See* Docket No. 15-0541, Final Order (12/16/2015) at 100-103 (e.g., “The only reduction in the cost of electric service that would take place with energy efficiency programs that are more expensive than electricity would be to shift the cost of electricity onto the purchase of energy efficiency, at a greater price. Procurement of such energy efficiency programs seems to contravene the spirit, if not the letter, of this portion of the statute.”).

Faced with that precedent, the AG’s only legal reference in support of its position is to Section 5/8-103(a), which states that “[r]equiring investment in cost-effective energy efficiency and demand-response measures will reduce direct and indirect costs to consumers by decreasing environmental impacts and by avoiding or delaying the need for new generation, transmission, and distribution infrastructure.” 220 ILCS 5/8-103(a). But the AG’s reliance on that provision in this context is misplaced.

First, the AG is citing to Section 5/8-103, yet again, for authority in a Section 5/16-111.5B docket, without any showing of why the statements contained therein should apply. Such undeveloped arguments should not be considered. *People v. Butler*, 354 Ill. App. 3d 57, 68, 819 N.E.2d 1133, 1142 (Ill. App. Ct. 1st Dist. 2004) (“this argument is undeveloped and the defendant failed to cite any supporting authority. As a consequence, the argument is waived.”).

Second, the reference to “avoided transmission and distribution infrastructure,” in the language quoted by the AG, is clearly tied to the earlier reference to “cost-effective energy efficiency and demand-response measures.” 220 ILCS 5/8-103(a). “Cost-effective” means that the programs pass the TRC test, and every party in this docket—indeed, every entity involved with energy efficiency policy in Illinois—knows that avoided transmission and distribution costs *are* included in the TRC calculation. That issue is not in dispute and proves nothing when addressing the COS issue.

Third, even if the introductory language from Section 5/8-103(a) were to apply to Section 5.16-111.5B, it could not in any way convert the meaning of Section 5/16-111.5B(a)(3)(E) to anything other than what its plain language says. That is because the specific controls the general, *see Weber v. Winnebago County Officers Electoral Bd.*, 966 N.E.2d 462, 469, 2012 Ill. App. LEXIS 123, *18, 2012 IL App (2d) 120051, ¶ 23 (Ill. App. Ct. 2d Dist. 2012), and because the more recently enacted of two conflicting statutes will prevail, *see County of Macon v. Edgcomb*, 654 N.E.2d 598, 602 (Ill. 1995). In other words, even if something in the header paragraph of Section 5/8-103 *could* be read to conflict with Section 5/16-111.5B’s specific, explicit directive to provide a comparison to the cost of *supply*, it would make no difference, because the newer, narrower directive controls.

In short, the AG's arguments are unavailing, and the Commission should reject this challenge, as well as any future challenges, to the current method for the calculation of the cost of supply.

Turning to the AG's contentions regarding AIC's avoided costs more generally, it is important to note that, contrary to its representations, the AG knows exactly why avoided costs are confidential. AG Objections at 10. AIC's avoided costs are based on competitive and sensitive information, like AIC's pricing curves. The Commission has, time and again, found such information falls within the kind that should be protected. *See, e.g.*, Docket No. 98-0116, Interim Order (May 6, 1998) at 2-3 (declaring confidential and proprietary information relating to (i) a public utility's prices of sales for resale, (ii) a public utility's prices for purchases for resale and (iii) a public utility's power production costs). The AG's request should be rejected for that reason alone. Beyond that, the AG has a choice. Because AIC's supply curves and avoided costs information are clearly confidential, they cannot be disclosed to the public. If the AG strongly feels that AIC needs to disclose a number to the public, however, AIC can cease using actual data as a basis for those inputs, and instead use "estimates" that do not reflect reality, as some utilities in the State have chosen to do. That approach does offer increased transparency, but it is not an improvement, because total transparency—especially total transparency based on artificial placeholder inputs—has downsides. One of the primary drivers of a program's acceptance into the IPA Plan is its attainment of a TRC value greater than 1.0. If all of the utility-side inputs are known to the bidders in detail, then these for-profit marketplace participants will be free to craft their non-duplicative, non-competing bids in such a way as to pass the TRC test with a value as close to 1.0 as possible, thereby increasing the "costs" they recoup from Illinois ratepayers, and therefore their own profits, at the expense of lost benefits.

The Commission should disregard the AG’s arguments regarding the purported “transparency” issue that has been raised.

F. Section 9.5.4.1: Policy Implications

1. Response to AG

As previously highlighted by both AIC and the Staff, certain programs included in this year’s IPA Plan involve the cross-subsidization of gas savings by electric ratepayers. *See* AIC Objections at 17-18; Staff Objections at 16-18. That is contrary to the overarching principles of the Act. *Id.* The Commission has already determined that it has the discretion to exclude otherwise cost-effective programs from the final IPA plan for various reasons, including that a program produces a COS or UCT value less than one. AIC Objections at 10-11; Staff Objections at 16-18. And AIC and Staff have taken the position that cross-subsidization—whether measured through the COS analysis or some other device—is another suitable basis for the exclusion of a program.

Those parties—the AG, the IPA, and NRDC—which are engaging Staff and AIC in the debate about how “gas savings” should factor into the Commission’s analysis seem to be missing the key issue. The IPA and the AG simply insist that gas savings should be included in the cost-effectiveness test, otherwise known as the TRC test. *See* AG Objections at 10 (“As the IPA notes, ‘cost-effective’ means that the measures satisfy the total resource cost test, which requires that the TRC analysis count, as a benefit, ‘other quantifiable societal benefits, including avoided natural gas utility costs.’”) As AIC has already stated many times in this proceeding, that is a point of consensus—AIC has included and will continue to include gas savings in the TRC analysis of electric programs. But the TRC test is also wholly irrelevant to the issue of cross-subsidization, and to whether the Commission, which is analyzing bids already found to be cost-effective by the IPA, should exclude any such bids from the final approved plan.

As AIC and Staff have already explained at length, the UCT and COS analyses—and the electric-only TRC test which AIC ran in the course of its bid analysis—are not replacements for the TRC test. Staff Objections at 16-18; AIC Objections at 9-13. They are not new screening devices which the IPA *must* use to eliminate programs from the plan it submits to the Commission. They are additional considerations provided to assist the Commission in exercising its discretion when deciding whether to approve particular Section 5/16-111.5B programs or measures, and they are firmly grounded in the plain language of the Act. *See* 220 ILCS 5/16-111.5B(D), (E); 220 ILCS 5/1-102(d)(iii) (stating the principal of “[e]quity,” meaning “the 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[.]”). And, when those measures suggest that a program requires the cross-subsidization of gas savings by electric-only ratepayers, it is within the Commission’s discretion to exclude the program on that basis.

2. Response to NRDC

NRDC, like the AG, wrote to address the gas savings issue. NRDC has taken the position that, to the extent a non-TRC test is used to measure cross-subsidization, it should be the UCT, rather than an electric-only TRC test. According to NRDC, “an electric only TRC compares all costs—including both the program costs and the portion of measure costs that are borne by program participants—to electric benefits alone.” NRDC Objections at 2. That much is true. But NRDC goes on to state, “Such a test does not make sense as a means of assessing whether cross-subsidization of gas customers by electric customers is a concern.” *Id.* In part, NRDC’s criticism is based on the “skew” that occurs when “other non-electric benefits (e.g., gas savings) that accrue to [program] participants are not considered.” But that is exactly why an electric-only TRC test is valuable to discern the existence of cross-subsidization. It compares *all* of the program costs (all of which, in the context of Section 5/16-111.5B, are borne by electric

ratepayers) to the *electric* benefits (which are the benefits electric ratepayers get in exchange for bearing all of the costs). In this way, the Commission can see whether a program is cost-effective under the TRC test only because electric ratepayers are paying for benefits that accrue to gas customers, and not to them.

That said, AIC agrees that the UCT is a useful metric in this context. Indeed, AIC does not believe it is an either-or question, and that both the UCT and the electric-only TRC analysis can be useful to the Commission in ferreting out cross-subsidization. The Commission does not have to choose one over the other.

G. Section 9.5.4.3: Behavioral Program (OPower)

1. Response to Staff

Staff, like AIC, recommends that the Commission reject the bundled OPower behavioral modification program for a number of reasons. Staff Objections at 16-18. Staff notes that the Continuation Program, standing alone, passes the TRC test only when gas savings are included, fails the COS analysis, and fails the UCT analysis. Staff Objections at 16. And, when the Continuation Program is bundled with the Expansion Program, the bundle fails the COS analysis. Staff Objections at 16-17. Just as important, Staff notes that customers who have already been participating in OPower's behavioral modification program for several years may already have retained the benefits of the program in terms of long-term adaptations to the changes prompted thereby, meaning the additional increase in savings from the continuation of that program will likely be minimal. Staff Objections at 17. AIC agrees with the concerns raised by Staff, and adds that the rejection of the OPower behavioral modification bid will give AIC's independent evaluator a useful opportunity to actually measure the persistence of savings achieved through the program's application, which will aid in determining accurate TRC, UCT and COS values for behavioral modifications in AIC's service territory in the future.

2. Response to the AG

During the first round of filings in this case, the AG joined the IPA in advocating for the inclusion of the OPower behavioral modification program in the IPA Plan. *See* AG Objections at 10-11. For all of the reasons stated in AIC's Verified Comments and Objections, AIC recommends that the Commission exclude the OPower program. *See* AIC Objections at 16-18.

H. Section 9.5.5: Duplicative Programs

1. Response to the AG

The AG advocated, in its Objections, for the full approval of the Franklin Small Business Direct Install ("SBDI") program which the IPA has recommended for conditional approval. AG Objections at 11-12. AIC previously agreed with the IPA's recommendation of a conditional approval on the grounds that the program was duplicative of programs and measures to be included in AIC's Plan 4.

In light of the stipulation filed in ICC Docket No. 16-0413,⁴ which resolves the contents of AIC's Plan 4, AIC would now request that the Franklin-SBDI program (as well the 360 Energy and GDS programs identified in Table 6 to the stipulation filed in Docket No. 16-0413) be conditionally approved as programs that are incremental to AIC's Plan 4 SBDI programs, subject to the Commission approving a Plan 4 that is consistent with the stipulation.

II. CONCLUSION

For the reasons set forth above, Ameren Illinois Company respectfully requests that the Commission adopt the positions and modifications set forth in AIC's Verified Comments and Objections, consistent with the arguments set forth herein, and grant any other such relief as is just and equitable.

⁴ The stipulation was filed in Docket No. 16-0413 as "AG Exhibit 1.3" on October 17, 2016.

Dated: October 21, 2016

Respectfully submitted,

AMEREN ILLINOIS COMPANY
d/b/a Ameren Illinois

By: /s/ Daniel V. Bradley
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VERIFICATION

I, Richard L. McCartney, certify that: (i) I have read the attached Verified Response to 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.

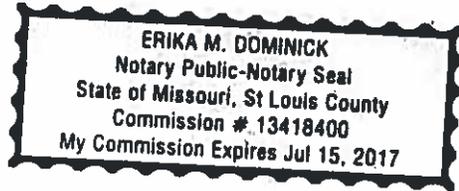
Richard L. McCartney

NAME

Director, Power Supply
Ameren Illinois Company

SUBSCRIBED and SWORN to before
me this 20 day of October, 2016.

Erika M. Dominick
Notary Public



My commission expires: 7/15/17

VERIFICATION

I, Keith A. Martin, certify that: (i) I have read the attached Verified Response to 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 A. Martin
NAME

SUBSCRIBED and SWORN to before
me this 21st day of October, 2016.

Ana M Lippert
Notary Public



My commission expires: 10.20.20

CERTIFICATE OF SERVICE

I, Daniel V. Bradley, an attorney, certify that a copy of the foregoing Verified Response to Objections was filed on the Illinois Commerce Commission's e-docket and was served electronically to all parties of record in this docket on this 21st day of October, 2016.

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