STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

Illinois Power Agency	)	
	)	ICC Docket No. 16-0453
Petition for Approval of the 2017 IPA Procurement Plan Pursuant to Section 16-111.5(d)(4) of the Public Utilities Act	)))	

VERIFIED RESPONSE TO OBJECTIONS
ON BEHALF OF THE ILLINOIS POWER AGENCY

The Illinois Power Agency ("IPA" or "Agency"), by and through its attorney, respectfully submits its Verified Response to Parties' Objections. These Objections relate to the 2017 Procurement Plan ("2017 Plan") submitted by the Illinois Power Agency for Illinois Commerce Commission ("ICC" or "Commission") approval on September 27, 2016, as provided for in Section 16-111.5(d)(3) of the Public Utilities Act ("PUA"). (*See* 220 ILCS 5/16-111.5(d)).

INTRODUCTION

The IPA's 2017 Plan is the ninth annual plan that the Agency has submitted for Commission approval. As with the IPA's 2016 Plan, no substantial objections in this year's proceeding relate to the IPA's core mission: the procurement strategy for "standard wholesale products" (such as energy and capacity) to meet the load requirements of the eligible retail customers of participating utilities. Instead, objections received related to the Agency's renewable energy resource procurement strategy and, primarily, incremental energy efficiency programs under Section 16-111.5B of the PUA.

Eight parties filed objections to the 2017 Plan: the Staff of the Illinois Commerce Commission ("Staff"); Commonwealth Edison ("ComEd"); Ameren Illinois Company ("AIC" or "Ameren"); MidAmerican Energy Company ("MEC" or "MidAmerican"); the Environmental Law & Policy Center ("ELPC"); the Natural Resources Defense Council ("NRDC"); the People of the State of Illinois ("AG"); and three renewable energy suppliers ("RS" or "Renewable Suppliers"). Of these, both MEC and ELPC provided no objections to any portion of the 2017 Plan in their filings, leaving six parties as having actually objected to portions of the 2017 Plan.

The IPA genuinely appreciates each party's feedback and attempts to improve the 2017 Plan. In preparing the Agency's Response, careful analysis and consideration was given to the arguments contained in parties Objections. To the extent that not all objections or comments are addressed herein, the failure of the IPA to address a particular argument should not be construed as agreement or acquiescence.

DISCUSSION

I. RENEWABLE ENERGY RESOURCE PROCUREMENT (CHAPTER 8)

Objections related to the procurement of renewable energy resources pursuant to Section 1-75(c) of the IPA Act generally concern the IPA's proposal to conduct two distributed generation ("DG") renewable energy credit ("REC") procurements using an updated approach from that utilized in prior years in an effort to boost procurement participation and success. Other objections connect back to the DG procurement process, but focus on the utilization or calculation of the portion of hourly ACP funds proposed to be mobilized for those procurement events. Those objections are addressed by party below.

The Renewables Suppliers, a coalition of three renewable energy companies that hold long-term bundled (i.e., REC and energy) power purchase agreements with ComEd and Ameren resulting from an IPA procurement conducted in 2010 (the "LTPPAs"), expressed concerns related to the availability of alternative compliance payments collected from hourly rate customers pursuant to Section 1-75(c)(5) of the Illinois Power Agency Act ("IPA Act") for use to purchase RECs in the unlikely event that a curtailment of the LTPPAs is required.

To be clear, the IPA's proposal to procure curtailed RECs using hourly ACP funds is merely that—a proposal. This approach was initially proposed in the 2013 Procurement Plan and adopted as a convenient mechanism for addressing an unexpected problem resulting from massive load migration due to municipal aggregation and its resulting impact on the state renewable energy portfolio standard's rate impact cap, and as a more palatable alternative than modifying existing contracts. Hourly ACP funds had been collected but were not earmarked for any other use, and their utilization for this purpose represented a convenient solution to an unfortunate challenge. But the use of hourly ACP funds to purchase curtailed RECs is not a statutory obligation, it is not a contractual obligation, and its approval in Docket No. 13-0546 was based only upon the record in that proceeding (in which no other use of hourly ACP funds was being considered) and was not necessarily intended to be binding upon each subsequent procurement plan or any future use of hourly ACP funds.[1]

Alternatively, the IPA has a clear, immutable statutory obligation to procure renewable energy credits from distributed generation systems. (See 20 ILCS 3855/1-75(c)(1); Docket No. 15-0544, Final Order dated December 16, 2015 at 123). Under the IPA Act, the "procurement of renewable energy resources from distributed renewable energy generation devices shall be done on an annual basis through multi-year contracts of no less than 5 years." (20 ILCS 3855/1-75(c)(1)). But as the Commission has repeatedly held, any use of the Renewable Resources Budget for new contracts beyond one year in length would be inappropriate given the ongoing curtailment risk for the existing LTPPAs that could result from an over commitment in future

[1] Curtailments that triggered the use of ComEd's hourly ACP funds to purchase LTPPTA RECs occurred in the 2013-2014 and the 2014-2015 delivery years, but have not occurred since then. Ameren has not experienced a curtailment.

years of the Renewable Resources Budget due to changes in the eligible retail customer load. (See, e.g., Docket No. 14-0588, Final Order dated December 17, 2014 at 286).

Faced with a statutory obligation to procure RECs from DG systems through 5-year (or longer) contracts but without reliable availability of the Renewable Resource Budget, the IPA is left with no choice than to utilize already-collected, utility-held hourly ACP funds for that longer-term procurement.[2] Already-collected hourly ACP funds feature no risk of diminishment through load migration (and carry no appropriation or diversion risk as they are held by the utility, and not the state), making certain their availability for future years of a five-year contract. And while in the unlikely event of a curtailment, the Renewable Suppliers could receive full (or very nearly full) value for curtailed RECs through the IPA's procurement of those curtailed RECs using the Renewable Energy Resources Fund (as done by the Agency in 2013) or through the sale of those RECs in other markets or to other parties, only utility funds could be utilized to meet Section 1-75(c)'s statutory targets.[3]

Against that backdrop, the IPA believes that the 2017 Plan contains proposals quite generous to existing LTPPA holders. The Agency could have proposed that the new DG contract process take clear precedence over the purchase of curtailed RECs using hourly ACP funds, but it did not. The Agency could have proposed that any curtailed RECs be purchased only through the RERF while hourly ACP funds would be used for other purposes, but it did not. The 2017 Plan features a balanced, thoughtful approach to competing concerns that prioritizes making LTPPA holders whole, but not at the expense of meeting immutable statutory requirements.

[2] This choice is limited to ComEd and Ameren. MidAmerican does not have any LTPPAs, and has very limited customer switching, so for MidAmerican, use of the Renewable Resources Budget for DG contracts does not pose the same risk.
[3] Indeed, based on this reasoning, the IPA's proposed approach for using hourly ACP funds for a DG procurement was likewise proposed (and ultimately approved) in the IPA's 2015 and 2016 Procurement Plans.

Turning to the specific proposals of the Renewable Suppliers, the Renewable Suppliers first argue that the IPA must specify that its first DG procurement must take place after the March load forecasts are received and a determination on the necessity of curtailment is made. (RS Objections at 3-4). IPA procurements are scheduled and conducted based upon the availability of internal and external resources, the timetable for contract development and completion, maximizing bidder participation, and other concerns related to meeting statutory requirements at the lowest total cost over time. IPA procurements have never been, and must never be, scheduled based upon the narrow financial interests of non-participants. While the IPA believes it is unlikely that its first DG procurement will be conducted before March 15, it must retain the right to schedule its procurements based upon criteria related to the success of the procurement itself—and not based on the needs of three entities already holding LTPPAs.

Second, the Renewable Suppliers request specificity around how the amount of hourly ACP funds allocated to the purchase of curtailed LTPPA RECs should be determined, as the actual price of those RECs would not be known. To this end, they propose that "the amount of the utility's accumulated hourly ACP Funds to be allocated to purchasing curtailed LTPPA RECs during 2017-2018 should be 110% of the estimated amount needed to purchase curtailed RECs" (RS Objections at 4); the IPA does not object to this request for clarification, and believes that 110% constitutes a reasonable amount.

Third, the Renewable Suppliers raise an utterly absurd argument that despite Commission Orders and administratively approved IPA Procurement Plans unambiguously designating hourly ACP funds as the source of funding for prior DG contracts, such a designation may be meaningless unless later expressly stated in the contracts themselves (as though the final administrative actions of the Commission are not binding upon the utilities unless manifest in contract—the implications of which would reach far beyond this issue). This line of reasoning culminates in a request that future DG procurement contracts must include a clause stating that such contracts are "subject to and subordinate to the use of Hourly ACP Funds to purchase curtailed RECs, should any curtailments of purchases under the LTPPAs be required during the five-year period." (RS Objections at 6). The IPA strongly objects to this request. Using hourly ACP funds for DG procurements constitutes the only available pathway to meet an immutable statutory requirement; using hourly ACP funds to purchase curtailed RECs constitutes one (of many) pragmatic solutions to addressing an unfortunate and unexpected problem for certain existing contract holders.[4] Further, adoption of this request would require new curtailment provisions to be included in DG contracts (as funding for such contracts would now be subject to the status of LTPPA curtailments). This undermines the very purpose of using hourly ACP funds for five-year DG contracts: the certainty of available funds so as to avoid creating any new curtailment risks. As this proposal would inappropriately prioritize the limited financial interests of LTPPA holders over the IPA's availability to use collected funds for the intended purpose of meeting statutory targets, it must be rejected.

While not specifically objecting to the IPA holding two DG procurements in 2017, Staff suggests that an alternative could be to lengthen the contract terms to offer a combination of 5 and 10 year contracts. (ICC Staff Objections at 4-5). While the IPA appreciates Staff's desire to minimize costs through a longer contract (and agrees that the Supplier Fee in prior DG

[4] And to be clear, while *unexpected*, this problem was not *unforeseen*—each LTPPA contract contains provisions around curtailment (thus demonstrating some acknowledgment of a curtailment risk by contract holders), and a colorable argument exists that curtailment risk may have been priced into bids made for LTPPAs. Indeed, as the Commission stated in its Order on Rehearing in Docket No. 13-0546, "it is clear to the Commission that bidders on the LTPPAs should have known about the possibility of customer switching and curtailments." (Docket No. 13-0546, Order on Rehearing dated June 17, 2014 at 53).

procurements has been higher than ideal),[5] comments received on the draft 2017 Plan—including those from entities that might participate in the DG procurement itself—demonstrated a strong desire for multiple procurements.[6] Although the IPA does not oppose a longer contract term, it cautions that a longer contract term may not necessarily spur additional participation. Additionally, through locking in purchase requirements of RECs from DG systems over a longer period of time, Staff's proposal could have the unintended consequence of stifling efforts to develop new DG systems in future years, as longer obligations would continue to constrain the available budget well into the future.

Staff also states that references to a contingency procurement under the Supplemental Photovoltaic Plan are "confusing" and should be clarified or removed. (Staff Objections at 6). The IPA does not view these references as "confusing," as the contingency supplemental photovoltaic procurement referenced in the 2017 Plan is expressly contemplated in the Supplemental Photovoltaic Procurement Plan approved by Commission in Docket No. 14-0651.[7] While the IPA's three supplemental procurements did *commit* the full $30 million budget, some projects have not been successfully developed by their required deadlines and other projects are still yet to be identified or developed with deadlines still to come.[8] It is not yet clear whether the balance of available funds freed through undeveloped projects will be sufficient to justify

[5] Reducing the supplier fee would be aided by increased participation by bidders, a challenge that many of the IPA's DG procurement reforms are meant to address.
[6] Comments on the Draft 2017 Plan can be found at www.illinois.gov/sites/ipa/Pages/DraftProcurementPlanComments2017.aspx.
[7] For example, Item # 4 of the timeline in Chapter 5 of the Supplemental Photovoltaic Plan reads "Early 2017 (Contingency Event; balance of available funds, possible limitation on categories of systems that may participate)."
[8] The use of funds that had been allocated to projects that are not successfully developed is expressly considered in the Supplemental Photovoltaic Procurement Plan: "the IPA is proposing a fourth, final procurement event (contingency procurement) should there be funds available after the third procurement event due to factors including, but not limited to, participation levels, Commission rejection of previous results, **and failure of bidders to successfully complete systems**." (Supplemental Photovoltaic Procurement Plan at 23, emphasis added.)

holding a contingency procurement event, and the IPA will determine whether to conduct a contingency supplemental procurement in early 2017.

To address Staff's concern, the IPA would support adding additional information and context about the contingency procurement as a footnote in the Plan. The IPA also notes that the Plan as drafted erroneously refers to the contingency procurement as potentially occurring in April 2017 while the SPV Plan describes it as taking place in "early 2017," and thus seeks Commission authorization for a correction to "early 2017" for its Final 2017 Plan.

Ameren Illinois offers several "observations" on proposed credit requirements for the DG procurement. (AIC Objections at 2-3). The first is that should suppliers default on DG contracts, replacement RECs may be required with costs could be potentially higher than the original contracts. Given the nature of DG RECs, the IPA believes that any new shortfalls could easily be accounted for in future procurements, and observes that while the price of "replacement" RECs could be higher, those RECs could be lower in cost as well—especially given the continuing reduction in costs associated with new DG systems. AIC's second observation relates to the difference between the credit requirements proposed for the DG procurement and those required for energy and capacity procurements. The IPA agrees that these proposed credit requirements are fundamentally different and wishes to be clear its proposed DG credit requirements are uniquely tailored to risks posed by a default on a DG REC contract, and should not be used to suggest that the credit requirements for energy and capacity should be changed. A failure to deliver energy or capacity is a fundamentally different (and larger) risk proposition than a failure to deliver DG RECs, and the IPA's DG procurement proposal reflects that difference.

In Objections, ComEd notes that the reporting of ComEd's Hourly ACP Fund balance in the Plan did not properly adjust for the value of the DG contracts entered into in 2015 and requests a correction. (ComEd Objections at 8). The IPA acknowledges this oversight and agrees that this value should be corrected.

II. INCREMENTAL ENERGY EFFICIENCY PROGRAMS (CHAPTER 9)

As in Docket No. 15-0541 (approving the IPA's 2016 Plan), the majority of contested issues in this proceeding concern the approval of incremental energy efficiency programs under Section 16-111.5B of the PUA. As the IPA stated in its Petition:

> On some issues, there are simply philosophical disagreements between parties. The scant guidance provided by a brief, two-page statutory provision leaves direction to the parties somewhat open-ended, and the relative newness of the provision (initially enacted as part of the Energy Infrastructure and Modernization Act in 2011 and revised the next year) has left some language in that provision untested. This has led to competing interpretations between parties and annual requests for Commission direction on contested matters.

(Docket No. 16-0453, IPA Petition at 6). In general, and as noted within the Plan itself, the IPA believes parties have made meaningful progress at reducing contested issues through workshops and ongoing stakeholder advisory group discussions, although both the substantive objections offered and the tone taken in certain filings highlight that clear differences remain.

In addition to seeking specific revisions to the Plan, some objections offered commentary (positive or negative) without any specific proposal for modifying the 2017 Plan. To focus its Response on matters of importance for Commission consideration, the IPA has generally chosen to respond only to proposals seeking 1) to revise the 2017 Plan's content or 2) requiring specific authorizing action from the Commission in approving the Plan. The IPA reserves its right to respond to other objections (including commentary) in subsequent filings, and its decision not to address any item raised in objections should not be viewed as acquiescence to that approach. Specific objections raised by parties are addressed below.

A. 2016 Section 16-111.5B SAG Workshop Subcommittee (Section 9.2)

Staff requests that the Commission should "require Ameren Illinois and ComEd to report all expected Section 16-111.5B costs to the IPA in their Section 16-111.5B energy efficiency assessment submittals" and "require the IPA, based upon this information, to report total expected Section 16-111.5B energy efficiency procurement costs in its procurement plan filings." (Staff Objections at 7-8).[9] The IPA disagrees. The specific requirements of utility energy efficiency assessments and the Procurement Plan are detailed in statute (See 220 ILCS 5/16-111.5B(a)(3)(A-G); 220 ILCS 5/16-111.5(b)(1-4)), and neither listing requires disclosure of these estimates. While the Commission certainly has authority to force parties' filings to include additional items beyond statutory requirements, the IPA believes it should not impose extra-statutory requirements without sound justification.

But in reviewing Staff's offered justifications, Staff readily concedes that this information is irrelevant to understanding the cost-effectiveness of individual energy efficiency programs proposed for approval. Further, Staff makes no argument that this information is a) not available to it, b) not available to other parties, c) not otherwise reported through more appropriate proceedings or filings, or d) could not be reported by the utilities should they elect to do so. Instead, its thin rationale for a new, extra-statutory, prescriptive requirement is merely that the resulting Plan would be "transparent and auditable" without any explanation of who would

[9] By "total expected Section 16-111.5B procurement costs," Staff apparently is referencing costs <u>other</u> than those reported as part of the cost-effectiveness of individual programs (which can already be found in the submittals and Plan), presumably meaning expected administrative costs to be incurred by the utility in its general management of the Section 16-111.5B portfolio.

"audit" the IPA's annual Plan and under what authority, let alone how requiring reporting an estimate of expected utility administrative costs would aid in any audit process. And while the IPA agrees that transparency is generally a laudable goal, this requirement would not create transparency around known information; it would simply require the reporting of best guess estimates that may prove inaccurate, introducing potential confusion with little corresponding benefit. As a result, Staff's proposal should be rejected.

B. 2016 Workshop Consensus Items (Section 9.3)

Both Staff and Ameren Illinois offer comments regarding Commission approval of consensus items included in the 2016 SAG Workshop Report. (Staff Objections at 10-13). Staff simply seeks "explicit" adoption of consensus language from the Commission; as drafted, the Plan calls for the Commission to "expressly approve the consensus items." (2017 Plan at 107). To the extent that "express" and "explicit" are distinct, the Agency favors whatever approach makes consensus item approval more clear.

Ameren Illinois complains that the Agency engaged in "selective highlighting of consensus items" from the 2016 SAG Workshop Report (Appendix H to the 2017 Plan), ignoring that IPA's listing of consensus items was copied directly from "Attachment A: 2016 Section 16-111.5B Energy Efficiency Consensus Items" to that very report. (See Appendix H at 21-24). AIC suggests either: 1) incorporating all consensus language contained throughout Appendix H within the Plan itself; or 2) including no such language, but simply making clear that all consensus language in Appendix H is approved by the Commission. (AIC Objections at 5). The IPA believes that its current approach is sound, and no party contests that approval of the Plan as drafted would *not* result in Commission approval of all consensus language contained in

Appendix H. However, in the interest of reducing contested issues, the IPA would prefer and agrees to AIC's second proposed approach.[10]

C. Policy Issues for Consideration in the 2017 Plan (Section 9.4)

In Objections, the AG seeks for the Commission to "require the Utilities to treat Section 8-103 and Section 16-111.5B contracts the same in terms of ensuring the best contract terms for ratepayers." (AG Objections at 3-7). While the IPA is supportive of the AG's general objective, the IPA is unclear on what the "same treatment" might constitute. Section 8-103 and Section 16-111.5B feature fundamentally distinct statutory schemes; in the former, a utility designs a portfolio every three years with a defined, limited budget, exercising discretion in determining which programs should be included and at what levels for its proposal to the Commission. Alternatively, in the Section 16-111.5B construct, the utility conducts an RFP for third-parties to bid programs every year, with no defined budgets and no subjective discretion for rejecting otherwise cost-effective bids—a more mechanical exercise designed to "fully capture the potential for all achievable cost-effective savings, to the extent practicable." (220 ILCS 5/16-111.5(a)(5)). Expecting one process to mirror the other seems unrealistic and unwise given these differences, as the opportunities for shaping program proposals and resulting contracts occur at different points and with entirely different levers for leverage held by different parties (primarily the utilities under the Section 8-103 construct, and the Commission under Section 16-111.5B).

The IPA is also unconvinced that "contract scrutiny" or "ensuring the best contract terms" has been a problem for utility contracts with Section 16-111.5B vendors, at least recently. If anything, disputes over the past year have centered on whether new, more protective contract

[10] While not substantively problematic, the IPA believes that the volume of new language folded in through the first approach would make the Plan less focused and more unwieldly, and thus should be avoided.

terms – such as withholding up-front payments, cybersecurity requirements, surety bonds, and other hold-back provisions – have erred too far on the side of protecting against risks of non-performance at the expense of vendor participation. Additional RFP requirements signaling to potential bidders that the utilities will scrutinize and seek to adjust proposed terms based upon utility review of proposals could have a strong chilling effect on vendor participation. Further, this new layer of review and scrutiny would empower the utilities with new gatekeeping responsibilities not envisioned by a statutory scheme focused on fully capturing all available cost-effective energy efficiency through an objective analysis of proposals received from the competitive marketplace. To the extent that "scrutiny" may manifest itself in "subjectivity" in evaluating a proposal, this appears to be exactly what the statutory scheme is designed to avoid.

The IPA is additionally concerned that this approach could result in bids misaligned with a vendor's actual capacity or optimal approach. As the IPA stated in its Plan:

> Post-bid negotiations, however, could create significant challenges with successful implementation. With the requirement that the utilities provide an assessment of the bids to the IPA by July 15 of each year, there is limited time available to utilities to undertake such negotiations after a bid is received. Further, the Agency fears that bidders could use a negotiation process as an opportunity to change an initially submitted proposal into something fundamentally different and less connected to the bidder's actual capacity just to attain program approval. Worse still, that dynamic that could eventually result in proposed initial program designs which reflect a bidder's best-case scenario, submitted under the understanding that should the utilities or others be uncomfortable with assumptions made in that proposal (or should that initial proposal fail the TRC), there exists room for negotiation.

(2017 Plan at 111). These concerns relate to *post-bid* negotiations; *post-Plan approval* negotiations (also floated by the AG in Objections) could yield even less benefit, as the bidder would have the backstop of a Commission Order already approving its cost-effective bid.

Additionally, if all savings estimates and program design elements would be subject to a new layer of utility scrutiny, how would this impact participation from the "local vendors of limited size" already worried about strict contract terms? (See AG Objections at 7-9). The IPA appreciates and generally agrees with the concerns identified by the AG in that section of its

Objections.[11] But given that the development and submittal of a proposal alone can constitute a significant allocation of resources for a smaller vendor, introducing further uncertainty about that proposal's fate through a new layer of scrutiny could easily dissuade that entity from participating—badly frustrating the AG's second objection at the expense of its first.

While the IPA understands and appreciates the spirit of the AG's request, the Agency believes that the ends sought through the "same treatment" may be best accomplished through maximizing participation in the Section 16-111.5B solicitation process, leading to increased competition and the best possible program designs and terms. As the IPA also stated in its Plan:

> Based upon the IPA's experience with its other procurements (e.g., block energy, capacity, renewables), the best mechanism for driving bidders to produce the most honest and accurate proposals oriented around minimizing costs and maximizing benefits may instead be through having clear and explicit processes and rules, and increasing participation to encourage competition between bidders. That approach can drive positive results even if a bid's proposed terms are fixed. Such improvements could perhaps be achieved through improvements to the RFP process as suggested above, although the IPA acknowledges that not every potential third-party energy efficiency program features a cadre of capable bidders equipped to compete. Nevertheless, further examination of this issue may be warranted, and while the IPA is not recommending requiring a post-bid negotiation process at this time, other parties may have more specific proposals worth of consideration in the Plan approval proceeding.

(2017 Plan at 112). Based upon the foregoing, the IPA believes that the AG's request that the Commission mandate that the "same level of scrutiny" between Section 8-103 and Section 16-111.5B be applied to "ensure that these programs are as cost-effective" should be rejected.

D. Ameren Illinois Section 16-111.5B Programs (Section 9.5)

1. Behavioral and DCV Programs (Section 9.5.4)

Staff and AIC both object to the IPA's inclusion of two programs featuring non-incidental levels of gas savings: a demand-based control ventilation program, and a behavior

[11] However, the Agency does not fully understand the relief sought by the AG in this section; the AG asks the Commission to "seek specific evidence on what constitutes the right balance" of interests in EE contract provisions (AG Objections at 8), but absent an evidentiary hearing (and the Commission has already determined that an evidentiary hearing is unnecessary, and no request for an evidentiary hearing was made), it is unclear how that evidence could be collected or would be utilized in a Commission Order providing further direction.

modification program. The IPA concedes that the demand-based control ventilation program may prove to be "duplicative" of a program proposed by Ameren Illinois in its Section 8-103 filing (should that filing be approved), and thus should only be conditionally approved by the Commission. Further, the IPA understands that parties to that proceeding have reached a stipulated settlement agreement, and thus the demand-based control ventilation program may no longer be a contested matter. But the behavior modification program would not be "duplicative" of a Section 8-103 program, and the IPA believes it should be included in the 2017 Plan.

In assessing whether to reject cost-effective programs on the basis of non-incidental gas savings, the Commission has two questions to consider: 1) whether the Commission has the statutory authority to exercise discretion to reject cost-effective programs on this basis; and 2) assuming it has such discretion, whether it should exercise that discretion for the specific proposal at issue in this year's proceeding. Mirroring arguments offered by the Agency last year, the IPA continues to believe that the governing law does not offer the Commission discretion of this nature. But should the Commission conclude that it has the discretion posited by AIC and Staff, the IPA believes that it would be inappropriate to utilize that discretion to reject the cost-effective behavioral modification program proposal made for the 2017 Plan.

With respect to the first question, Section 16-111.5B states that the Illinois Commerce Commission "shall also approve the energy efficiency programs and measures included in the procurement plan, including the annual energy savings goal, if the Commission determines they fully capture the potential for all achievable cost-effective savings, to the extent practicable, and otherwise satisfy the requirements of Section 8-103 of this Act." (220 ILCS 5/16-111.5B(a)(5)). Indeed, the IPA agrees with AIC and Staff that Commission does have *some* discretion to exclude cost-effective energy efficiency programs under this language—but only if the

Commission *does not* conclude that such a program's inclusion would result in "fully captur[ing] the potential for all achievable cost-effective savings, to the extent practicable, and otherwise satisfy the requirements of Section 8-103 of [the Public Utilities Act]." In interpreting this language, the Agency believes that the following principles must apply: 1) as it is undefined in the law, the plain language meaning of the term "practicable" (that is, "capable of being put into practice or of being done or accomplished")[12] must be utilized; and 2) any discretion exercised on the grounds of program's inclusion failing to be "practicable" must be exercised against the backdrop of language mandating that the Plan "fully capture the potential for all achievable cost-effective savings." As a result, the Commission's inquiry must focus on whether the energy efficiency program proposed under Section 16-111.5B is "capable of being put into practice or being done or accomplished," with a standing presumption that cost-effective programs should be approved if possible—and not based an analysis of whether approving the program constitutes good public policy in the view of Ameren, Staff, or other parties. As cost-effective energy efficiency programs featuring non-incidental levels of gas savings are still "fully capable of being accomplished" (i.e., "practicable"), and given that their exclusion would result in failing to "fully capture the potential for all achievable cost-effective savings," excluding programs on this basis would be inconsistent Illinois law.

And while the Illinois Power Agency is not the entity tasked with determining whether to exercise that discretion, the Agency would strongly prefer that Commission Orders approving its procurement plans not be unnecessarily subject to appeal through reaching conclusions inconsistent with governing law. To address a concern raised by AIC, the IPA fully understands its role versus that of the Commission. The IPA proposes a Plan, the Commission approves that Plan, and for Section 16-111.5B programs, discretion is exercised by the Commission and not

[12] Definition taken from Merriam-Webster (www.merriam-webster.com)

the Agency. But the IPA nevertheless has a very strong interest in the stability and integrity of its procurement process, and those principles are undermined when the governing law is disregarded. As a result, the Agency's positions in taken in its Plan and in this proceeding are informed by a firm belief that Illinois law should and must be followed, and one role for the Agency in this proceeding is as a zealous advocate for ensuring that the resulting Commission Order follows state law.

Nevertheless, the IPA acknowledges that in Docket No. 15-0541, the Commission adopted a broader view of its discretion, viewing this language as allowing it to set "practical" limitations on the procurement of cost-effective energy efficiency programs. On this basis, the Commission authorized the rejection of two proposals on the basis of AIC's new "cost of supply" analysis developed for that year's submittal. While the IPA believes this determination was inconsistent with the statute, should the Commission feel that this approach affords it broad enough discretion to disqualify programs with non-incidental gas savings, the IPA believes that it the Commission should not do so for the behavioral program included in the 2017 Plan.

Turning to that program, the IPA understands and appreciates AIC's concerns regarding cross-subsidization. Electric ratepayers subsidizing gas ratepayers through the approval of any programs primarily benefitting gas ratepayers is problematic. While the extent to which it can be limited under the Section 16-111.5B paradigm necessitates a close examination of governing law (and not merely an identification of policy concerns, as done by AIC in its Objections), there are indeed legitimate arguments on both sides. As a result, the IPA would support workshops after the conclusion of this proceeding undertaken in an effort to reach consensus regarding what level of gas savings are permissible in future years' bids.

But optimizing program delivery (and thus providing the greatest possible value to ratepayers at the lowest possible cost) may require programs to feature multiple types of savings. To that point, there is no statutory bar against the consideration of dual-fuel programs under Section 16-111.5B, only a requirement that such programs be "cost-effective" when "other quantifiable societal benefits, including avoided natural gas utility costs" are taken into account. (See 220 ILCS 5/16-111.5B(b); 20 ILCS 3855/1-10). While combining funding from both electric and gas portfolios may be the optimal solution, funding under a Section 8-104 portfolio may not always be available for dual-fuel programs.

With respect to the specific behavior modification program recommended by AIC and Staff for disqualification, as a threshold matter, the IPA believes that this program is best evaluated as bid by the bidder itself. This "as bid" approach requires both a) the continuation of the existing Planning Year 9 program and b) the choice of one of multiple expansions into all-electric households (further increasing the focus on electric savings specifically). While this bidder created self-inflicted confusion through assembling its bid in this oddly segmented manner, the language of the bid makes sufficiently clear that the "expansions" are not proposed as standalone programs, and should be analyzed in conjunction with the "continuation." To maximize participation, the IPA chose the largest of the available expansions for inclusion, and the resulting program featured a TRC Test result of 1.17.

As explained in the Plan, when normalized on a BTU basis, half of the projected energy savings result from reductions in gas usage. But when savings are considered in dollar terms (i.e., the focus is on benefits), a significantly higher proportion of benefits accrue to electric ratepayers than gas ratepayers despite the presence of non-incidental levels of gas savings. As these programs primarily benefit electric ratepayers, not gas ratepayers, the IPA believes that if the Commission indeed has the discretion to disqualify programs on the basis of non-incidental gas savings, exercising that discretion over this program would not be in the best interest of electric ratepayers and the behavior modification program should remain in the Plan.

While parsing the program as recommended by Staff (i.e., evaluating and approving only the expansion) may be attractive insofar as the expansion appears to be the stronger component, it is unclear whether the expansion standing alone would feature a different cost structure or necessitate a different program design if not coupled with the continuation (as was originally bid). This underscores one of the challenges manipulating bids after their receipt, an approach also suggested by the AG in its Objections: the bidder is far more knowledgeable about the impacts of bid modifications than any party or the Commission itself. Without increased participation from the bidders themselves (an ongoing concern highlighted by the Agency in Section 9.4.2 of the Plan), the full implications of those choices are unknowable to the parties in this docket. Given that the bid as originally presented and constructed is cost-effective and that strongest arguments exist for adopting the largest proposed expansion, the IPA believes the program should be evaluated and approved consistent with its approach taken in the Plan and need not be parsed as recommended by Staff.

In connection with this analysis, NRDC expressed concerns related to the IPA's alleged use of an "electric only TRC as the secondary test" in its 2017 Plan. (NRDC Objections at 1-3). To be clear, "electric only" TRCs were not provided within the 2017 Plan as a "secondary test" for determining program eligibility for approval. The governing law makes no reference to the development of an "electric only" TRC Test, let alone the use of that calculation in determining program eligibility. "Electric only" TRC calculations were provided in the Plan for illustrative purposes only; to the extent NRDC's Objections focus on the propriety of the UCT versus an "electric only" TRC *for* illustrative purposes, the IPA suggests reporting both UCT test results and "electric only" TRC results in relevant sections.

2. Community Based LED Program (Section 9.5.6)

Ameren recommends that the Community Based LED program be limited to one year rather than three years as proposed by the bidder. (Ameren Objections as 20-21). After reviewing both the initial submittal and the comments on the draft Plan, the IPA suggested an alternative approach that, while keeping the 3-year program length intact, would expressly allow Ameren to reopen the contract on an annual basis. (2017 Plan at 121.)

This program (and its CFL-based predecessor) distributes bulbs to households through Food Banks and gives each participant four bulbs. Families rely on Food Banks in times of financial hardship; some families only rely on the essential services of a Food Bank for a limited time period, while others may have to do so for longer. It is not a static population. Over the one year CFL program and the proposed three years of the LED program, there may be families that only receive bulbs from the program once or twice, while others may have the opportunity more times. The portion of a household's lighting served by this program therefore will inherently vary, but the IPA believes that it is unlikely to reach saturation.[13]

While Ameren does raise valid concerns about the need to evaluate this program and its impact, those concerns arguably apply to any new program design. The IPA believes it would be inefficient to require new program designs to shut down after one year to await evaluation results simply because the efficiency of the approach is not yet known. Further, because the bidder will have already invested the organizational resources to develop relationships with the Food Banks

[13] The number of lamps (e.g., bulbs) per household is estimated to range from 25 in a multifamily home to 62 in a detached single family home. (See US Department of Energy, 2010 U.S. Lighting Market Characterization at 38. Available at: http://www1.eere.energy.gov/buildings/publications/pdfs/ssl/2010-lmc-final-jan-2012.pdf.)

in the Ameren service territory in implementing the CFL program (and those relationships would presumably carry over to the LED program with little incremental cost), the program may be expected to operate more effectively and efficiently in each year after its initial startup.

The IPA appreciates the concerns raised by Ameren, and notes that it did not explicitly reject Ameren's recommendation to approve the program for only one year. Instead, the Agency simply offered an alternative approach. The IPA believes the alternative approach to be preferable, but either outcome would be acceptable.

3. AIC 8-103/8-104 Portfolio Reservations (Section 9.5.8)

AIC spends three full pages of its Objections on a defensive response to the IPA having highlighted a legitimate concern with AIC's requested reservation that it "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." The IPA merely states the following in its Plan:

> This request appears to be a request that 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. It is unclear at this time how this reservation of rights will be applied by Ameren Illinois, but the Agency will approach any such post-hoc assertion of duplicity with an eye toward a request for proposal process that took place without any such overlapping programs having been identified to bidders.

(2017 Plan at 123). The IPA strongly disagrees that this commentary should be stricken from the Plan, as this commentary highlights a legitimate concern to AIC's approach to constructing its Section 8-103 portfolio. In this proceeding, the IPA and AIC have no (known) disagreement over any proposal contained in AIC's Section 8-103 portfolio that currently renders one of its Section 16-111.5B programs as "duplicative." For instances in which a duplicative designation has been offered by the utility, the IPA has agreed that only conditional approval would be appropriate. Nevertheless, the IPA's commentary highlights an important and legitimate challenge with AIC's approach to developing its Section 8-103 portfolio—that it may modify its Section 8-103 portfolio in light of bids received pursuant to Section 16-111.5B, possibly rendering otherwise permissible bids as "duplicative" well after submission. Contrary to AIC's assertion, this is not a necessary consequence of the statutory scheme, nor is AIC's approach the only approach to managing this risk. ComEd, for instance, chose to move several programs wholesale at scale into the Section 16-111.5B portfolio as "expansions;" bidders knew that programs of those types would be "duplicative" and were on notice not to offer such bids. By comparison, bidders responding to AIC's RFP would have no notice of what program types could potentially result in "duplicative" bids, and all programs would stand at an unknowable risk of being disqualified.

This is not to say AIC necessarily must adopt ComEd's approach; it is merely to say that AIC's approach carries important downside for potential bidders, downside additionally highlighted by the AG in its Objections. Because that downside is accurately and appropriately captured in the IPA's alleged "negative commentary," and because AIC's approach would effectively offer it inappropriate veto power over third-party bids intended to be reviewed on the basis of their merits, this commentary should not be stricken from the Plan.

4. AIC EM&V TRC Adder (Section 9.5.3)

The AG requests that the Commission direct Ameren to remove 0.97% from their Evaluation, Measurement and Verification ("EM&V") adder in the TRC to reset that adder to the 3% level required for Section 8-103 programs. (AG Objections at 9). The IPA disagrees that this adjustment would be warranted. Unlike the 3% budget allocation value used in Section 8-103, to calculate the TRC, Ameren used the previous program year's EM&V budget (set at 3%) and applied it to actual spending (which, because lower than forecast, translated into a higher net percentage) to develop an EM&V adder. This approach seems most consistent with the Commission's requirement that administrative cost adders be based on actual administrative costs. (See Docket No. 14-0588, Final Order dated December 17, 2014 at 224-225).

E. ComEd Section 16-111.5B Programs (Section 9.6)

1. Middle School Energy Education Campaign and Low Income Multifamily Retrofits Programs (Section 9.6.8)

In arguments somewhat mirroring the discussion of gas benefits above, Staff recommends that two ComEd programs (Middle School Energy Education Campaign Program and Low Income Multifamily Retrofits Program) that do not pass the Utility Cost Test ("UCT") be rejected. (Staff Objections at 18-19). The IPA disagrees. Whatever the policy merits of the UCT, the governing law states that the Commission "shall also approve the energy efficiency programs and measures included in the procurement plan . . . if the Commission determines they fully capture the potential for all achievable cost-effective savings, to the extent practicable." (220 ILCS 5/16-111.5(a)(5)). As a cost-effective program failing the UCT could still be "capable of being put into practice or being done or accomplished," the IPA believes that a program with a TRC test result of greater than 1 but a UCT rest result of less than 1 should be approved by the Commission—especially against the backdrop of a corresponding requirement that "all achievable cost-effective savings" be "fully capture[d]."

Furthermore, a determination that the UCT is provided for informational purposes only has been the IPA's approach for each prior Procurement Plan for which a Section 16-

111.5(a)(3)(D) UCT analysis has been required (See 2016 Plan at 99, 2013; 2015 Plan at 76, 80; 2014 Plan at 87, 89), in addition to the present Plan (See 2017 Plan at 121, 127). UCT results have never been considered a valid basis for barring otherwise cost-effective programs, and nothing in Staff's Objections provides a sound rationale for departing from that well-established approach. The UCT is not the TRC, and the law clearly mandates that the TRC be used to assess the costs and benefits of proposed energy efficiency programs in determining fitness for approval in the IPA's Plan. Had the drafters sought to require additional tests for Section 16-111.5B programs beyond the TRC, they could easily have done so; they did not.

2. ComEd "Performance Risk" Approach (Section 9.6.5)

Staff generally supports the two-step approach developed by ComEd and stakeholders to assess the "performance risk" of certain bids, but has concerns with the 5% past performance standard and its potential impact on future bids. (Staff Objections at 20-21). Staff ultimately recommends approval of that approach for this year but requests that the Commission direct non-financially interested SAG members to address this issue (presumably via a workshop) for future Plans. The IPA agrees with this recommendation, but requests that workshops proceed with the objective that a single approach applicable to both utilities be agreed upon.

3. ComEd Contract Templates

ComEd includes a set of contract templates with its Objections; those templates were also included with ComEd's comments on the IPA's Draft Plan with a request that they be included as an appendix to the IPA's filed Plan. As the IPA explained in its petition:

> While the Agency understands ComEd's desire for clarity on acceptable terms and conditions, procurement plan approval proceedings are 90-day dockets during which a multitude of issues are considered. In deferring total resource cost test methodology

> issues workshops, the Commission has previously recognized that "[a] significant problem with procurement proceedings is the expedited schedule combined with a relatively large number of contested issues and parties," thus making it "difficult for the Commission to deal with complex economic issues" in these proceedings. While contract templates may not present "complex economic issues," opening up all terms and conditions of each contract template to litigation does add additional layers of review and analysis to an already time-constrained proceeding. Given that general guidance from the Commission in combination with the identification and resolution any specific, discrete concerns should achieve the same ends, the IPA felt it was unnecessary to attach ComEd's contract templates to its file Plan.

(Docket No. 16-0453, IPA Petition at 7). Rather than simply attaching a series of forms to a filing, the IPA would have strongly preferred a more pointed identification of what specific concerns necessitated approval of contract templates (especially given that the issue resulting in a prior disallowance for ComEd would seem to have been addressed through withholding up-front payouts to vendors) and highlighting of key terms within templates that ComEd felt could be contentious or problematic. Further, while ComEd cites workshop process conclusion as grounds for contract template approval through this proceeding, these templates were never introduced to the Agency (or presumably any other parties) during the workshop process.

Nevertheless, the Agency recognizes that these templates have now been introduced in this proceeding, are likely to be commented on by parties, and have been presented by ComEd for Commission approval. At this point, the Agency's best role may be to identify any concerns it has on what ComEd has presented. To that end, the Agency states that it has no (known) objections to the content of the contract templates, but reserves the right to modify its position should other parties identify aspects of the templates that may be problematic.

CONCLUSION

The IPA again thanks parties who filed Objections for advancing the discussion of its 2017 Plan and recommends that the Commission resolve Objections consistent with the IPA's positions articulated herein.

Dated: October 21, 2016

Respectfully submitted,

Illinois Power Agency

By:
__/s/ Brian P. Granahan____

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STATE OF ILLINOIS)
)
COUNTY OF COOK)

VERIFICATION

Anthony M. Star, being first duly sworn, on oath deposes and says that he is the Director for the Illinois Power Agency, that the above Verified Response to Objections on Behalf of the Illinois Power Agency has been prepared under his direction, he knows the contents thereof, and that the same is true to the best of his knowledge, information, and belief.

OFFICIAL SEAL
SANJAY J PATEL
NOTARY PUBLIC - STATE OF ILLINOIS
MY COMMISSION EXPIRES:02/06/18

Anthony Star

Anthony M. Star

Subscribed and sworn to me
This 21st day of October, 2016

Sanjay J Patel

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

Illinois Power Agency	)	
	)	ICC Docket No. 16-0453
Petition for Approval of the 2017 IPA	)	
Procurement Plan Pursuant to Section 16-	)	
111.5(d)(4) of the Public Utilities Act	)	

NOTICE OF FILING

Please take notice that on October 21, 2016, the undersigned, an attorney, caused the Verified Response to Objections on Behalf of the Illinois Power Agency to be filed via e-docket with the Chief Clerk of the Illinois Commerce Commission in the above-captioned proceeding:

October 21, 2016

/s/ Brian P. Granahan___
Brian P. Granahan

CERTIFICATE OF SERVICE

I, Brian P. Granahan, an attorney, certify that copies of the foregoing document(s) were served upon the parties on the Illinois Commerce Commission's service list as reflected on eDocket via electronic delivery from 160 N. LaSalle Street, Suite C-504, Chicago, Illinois 60601 on October 21, 2016.

/s/ Brian P. Granahan___
Brian P. Granahan