

STATE OF ILLINOIS  
ILLINOIS COMMERCE COMMISSION

Illinois Power Agency

Docket No. 16-0453

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

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**IPA 2017 Procurement Plan  
NRDC Replies to Responses to Objections  
October 31, 2016**

**A. Improving /Refining Bids (IPA Plan Section 9.4.2)  
Reply to Ameren Response to Objections (pp. 5-11)**

Ameren's Response to the Illinois Attorney General's (AG) Objections regarding its contract terms for efficiency program vendors suggests that its 5% holdback and its 25% surety bond are necessary to protect ratepayers. Indeed, it suggests that the AG should join the utilities "in trying to maximize ratepayer protections, instead of casting the issue aside in the name of procuring energy efficiency." Ameren also chastises the AG for arguing that these contract terms suppress bidder participation without providing any proof that such suppression is occurring.

NRDC has two concerns with these arguments: (1) Ameren's one-dimensional view of what it means to protect ratepayers could cause ratepayers more harm than good; and (2) Ameren is suggesting that the AG be held to a higher standard of proof in its arguments than that to which Ameren is holding itself.

Ameren's arguments about ratepayer protections focus entirely around ensuring ratepayers do not pay a penny for savings that efficiency program vendors do not produce. NRDC understands and agrees that it is important to reduce risk to ratepayers of payment for non-performance (as the AG and other parties likely do as well). However, the risk of payment for non-performance of efficiency programs is only one of several potential risks for ratepayers in the IPA efficiency procurement process. Basic economic theory tells us that Ameren's approach of shifting risk of efficiency program non-performance virtually entirely to program vendors will have the effect of increasing vendor costs. In some cases, such costs may be manifested in increased vendor prices for programs that are still bid into the IPA, with ratepayers still getting cost-effective energy savings but with the magnitude of their cost savings being smaller than they would be if a portion (perhaps even a very modest portion) of the risk of non-performance was borne by ratepayers. In other cases, the cost to vendors of the level of risk that they are asked to bear may be large enough that they choose to not even bid programs that would have been cost-effective under more attractive contract and risk terms. In such cases, ratepayers will simply be stuck with purchasing more expensive supply.

Put simply, the greater the portion of risk of non-performance that is imposed on vendors, the greater the risk that ratepayers will pay more for electric service. It is not at all clear that the *cost savings* to ratepayers resulting from Ameren's current approach of imposing virtually all of the risk of non-performance on vendors is greater than the *cost increases* ratepayers are facing because of (1) higher costs vendors likely charge for the programs they still bid into the IPA, and (2) higher costs ratepayers are paying for supply resources when vendors choose not to bid efficiency programs because of the risk they face under Ameren's contract terms. Indeed, it is not even clear that the benefits of reduced risk to ratepayers from just making all contract 100%

pay-for-performance (i.e. even without holdbacks or surety bonds) – a requirement that both Ameren and Com Ed have now used several years in a row – outweigh the costs (particularly for less risky types of programs).

Even though basic economic theory tells us there are trade-offs, Ameren is correct that there are no publicly available data documenting the magnitude of the trade-offs for ratepayers. However, the absence of definitive “proof” goes both ways. Ameren itself has provided no proof that its approach has been optimized for ratepayers’ benefit. Indeed, it simply asserts – without any data or analysis – that setting its surety bond “at a reasonable level” of 25% “balances risk versus decreased participation by vendors.” Ameren does not even tell us how it defines “balance” in this statement.

It is not surprising that all parties to this debate are challenged in providing data or analysis to support their positions. Vendors are not likely to be willing to publicly share – particularly in proceedings like these – how they price their products and services. Moreover, smaller vendors – those most likely to not be able to accommodate the contract terms Ameren is now using – may not have the resources necessary to participate in proceedings like these. Finally, vendors who see utilities as their clients are likely to be reluctant to publicly challenge their prospective clients in proceedings like these. To address these concerns, NRDC suggests that the Commission instruct the Ameren and Com Ed to jointly fund an independent study of the ratepayer risk-reward trade-offs associated with different ways of addressing and assigning risk for non-performance, with promises to vendors that data collected from them will be considered confidential and “anonymized” in the evaluation report. The scope of work for such a study should be developed through a SAG workshop process.

## **B. Defining “Cost of Supply” (IPA Plan Section 9.5.3)**

### **Reply to Ameren Response to Objections (p. 13)**

In its Response to Objections, Ameren notes that the Commission used the Company’s cost of supply analysis as the basis for excluding programs that were TRC cost-effective from last year’s IPA procurement plan. Ameren then cites the following Commission explanation from its order:

“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.”

The reference in that statement to “at a greater price” would be accurate only if the assessment of the cost of electric service accounted for *all* of the electric system benefits of an efficiency program. As noted in both NRDC’s Objections and its Response to Objections, and in the discussion below, Ameren’s interpretation of the cost of supply excludes important electric system benefits. Thus, Ameren’s analysis of the alternative cost of supply does not tell us whether or not electric ratepayers are better off or not better off as a result of purchase of an efficiency resource.

## **C. Approach to Programs with Gas Savings (IPA Plan Section 9.5.4)**

### **Reply to Ameren Response to Objections (pp. 16-17)**

### **Reply to IPA Response to Objections (pp. 14-20)**

### **Reply to Staff Response to Objections (pp. 11-13)**

#### **1. Limits on Legal Authority to Reject Cost-Effective Programs**

Ameren continues to argue that the Commission has authority to reject programs that are cost-effective (as determined by the statutorily prescribed Total Resource Cost (TRC) test) if the programs involve cross-subsidization of gas savings by electric-only ratepayers. In its original objections, Ameren argued that the Commission had such legal authority because the statutory

requirement that the Commission approve all cost-effective efficiency programs had a “...to the extent practicable” qualifier (Ameren Objections pp. 9-13).

In its response, the IPA very helpfully provides the full context for the “to the extent practicable” language, particularly the language in the statute that precedes it, which states that the 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...” [220 ILCS 5/16-111.5B(a)(5)]

The IPA observes that the “to the extent practicable” limitation applies only to whether the efficiency programs being considered for inclusion in the IPA’s procurement plan “capture the potential for all achievable cost-effective savings”, not whether they may run counter to other policy concerns (including cross-subsidization of gas savings) that Ameren, the Commission or others may have. NRDC concurs that this is the most logical interpretation of the language.

The IPA also states that since the term “practicable” is not defined in the statute, its legal meaning must be interpreted as consistent with its use in the English language, which the IPA cites as being “capable of being put into practice or of being done or accomplished”. Again, that would preclude use of the “to the extent practicable” qualifier to justify rejecting any programs for reasons other than what they are capable of accomplishing – and the fact that a program captures gas savings as well as electricity savings clearly has no bearing on what the program is capable of accomplishing. NRDC concurs with the IPA on this conclusion as well.

## **2. Secondary Tests**

In the event that the Commission disagrees with NRDC and the IPA with regard to whether it has legal authority to reject cost-effective programs that produce gas savings as well

as electricity savings, it is vitally important that the Commission use a “secondary test” that properly addresses the underlying policy concern that electric ratepayers not pay more than they receive back in benefits.

Each of the following “secondary tests” have been put forward and/or used by different parties as the basis for rejecting a cost-effective program that saves gas as well as electricity:

- The “non-incident gas savings” test. Under this test, any program that produces any amount of gas savings that are not incidental – that is, through installation of measures that simultaneously produce both electric and gas savings – should be rejected. This is the test used by Ameren in its RFP and which Staff appeared to support in its Objections.
- The “cost of supply” test. Ameren has interpreted this test to be a comparison of the costs electric ratepayers incur to only the avoided energy and capacity benefits they would receive. Note that NRDC, the IPA, and the AG all argued that Ameren’s interpretation of this test is flawed because it does not include all of the benefits that electric ratepayers realize or that are part of the cost of “supplying” electricity. Most notably, it excludes the benefit of reduced electric transmission and distribution system costs.<sup>1</sup>
- The electric only TRC test. This program compares the sum of (1) all of the costs electric ratepayers incur and (2) the additional costs that program participants incur to all of the benefits that electric ratepayers receive. Both Ameren and the IPA have relied on this test to inform their recommendations.

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<sup>1</sup> As NRDC noted in footnote 2 of its response to objections, there are other electric system benefits also excluded from this test as Ameren interprets it.

- The Utility Cost Test (UCT). This test compares the all of costs electric ratepayers incur to all of the benefits that they receive. NRDC argued in its Objections that, if the Commission determines that it is appropriate to apply a secondary test (beyond the TRC) to determine whether a program that saves both electricity and gas should be rejected, this is only secondary test that should be used. In their Responses to Objections, both the AG and Staff concurred.

NRDC continues to firmly maintain that if a secondary test is going to be used to reject a program that passes the TRC, the secondary test must solely address the question of whether or not electric ratepayers are better off with or without the program. The UCT is the only test that answers that question because it is the only test that compares all electric ratepayer costs (*but only electric ratepayer costs*) to all electric ratepayer benefits (*and only electric ratepayer benefits*).

As NRDC explained in its Response to Objections (pp. 1-2), the “non-incidentals savings” test is highly problematic as a basis for accepting or rejecting a cost-effective program that produces both electric and gas savings because it doesn’t even attempt to quantify the magnitude of benefits, let alone whether electric ratepayer benefits exceed electric ratepayer costs. As NRDC additionally explained (pp. 1-4), the Ameren version of the “cost of supply” test also has no value in determining whether electric ratepayers are better off with or without a program because it excludes important electric system benefits from its calculation. The AG appears to concur in its Response to Objections (pp. 9-10).

The IPA’s Response to NRDC’s Objections states that the electric only TRC calculations were provided only for “illustrative purposes” and suggests reporting both the UCT and the electric only TRC results for “illustrative purposes” in the future. However, it provides no

explanation regarding the “illustrative purpose” that the electric only TRC serves. As NRDC explained in its Objections, the “electric only TRC” test also has no value in determining whether electric ratepayers are better off with or without a program. Unlike Ameren’s version of the “cost of supply” test, the electric only TRC does include all electric system benefits. However, it also includes non-electric system costs (specifically, it includes additional costs incurred by program participants to buy efficiency measures) without including any non-electric system benefits. As a result, it is not only not useful as a test of whether electric ratepayers are better off or not, it is not even a test of whether anyone is better off or not.

In its Response to NRDC’s Objections, Ameren continues to argue that the electric only TRC is “valuable to discern the existence of cross-subsidization”. Its argument is as follows:

“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 because electric ratepayers are paying for the benefits to gas customers, and not to them. (pp. 17-18)

This argument is fundamentally flawed. In common efficiency industry parlance, the term “program costs” is typically used to refer to the costs that will go into rates and will be shared by all ratepayers (of a given customer class). However, in its use of the term, Ameren appears to mean not only what are traditionally called program costs, but also the costs borne solely by participating customers. Consider a hypothetical example in which an efficiency program promotes a clothes washer that costs \$1000 by providing a \$400 rebate, with participating customers paying the remaining \$600 out of their pockets. In this example, the program cost that is borne by all electric ratepayers is \$400. Therefore, that is the cost that should be compared to the electric system benefits. However, Ameren is essentially arguing that

the remaining \$600 that is paid *only by the participating customers* (not all electric ratepayers) should also be included in any assessment of the potential for cross-subsidization. At the same time Ameren is arguing that the gas savings (and any other non-electric benefits) that those participating customers also realize should not be included in the analysis. In short, Ameren is arguing for an “apples” to “oranges” treatment of costs and benefits.

Staff recognized this problem in their Response to Objections when it said “NRDC’s logic is compelling.” (p. 12). As Staff explains:

“An individual customer’s decision to directly contribute to paying for a measure in order to obtain savings on his/her gas bills does not imply that electric customers are cross-subsidizing gas customers. Only when the costs the utility incurs and passes along to electric customers exceed the benefits to electric customers (and the measure passes the TRC only because natural gas benefits are included) do electric customers subsidize gas customers.” (p. 12)

In summary, as the following table shows, there are fundamental flaws (highlighted in yellow) with three of the four tests that have been put forward at various points in time by various parties for assessing whether a cost-effective program that provides both electric and gas savings is in the best interest of electric ratepayers. Only the UCT assesses whether the benefits to electric ratepayers exceed the costs they are incurring. Therefore, only the UCT assesses whether there is any cross-subsidization between electric and gas ratepayers.

**Table 1: Impacts Included in Potential Secondary Tests**

Test	Electric System Impacts		Other Impacts	
	Costs	Benefits	Costs	Benefits
Non-incidentals gas savings	<i>n.a. – doesn’t even compare costs and benefits</i>			
Cost of Supply (Ameren version)	All	Partial	None	None
Electric Only TRC	All	All	Participant costs	None

Utility Cost Test (UCT)	All	All	None	None
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**D. Retroactive Duplicity (IPA Plan Section 9.5.8)**

**Reply to IPA Response to Objections (pp. 21-22)**

**Reply to Ameren Response to Objections (p. 19)**

In its Objections, Ameren took issue with the IPA raising concern about the Company’s proposal to allow it to render one or more IPA program bids “duplicative” by deciding, long after IPA program bids are submitted, to include a similar program in its 8-103 plan. NRDC critiqued Ameren’s position on this issue in its own Objections, expressing concern that the policy approach Ameren advocates would at best be seen by prospective vendors as adding additional risk (thereby increasing their costs and/or reducing the number of bids submitted) and at worst become a mechanism through which a utility could in the future “take ideas” from vendors and/or be used to limit spending on cost-effective efficiency programs.

The IPA also responded to Ameren’s Objections, in part by noting that Ameren had other options (e.g. those taken by Com Ed) to address its concerns. NRDC believes that the IPA’s arguments have great merit. NRDC also strongly concurs with the IPA that the issue it raised in its Plan is a legitimate and important one and should not be struck from its Plan.

Finally, NRDC wants to emphasize that it is concerned, in this case, solely with the policy implications (*i.e.* impacts on future procurement processes) of Ameren’s proposal. As made clear in the settlement in Ameren’s 8-103 plan proceeding to which NRDC is a signatory, we support Ameren’s request in its Response to Objections “that the Franklin-SBDI program (as well as 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.”

As a result, we do not believe that there are any concerns about the *application* of Ameren's proposal *in this proceeding*.

Respectfully submitted,

Date: October 31, 2016

A handwritten signature in blue ink that reads "Ann Alexander".

By: \_\_\_\_\_

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**VERIFICATION**

I, Ann Alexander, state that I have read the foregoing Verified Petition to Intervene by the Natural Resources Defense Council for ICC Docket No. 16-0453, that I am familiar with its contents, and that to the best of my knowledge, information and belief, based upon reasonable inquiry, the contents are true and correct.

Ann Alexander

**STATE OF ILLINOIS**

**COUNTY OF COOK**

The foregoing instrument was subscribed, sworn to and acknowledged before me by Ann Alexander on this the 31st day of October, 2016.

Jennifer R. Daly  
Notary Public  
My Commission Expires: 05/28/2017

