

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." The IPA also correctly references that the LTPPA contracts contain provisions pertaining to curtailments and that the Commission had previously stated the LTPPA suppliers should have known about the possibility of customer switching and curtailments. IPA Response at 6.

The Staff of the Illinois Commerce Commission ("Staff") makes similar arguments and concludes that the "curtailment provisions to DG REC or other REC contracts would be of benefit to no one except Renewable Suppliers." Staff therefore opposes the Renewables Suppliers' proposal. Staff Response at 9.

Upon review of the arguments put forth by the IPA and Staff, Ameren Illinois agrees that the Commission should reject the Renewables Suppliers' proposal that future DG REC contracts have curtailment provisions.

B. Section 9.2: 2016 Section 16-111.5B SAG Workshop Subcommittee

The Staff of the Illinois Commerce Commission ("Staff") has requested a clear Commission directive that the utilities should report all expected Section 5/16-111.5B costs to the IPA in their Section 5/16-111.5B Incremental Energy Efficiency ("IEE") submittals, and that the IPA should sum that information and include it in the IPA Plan filed with the Commission. Staff Objections at 7-9. The IPA and Commonwealth Edison Company ("ComEd") oppose Staff's request. IPA Response at 10-11.

While AIC can see both sides of this issue, and does not formally take a position, the IPA's rationale for arguing that the additional information should not be included in utility submittals or in the IPA Plan submitted to the Commission because it is not specifically required by Section 5/16-111.5B is troubling. The IPA rightly acknowledges that the Commission has the

authority to impose additional requirements, *see* IPA Response at 10, and the IPA itself regularly—and voluntarily—includes a host of information in its IPA Plan that is supplemental to the Act’s enumerated requirements. *See* 220 ILCS 5/16-111.5B(a)(2), (a)(4) (mandating an “assessment of opportunities to expand the programs promoting energy efficiency measures that have been offered under plans approved pursuant to Section 8-103 of this Act or to implement additional cost-effective energy efficiency programs or measures” and a list of “energy efficiency programs and measures [the IPA] determines are cost-effective and the associated annual energy savings goal”). For example, this year’s IPA Plan includes considerably more than the bare minimum, in the form of IPA commentary on a variety of policy and legal matters.

With respect to reporting costs, however, the IPA seems to advocate for shielding the information Staff is requesting from the public, and to do so may hide from the public the true cost (albeit estimated) of the annual IEE procurement pursuant to Section 5/16-111.5B. Until last year, this was a non-issue, because the utilities were free to include non-program specific costs of the IPA procurement process in their TRC analyses, thereby ensuring that only those programs for which the total benefits *actually* outweighed the total costs of procurement were ultimately procured. But, at the urging of Staff and the IPA, the Commission decided in last year’s procurement plan docket that so-called “fixed costs” cannot be included in the TRC analysis at the program level. *See* Docket No. 15-0541, Final Order (December 16, 2015) at 95. There is no TRC analysis at the “portfolio level” for the IPA procurement, however, and, as a result, those “fixed” costs have been lost altogether. A ratepayer, therefore, could not ascertain when reviewing the IPA Plan that there are additional costs to the procurement of the programs and measures set forth therein—costs which, counter-intuitively, are not accounted for in the

“cost-effectiveness” analysis, and which, in close cases, could mean that the procurement of these programs actually costs the public *more* than the sum total of their benefits.

For its part, Staff’s proposal is a commendable attempt to keep sight of those unaccounted-for costs, if not to involve them in the TRC analysis, and the IPA’s opposition to granting the public that needed level of oversight and transparency is troubling, especially in light of last year’s Final Order removing such costs from consideration when determining whether to approve a program in the first place.

C. Section 9.3: Consensus Items

In its Objections, AIC noted that the IPA Plan picked-and-chose from among the consensus language that grew out of the 2016 IPA SAG Workshop Process, including language favorable to the IPA’s causes and excluding, or contradicting, language unfavorable to the IPA’s causes. AIC Objections at 3-5. AIC proposed that the Commission order the IPA to either incorporate all of the consensus language from Appendix H into the IPA Plan itself, or to incorporate none of it and simply make clear in its Final Order that all of the consensus language in Appendix H is approved by the Commission, so that it is abundantly clear that the various consensus items and consensus language are on equal footing and are universally approved. AIC Objections at 5. The IPA has agreed to the second approach, and AIC recommends that the Commission order the IPA to modify its Plan accordingly. IPA Response at 11-12.

Complicating what should be a minor issue, NRDC has written to argue that the IPA Plan, as written, does *not* contradict consensus language developed in the 2016 SAG Workshop Process. *See* NRDC Response at 6. First, NRDC argues that the IPA’s opposition to AIC’s handling of the gas savings issue does not contradict consensus language. *Id.* But AIC never

argued that it did, so that is a non-issue. The “gas savings” issue is addressed more fully on the merits below.

Second, NRDC argues that the IPA’s criticism of AIC’s reservation of rights does not contradict consensus language. The SAG 2016 Section 16-111.5B Workshop Subcommittee Report provides the following consensus language:

Ameren Illinois Approach to IPA 2017 Electricity Procurement Plan Process

Ameren Illinois will take a consistent approach to the Section 16-111.5B programs for the 2017 Procurement Plan that it has taken with each of its past Section 16-111.5B RFPs. However, the RFP may vary from previous RFPs in order to incorporate applicable terms resulting from the recent Commission Orders or directives, the IPA Workshop Subcommittee or SAG plan development process, and to account for the fact that there are no Section 8-103 programs currently approved for the applicable program year(s). The RFP seeks bid responses for programs that reduce electric consumption for electric ratepayers. Copies of all bids will be provided to IPA, as well as an assessment of bids and a recommendation as to whether each bid should be approved. Specifically:

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

IPA Plan Appendix H at 6-7 (emphasis added). NRDC’s position is that the italicized phrase—“plans to propose”—“implies that a decision has been made by the company to include a particular type of program in its EEPS portfolio at the time of the IPA RFP being issued and that such intention would be made clear to prospective bidders.” NRDC Response at 6. NRDC

seems to suggest that, because AIC had not finalized its Plan 4 at the time the RFP issued, the IPA programs *cannot* be judged duplicative. *See* NRDC Response at 7.

NRDC's position is flat wrong. First, NRDC was a key participant of the collaborative process that led to the issuance of the RFP and the development of AIC's Plan 4. NRDC knew at the time the RFP was issued (and knows now) that discussions on development were ongoing and that AIC had not made any final decisions on all of the programs that would be proposed as part of its Plan 4.² To suggest otherwise now, through legal argument, is disingenuous. Second, there is no need to consider what is "implied" by the language seized upon by NRDC, because the sentence NRDC selectively quotes goes on to make explicitly clear that it relates to AIC seeking a conditional approval of potentially duplicative programs. A conditional approval is something that AIC has the undeniable legal ability—regardless of any reservation language put in the RFP—to request from the Commission in a docketed proceeding long after the RFP process has concluded. Thus, the relevant question is which programs AIC "plans to propose" in its Plan 4 when the time to seek conditional approval of IPA programs arrives, as it now has. In other words, AIC's conduct throughout this proceeding—and its Reservation of Rights in its Submittal—has been consistent at every step with the consensus language agreed to by the SAG, and no reasonable party could interpret the consensus language to say otherwise.

Notably, while both NRDC and the IPA appear to be walking away from the SAG consensus by continuing to contest this point, it is important to note that there is no meaningful, live dispute in this docket. There is no present disagreement about any duplicative program determinations in this docket, something the IPA readily acknowledges, and the contents of

² As noted in by AIC in previous filings, AIC did identify for bidders certain programs that AIC expected would be adequately offered to customers by existing or planned programs, like kits.

AIC's Plan 4 have been agreed to by stipulation in ICC Docket No. 16-0413. Equally important, next year's IPA procurement process will not deal with the same problems regarding misalignment of the Section 5/8-103 and 5/16-111.5B planning processes, as all of AIC's Section 8-103 programs will be known and identified in the RFP, and this issue therefore does not require extended Commission attention at this time.

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

Although AIC reiterates that there is no actual problem in need of solving, *see* AIC Objections at 5-7, it appears that no party objects to the IPA's proposal that the Commission require SAG workshops after the conclusion of the proceeding approving the IPA Plan, at which the utilities and stakeholders can (a) discuss strategies for marketing Section 5/16-111.5B RFPs and (b) discuss how the utilities' potential studies and stakeholder feedback can 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. Moreover, the AG appears to no longer be seeking a Commission directive that the utilities must solicit specific programs. *Contrast* AG Objections at 3 *with* AG Response at 2. Accordingly, AIC has no objection to participating in workshops on the two issues identified above, provided the parties are directed to actually honor the consensus reached in those workshops.³

E. Section 9.4.2: Improving/Refining Bids

Two issues relating to Section 9.4.2 of the IPA Plan have risen to prominence in this docket: (1) the appropriate balance between contract terms that protect ratepayers and an

³ AIC also cautions that the timeframe available for the parties to reach consensus is necessarily limited by the Act, which requires AIC to provide its submittal to the IPA on July 15. Practically speaking, AIC must issue its RFP several months prior to that date in order to perform the necessary analysis and include the stakeholders in the process before the deadline. To the extent no "consensus" is reached in workshops prior to the time at which AIC must issue its RFP, AIC will make a good faith attempt to accomplish what the IPA suggests.

unencumbered process that is friendly to bidders; and (2) the AG’s campaign for what the IPA has correctly identified as the vague issue of what it means to apply the “same scrutiny” to contracts entered into pursuant to Section 5/16-111.5B versus Section 8-103. Several parties—including the AG, Staff, and ComEd—have taken varying positions on the first point, while the second point is a matter of the AG advocating for something that both AIC and the IPA oppose. Each issue is addressed below, in turn.

1. Contract Terms

ComEd has submitted its Section 5/16-111.5B vendor contract templates for approval by the Commission. Staff argues that approval of the form contracts is unnecessary, *see* Staff Response at 7-11, and the AG now argues that, in the absence of an evidentiary hearing, this docket is not the right forum for the resolution of this delicate balancing issue, *see* AG Response at 5. This is a welcome step backward from the AG’s previous assault on AIC’s contract provisions designed for the protection of ratepayers, which was based solely upon “information and belief.” *See* AG Objections at 7-9.⁴

AIC previously indicated no objection to the Commission’s approval of ComEd’s form contracts, noting that Commission guidance on contract terms would be welcome, with the understanding that an endorsement of those contracts would not make their terms a requirement for contracting with winning bidders. That being said, AIC would not object to workshops designed to better understand the issues raised by the AG and Staff, provided that the parties actually adhere to the agreements reached through the workshop process. Although workshops can be a useful forum for the parties to collaboratively seek compromise and resolve their issues,

⁴ Notably, in response to Data Requests issued by AIC asking the AG to substantiate its statements, the AG was unable or unwilling to identify a single potential bidder aggrieved by AIC’s ratepayer protection provisions, claiming the conversations which formed the basis of AG’s comments were “confidential.”

AIC would not want to spend an amount of time (or ratepayer dollars) similar to what was spent in the SAG-led IPA Workshop process this year without some assurance that all parties will abide by the outcome of those workshops in the future.⁵

2. Levels of Scrutiny

The AG continues to press its “same level of scrutiny” argument. *See* AG Response at 5-7. AIC has already responded to this demand at length, *see* AIC Response at 5-9, and the IPA has adequately rebutted it, as well, *see* IPA Response at 12-14. Rather than restate in full the many compelling reasons why the Commission should reject the AG’s position, AIC incorporates its prior briefing by reference and adds or emphasizes the following points.

First, there is no problem that needs to be addressed. The IPA notes that it “is unconvinced that ‘contract scrutiny’ or ‘ensuring the best contract terms’ has been a problem for utility contracts with Section 16-111.5B vendors[.]” IPA Response at 12. And the AG has failed to identify a single instance in which the problem of which it complains—vendors claiming additional costs to fill the “headroom” of the TRC analysis either before or after their programs have been approved—has actually occurred. Indeed, it is hard to imagine *how* that could occur before the program is approved, given that the utilities (and the IPA) run the TRC *after* the bid, complete with estimated program costs, has already been submitted. And there simply is no opportunity for vendors to suddenly balloon the administrative costs of their program during the contracting stage, when it has already been approved. On a related note, one way that AIC ensures vendors do not have the ability to “game” the TRC analysis is by keeping AIC’s avoided

⁵ In the Final Order of the last (2016) IPA Procurement Docket, Docket No. 15-0541, the Commission directed the parties to resolve several issues through a workshop process led by the Stakeholder Advisory Group. Ten meetings and several conference calls totaling over 400 hours were conducted, and that total does not include the thousands of additional hours the various parties spent in preparation for the meetings, or in review and finalization of the documents, and travel.

costs—a critical component of the TRC analysis—private, a practice which the AG inexplicably attacks in this docket (while at the same time maintaining that information the AG seeks to rely upon for its positions should be kept “confidential”).

Second, as explained by the IPA, the Act mandates different approaches to the contracts procured pursuant to Section 5/16-111.5B and Section 5/8-103. For example, procurement of Section 5/16-111.5B programs and measures are subject to many different layers of scrutiny which are 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)). Section 5/16-111.5B programs are subject to these additional layers of scrutiny because the Act does not contain a corollary to the budget-screening tool found in Section 5/8-103(d) for the procurement of IEE pursuant to Section 5/16-111.5B. The AG has yet to explain what impact a mandate of “equal scrutiny” would have on Section 5/8-103 bids and contracts, which currently are not subject to the additional requirements of Section 5/16-111.5B.

Third, the AG’s positions in this docket are irreconcilably inconsistent. With respect to this issue, the AG continues to argue that “more” scrutiny is required for Section 5/16-111.5B contracts than the utilities currently apply. Yet, elsewhere in the AG’s Response and Reply, the AG goes on at length about how problematic the ratepayer protection provisions in the utilities’ contracts are, because they discourage bidders from participating in the RFP process, despite the fact that those ratepayer protection provisions accomplish *exactly* the “scrutiny” which the AG

seeks. *See, e.g.*, AG Objections at 8; AG Response at 4-5. The AG cannot have it both ways; the AG either supports including ratepayer protections, or supports removing them.

In summary, for the foregoing reasons—and for all of the reasons previously stated by AIC and the IPA—the AG’s unsupported demand regarding “equal scrutiny” should be rejected by the Commission.

F. Section 9.5.3: Review of Ameren Illinois TRC Analysis

1. EM&V

AIC noted in its Response that the AG’s attack on its administrative cost adder for EM&V was baseless. *See* AIC Response at 11-12. AIC stands by those comments, but writes to add that the IPA’s assessment of the issue is correct and provides another basis for rejecting the AG’s position. *See* IPA Response at 22-23.

2. Confidentiality of TRC Inputs

NRDC has joined the AG’s argument that AIC’s TRC inputs should be made public. *See* NRDC Response at 7. But forcing AIC to disclose TRC inputs to bidders is a surefire way to create the problem the AG claims to be concerned about in Section 9.4.2. Armed with the knowledge of the TRC benefits inputs like avoided costs, bidders will include all of the administrative costs they can without tipping over into cost-ineffective territory—thus ensuring the program must be included as cost-effective, while at the same time maximizing profits. Aside from that, NRDC tacitly recognizes that the position taken by both it and the AG is in contradiction of the Non-Disclosure Agreement they both executed in order to gain access to AIC’s avoided cost data. *See* NRDC Response at 7 (“[A]fter signing a non-disclosure agreement, NRDC had the opportunity to review and discuss with [AIC] an earlier version of its

avoided cost assumptions.”). The utilities and the IPA have access to the necessary data, and that data is confidential, which is why NRDC had to sign an NDA to access it.⁶

Finally, it is not NRDC’s job to second-guess the TRC analysis for the IPA procurement process, nor is there any legal basis for NRDC’s demand that it should have the opportunity to do so. The Act assigns the task of calculating cost-effectiveness first to the utilities, *see* 220 ILCS 5/16-111.5B(a)(3)(C), and ultimately to the IPA, *see* 220 ILCS 5/16-111.5B(a)(4). NRDC does not take any issue with the IPA’s TRC analysis—the final analysis that was actually used when determining which programs to include in the Plan. The Commission should disregard NRDC’s argument, and AIC’s avoided costs should remain confidential.

G. Section 9.5.4.1: Policy Implications

Several parties have taken positions on what has been broadly described as “the gas savings issue.” Rather than respond to each of them individually, AIC discusses each of the three sub-issues that have developed, in turn.

1. Commission Discretion

The IPA refuses to accept the Commission’s decision regarding its discretion to exclude otherwise cost-effective programs, issued in last year’s Final Order in Docket No. 15-0541. Moreover, like last year, the IPA condescendingly lectures the Commission on what is “the law.” *See* IPA Response at 15-17. But the IPA has provided little, in terms of “the law,” to support its impermissible collateral attack on the Commission’s Final Order in Docket No. 15-0541. In contrast, AIC’s position is grounded in the plain language of the Act and in prior Commission orders. As explained in its objections, the Commission approves cost-effective programs and

⁶ Notably, the confidentiality of avoided cost data is not a matter in dispute, and NRDC is entitled to time to review the data and consider its confidentiality. *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).

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

The IPA disagrees with the foregoing Commission precedent defining the qualifying term “to the extent practical” to allow the Commission to exercise “judgment and flexibility.” IPA Response at 15-16. Its disagreement is not based on any legal authority. Instead, the IPA’s disagreement with the Commission is solely based (again) on the selective revision of an online dictionary entry.⁷ After offering up that selective revision, the IPA appears to threaten the Commission with an appeal if the Commission does not give the IPA what it wants. IPA Response at 16-17.

⁷ Just as it did last year, the IPA quotes “www.merriam-webster.com” for the proposition that “practicable” means “capable of being put into practice or accomplished,” and argues that this so-called “plain meaning” should trump the Commission’s settled legal interpretation. As AIC explained when the IPA offered the same misquotation last year:

To be sure, reference to a dictionary definition is appropriate to determine the plain meaning of a statutory term. *See People v. Perry*, 864 N.E.2d 196, 208 (Ill. 2007). But it is inappropriate to selectively revise that definition, as the IPA has done. In full, Merriam-Webster defines “practicable” to mean “capable of being put into practice or of being done or accomplished: *feasible*.” “Feasible,” in turn, means something different than the IPA intends. “Feasible,” as defined by Oxford, means “[p]ossible to do *easily or conveniently*.”

Docket No. 15-0541, AIC Reply (October 30, 2015) at 14 (emphasis original).

The threat is idle. This exact issue has already been litigated between these exact parties, and it has already been decided. And, while the Commission is not strictly bound by the principles of *res judicata* and collateral estoppel, before it departs from its own precedent, “[i]t is incumbent upon the Commission to explain and give reasons for its departure from an established past practice, i.e., why it is treating a like situation differently.” See Docket No. 03-0779, Order (September 9, 2004), 2004 Ill. PUC LEXIS 513, *38 (citing *Abbott Laboratories v. Illinois Commerce Commission*, 682 N.E.2d 340 (1st Dist. 1997) (stating that where the Commission departs from its usual rules of decision to reach a different, unexplained result in a single case, it deprives a party of equal treatment); *Citizens Utility Board v. Illinois Commerce Commission*, 683 N.E.2d 938 (1st Dist. 1997) (observing that Commission decisions are entitled to less deference where it departs from past practice and further noting that the Commission is required to provide findings and analysis sufficient to allow for informed judicial review)). By offering only the exact same insufficient argumentation it provided to the Commission last year, the IPA has not given the Commission a worthy reason to depart from its prior final decision.

In short, it is now settled that “[t]he phrase ‘to the extent practicable’ is a qualifying phrase that allows th[e] Commission to exercise judgment and flexibility.” Docket No. 15-0541, Final Order (December 16, 2015) at 101. And, to be frank, the IPA itself recognizes as much when it suits the IPA’s policy preferences, such as when the IPA advocates for the exclusion of three cost-effective programs from ComEd’s IPA portfolio based on performance risk concerns, despite the fact that those programs score as high as 3.57 on the TRC test. See IPA Plan at 126. The IPA’s position on this issue is inconsistent and wrong, and the IPA’s continual attempts to invent new limitations on what the Commission can and cannot do, in the context of an IEE procurement, are unproductive and unpersuasive. They should be rejected.

2. Content of “Cost of Supply” Standard

Several parties—including the AG and NRDC—continue to argue that the statutory term “cost of comparable supply” really means “cost of comparable supply plus transmission plus distribution.” AIC has addressed this issue at length, and will not recreate those arguments in full here. *See* AIC Response at 13-15. A few basic points bear repeating, however, because this is not a complicated issue, no matter how the other parties attempt to obfuscate it.

First, the plain language of the Act requires that a utility 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). 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). Per the canons of statutory construction, “cost of comparable supply” and “overall cost of electric service” must mean different things. *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). The law cannot mean, as the AG and NRDC advocate, that AIC should provide the same information under both statutory provisions.

Second, every party agrees that “overall cost of electric service” means the cost of supply plus transmission plus distribution—in other words, all of the things, bundled together, which go into providing electric service. *See, e.g.*, AG Response at 8 (“The cost of electric service must reasonably be viewed to include all costs associated with getting electricity to a customer’s meter. This is effectively what is defined by the Utility Cost Test (UCT).”); NRDC Response at 4 (“ . . . it is true that including avoided [transmission and distribution costs] would render a cost

of supply calculation similar (or even equal) to the UCT[.]”). Thus, because “cost of comparable supply” and “overall cost of electric service” must mean different things, *see Blum*, 235 Ill. 2d at 29, and because “overall cost of electric service” *does* mean “cost of supply plus transmission plus distribution,” “cost of comparable supply” must *not* mean “cost of supply plus transmission plus distribution.” Instead, “cost of comparable supply” means what it says: the cost of comparable supply. It is that simple and uncontroversial.

Third, the shared belief of the AG, NRDC, and the IPA that the Cost of Supply (“COS”) test is not a *good* additional metric for cost-effective programs and measures, in part because it excludes transmission and distribution costs, does not mean that it is not *one* of the additional metrics which the utilities are required by the Act to provide to the IPA (and the Commission). These are two completely different points. Throughout this docket, AIC has tried to explain to the objecting parties that their complaint with the COS analysis—which basically amounts to a complaint that it is not the TRC test, and that the TRC test should be the only one that matters—is not relevant to determining the content of the term “cost of comparable supply.” The statute says that AIC is to provide a comparison to the “cost of comparable *supply*,” 220 ILCS 5/16-111.5B(a)(3)(E) (emphasis added), and AIC must do so in order to remain in compliance with the statute. A comparison of the cost of supply, which is what the procurement of energy efficiency is meant to replace, makes sense and provides meaningful information to the Commission, as noted in ICC Docket No. 15-0541. If it is more expensive to ratepayers to procure energy efficiency than it would be to procure regular supply, then the procurement of the more expensive energy efficiency should not be approved. *See* Docket No. 15-0541, Final Order (December 16, 2015) at 101.

Moreover, the reason for the Act's inclusion of this additional comparison is plain from the face of the statutory language. The IPA's function is to procure supply. *See generally* 220 ILCS 5/16-111.5. The IPA does not procure transmission or distribution. The General Assembly was obviously concerned with measuring the impact that the procurement of IEE has on the IPA's capacity procurement, both quantitatively and financially. That is why, for example, Section 5/16-111.5B(a)(3)(G) requires, "[f]or each expanded or new program, the estimated amount that the program may reduce the agency's need to procure supply." 220 ILCS 5/16-111.5B(a)(3)(G). And it is why the Act requires a comparison to the "cost of [the] comparable supply" which the IPA will no longer need to procure. 220 ILCS 5/16-111.5B(a)(3)(E). That information should matter a great deal to the IPA, if it is handling its procurement duties responsibly.⁸ In short, there is nothing odd or exceptional about the inclusion of the COS measure among those which the utilities are required to provide to the IPA and to the Commission.

After two years of litigation, it is time to put to rest this misguided crusade against the plain terms of the Act. The Act means what it says, and AIC is calculating the COS correctly. The IPA, the AG, and NRDC are free to argue *against* the exclusion of programs on the basis of a COS analysis in the future, but there is no further value in their arguing that the COS analysis should be identical to the TRC, or to the UCT, or that it should otherwise *not exist*. The plain language of the Act controls over their unilateral policy preferences.

⁸ To be clear, the "prevailing cost of comparable supply" used by AIC when evaluating the bids included only the energy and capacity components of the TRC equation. Further, it should be noted that IPA purchases energy and capacity at the generator adjusting kilowatt hours at the meter for transmission and distribution losses. Simply stated, the cost of supply is calculated by taking the energy saved at the meter adjusted for losses to get it to the generator multiplied by the cost of capacity and the cost of energy and then comparing it to the cost of the energy efficiency program.

For the foregoing reasons, the positions of the IPA, the AG and NRDC, on this issue should be rejected.

3. Screening for Cross-Subsidization

The AG, NRDC, the IPA, Staff and AIC have weighed in on whether the electric-only TRC test or the UCT test is the better measure to screen for the cross-subsidization of benefits accruing to gas customers by electric ratepayers. AIC previously posited that both can be useful in different ways, but noted the superiority of the electric-only TRC test for this purpose because it actually excludes gas benefits, which would not accrue to electric ratepayers, while the UCT test run by AIC has historically included gas benefits, making it a relatively ineffective cross-subsidization screen.⁹

At this point, however, AIC has reviewed the positions of the other parties and agrees with the broader consensus among the parties to this docket that AIC should use an electric-only UCT test to screen for cross-subsidization because of the inclusion of program participant costs in the electric-only TRC.¹⁰ *See, e.g.*, AG Response at 10 (advocating for an electric-only UCT “because the UCT only recognizes benefits that accrue directly to the electric system, and thus electric ratepayers” and “[s]o long [as] the UCT benefit-cost ratio exceeds 1.0, all electric ratepayers are better off, regardless of the presence of additional gas benefits”). Accordingly, AIC will use an electric-only UCT to screen for cross-subsidization in the future, per the request

⁹ The IPA has also advocated for the use of both tests, *see* IPA Response at 19-20.

¹⁰ AIC notes that the following statement from Staff’s Response, however, is not entirely correct: “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.” Staff Response at 12. Technically, any time the electric-only TRC is *lower* than a gas-only TRC for the same program or measure, electric customers are subsidizing *some* gas benefits. But AIC would consider that amount of cross-subsidization to be incidental. The real problem arises when the measure fails the electric-only UCT, because at that point the gas benefits are not merely incidental, they are masking a program that is not actually reducing the overall cost of electric service.

of Staff, the AG, and NRDC, when compiling its assessment. To be clear, AIC still advocates for the Commission to use its discretion to not approve programs that do not pass that screen.

H. Section 9.5.4.3: Behavioral Program (OPower)

The IPA continues to advocate for the inclusion of the OPower behavioral modification program, in the face of opposition from every other party who has provided comments on the issue. The IPA is, of course, wrong when it says the Commission does not have the authority to exclude the program—as noted above, the IPA does not have the power to unilaterally trump the Act’s clear delegation to the Commission of the authority to review and not approve cost-effective programs. *See* IPA Response at 15-17. And it admits that cross-subsidization is a problem. IPA Response at 17 (“Electric ratepayers subsidizing gas ratepayers through the approval of any programs primarily benefitting gas ratepayers is problematic.”). But the IPA goes on to advocate for the inclusion of the “largest of the available expansions” despite the fact that “when normalized on a BTU basis, half of the projected energy savings result from reductions in gas usage.” IPA Response at 18. As previously set forth by Staff, the AG, and AIC, this program should not be approved; instead, the program should be allowed to be evaluated to determine whether the persistent savings relied upon to purportedly make the program “cost-effective” even exist.

First, the IPA has completely failed to grapple with the fact, noted by Staff, that when the “Continuation Program is included with the Expansion Program in a bundle, the bundle fails the Cost of Supply test.” Staff Objections at 17. When the Commission addressed a similar argument last year, the Commission noted that “[w]hile energy efficiency is aimed at reducing the use of energy, little benefit is really achieved on that level, if the cost of avoiding the use of energy exceeds the cost of energy, which is how the dictionary definition of ‘efficiency’ was

used above.” Docket No. 15-0541, Final Order (December 16, 2015) at 103. The combined program’s failure to pass the COS analysis provides a sensible basis for its exclusion, and it must also be noted that the combined program fails the electric-only UCT requested by the parties to this very docket as a more appropriate screen for cross-subsidization, which AIC has run before filing this Reply.

Second, the IPA completely failed to respond to the significant concerns, raised primarily by Staff, regarding whether any of the expected savings claimed by the bidder associated with the Continuation Program would ever actually materialize. Staff noted that “the Continuation Program . . . would not significantly affect energy savings, due to the high level of ‘persistence’ associated with this behavior program,” referring to the fact that the customers targeted by the Continuation Program have already been in the program for years and may have internalized the behavioral modifications. Staff Objections at 17. Indeed, such customers “may save 95% or more of what they can be expected to save under the Continuation Program, even if the Continuation Program is excluded from the Procurement Plan.” *Id.* (citing IL-TRMv5.0 Vol. 4 at 16). In short, the Continuation Program may be an even worse deal than it already appears, rendering the entire bundled bid an unattractive option. The IPA never responded to this important point, which in and of itself is grounds to reject the bid. *See Crossroads Ford Truck Sales v. Sterling Truck Corp.*, 959 N.E.2d 1133, 355 Ill. Dec. 400, 2011 IL 111611, ¶ 63 (Ill. Ct. App. 1st Dist. 2011) (failure to respond in plaintiff’s reply brief to the substance of an argument raised by the defendant in its response brief meant plaintiff forfeited the argument).

Third, one of the continuing difficulties with evaluating dual fuel behavioral programs like this one is that there is limited research available regarding the persistence of the savings achieved. Excluding OPower from the IPA Plan would give AIC’s independent evaluator an

opportunity to measure and analyze the persistence of savings for these types of behavioral programs, which would in turn inform the continued development of the related measures in an updated version of the Illinois Technical Reference Manual and, if helpful, in the evaluations themselves. Additionally, it would resolve the concern highlighted by Staff and discussed above, in that the utilities could then appropriately discount continuation proposals for behavioral programs that effectively duplicate persistent savings already achieved.

In summary, there are numerous compelling reasons for the exclusion of the OPower behavioral modification program from this year's IPA Plan, many of which the IPA has not refuted, and the Commission should do just that.

I. Section 9.5.5: Duplicative Programs

Lest any confusion remain, AIC writes to make clear that it is *not* seeking the exclusion of the Franklin—Small Business Direct Install Program. In light of the stipulation filed in ICC Docket No. 16-0413, which resolves the contents of AIC's Plan 4, AIC now requests 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. As noted by other parties, there are no remaining disputes with respect to duplicative determinations, as they pertain to AIC, that the Commission must resolve.¹¹ This point appears to be uncontested. *See* IPA Response at 14-15.

¹¹ Although it is a minor correction not necessary to resolving the issue, AIC notes that the following statement from the AG's Response is incorrect: "Both ComEd and Ameren also moved their small business direct install ('SBDI') programs into their respective IPA portfolios during the current three-year plan." AG Response at 12. AIC did not do so.

J. Section 9.5.6: Community-Based LED Distribution Program

In its Verified Comments and Objections, AIC explained why the Community-Based LED Distribution Program should be limited to one year. First, AIC expressed a concern that the current Community Based CFL Distribution Program, approved in the 2016 IPA Electricity Procurement Plan and being implemented during PY9, will achieve market saturation at the targeted segment such that the Community-Based LED Distribution Program essentially becomes duplicative and, accordingly, not needed beyond the first year of its bid. Second, AIC expressed a concern that the program design needs to be evaluated by the independent evaluator to gather meaningful and reliable information on the amount of product leakage to regions not served by AIC, whether the product is actually being installed, and what technology (CFL or incandescent) is being replaced. *See generally* AIC Objections at 21. The IPA has now expressed that AIC’s preferred approach is acceptable. IPA Response at 21. As such, AIC requests that the Commission order a modification of the IPA Plan consistent with AIC’s request.

K. Section 9.5.8: AIC Reservations and Requested Determinations

The NRDC and AG have now joined the IPA in criticizing AIC for reserving its rights related to the concurrent development of its Plan 4 and the IPA’s 2017 IPA Electricity Procurement Plan. IPA Plan at 122-123. In its Assessment, Ameren Illinois “reserve[d] the right to adjust any terms or conditions with any selected implementers to account for its upcoming Section 5/8-103 and Section 5/8-104 integrated energy efficiency and demand response Plan 4 filing[.]” AIC Submittal at Page 8. As previously set forth in detail, the criticism on this point is unwarranted and need not be addressed by the Commission. *See* AIC Objections at 22-25. But three fundamental problems with such criticism demand reply.

First, the “legitimate concern” that the IPA claims to be pursuing by criticizing AIC’s reservation of rights has been manufactured out of thin air. Within a sentence, the IPA first aggrandizes the importance of its concern about potential AIC gamesmanship and then immediately acknowledges that no such gamesmanship exists. *See* IPA Response at 21 (“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[,]” yet, “[i]n 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.’”). There is no reason to publicly criticize AIC, or to seek Commission confirmation of such criticism, on the basis that AIC *might* have done something that it did not, in fact, do, and the IPA’s imprudence in this respect has done nothing but spawn litigation.

Second, for the IPA—and the AG—to attack AIC’s RFP process at this point in time, when the RFP and Plan 4 development process was conducted in a manner that was transparent, collaborative with stakeholders including the IPA and AG, and completely consistent with the consensus language achieved in the SAG Workshop process is disappointing. Parties spent hundreds if not more individual hours working on this process, which culminated in a consensus document. AIC needed to know that it could navigate the chronological complexity of this year’s procurement processes without needless criticism from the stakeholders, so it circulated its draft RFP among stakeholders, collected feedback from them, and incorporated their feedback where appropriate, just as the Commission directed AIC to do. *See* IPA Plan Appendix H at 6-7. Critically, *no* stakeholder raised these new concerns about AIC’s reservation of rights at that time. Now, the AG has abandoned the consensus attained in the SAG regarding AIC’s RFP

process. *See* AG Response at 14-15. NRDC has functionally done the same thing. NRDC Response at 4-5. If the SAG consensus is to be meaningless, then parties will have no incentive to participate in SAG workshops. That is an outcome that should not be endorsed by the Commission.

Third, the IPA, the AG and NRDC are flat wrong in how they explain the process. As the IPA acknowledges, AIC has not manipulated the planning processes in order to disqualify programs bid into the IPA. Indeed, everything AIC has done has been consistent with past practices and subject to Commission review and approval. But the simple fact is, if AIC *did* ask the Commission to disqualify programs bid into the IPA in favor of including similar programs in its Plan 4 this year, it would be wholly consistent with the law. Not one of the objecting parties has identified *any* provision of Illinois law, *any* Commission decision, or *any* sort of guiding authority whatsoever supporting the supposed right of IPA bidders to be free from later program disqualification. That is because none exists. IPA bidders are disqualified after the fact for numerous reasons every year, and the IPA itself is advocating for conditional approvals in this docket. The entire concept of a “conditional approval” is based on the premise that an IPA bidder can be disqualified—even after program approval—from implementing the program by the later adoption of a duplicative program under Section 5/8-103. In short, it is odd that the legal, routine request for conditional approval—the same request made by the IPA and others—is now objectionable to the IPA, the AG and NRDC simply because, stated this way, it affords the utilities a small amount of discretion to lawfully request relief from the Commission.

Finally, not one party objecting to AIC’s reservation of rights has even attempted to explain how a procurement that is statutorily limited to programs or measures that are “*incremental*” to those included in energy efficiency and demand-response plans approved by the

Commission pursuant to Section 8-103 of th[e] Act,” 220 ILCS 5/16-111.5B(a)(3)(C), can possibly take precedence over the very same “energy efficiency and demand-response plan[]” to which it must be “incremental.” That is because it cannot. There is simply no basis, in the Act, in Commission precedent, in Illinois case law, or anywhere else, for a directive ordering the utilities to build their Section 5/8-103 portfolios around the bids for the IPA’s Incremental Energy Efficiency procurement every three years.¹² The Commission should order the IPA to strike its criticism of AIC’s reservation of rights.

L. Section 9.6.8: ComEd LIMEP Program

The Board of Trustees of the University of Illinois on behalf of the Energy Resources Center at the University of Illinois at Chicago (“ERC”) filed a Response in support of the inclusion of the Low Income Multifamily Efficiency Program (“LIMEP”) for the ComEd service territory. ERC Response at 1-4. AIC agrees with Staff that programs which do not lead to an overall reduction in the cost of electric service should be rejected, for all of the reasons stated in Staff’s Response. *See* Staff Response at 18-19.

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 in AIC’s Verified Response to Comments and Objections, and grant any other such relief as is just and equitable.

Dated: October 31, 2016

Respectfully submitted,

AMEREN ILLINOIS COMPANY

¹² In fact, the Act could be read to *preclude any* incremental energy efficiency in a year in which no baseline Section 8-103 programs have been approved, though AIC has not advocated for such an interpretation in this docket.

d/b/a Ameren Illinois

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VERIFICATION

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

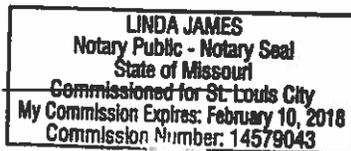
Director, Power Supply

SUBSCRIBED and SWORN to before me this 28th day of October, 2016.

Linda James

Notary Public

My commission expires:



VERIFICATION

I, Keith E. Goerss, certify that: (i) I have read the attached Verified Reply to Responses 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.

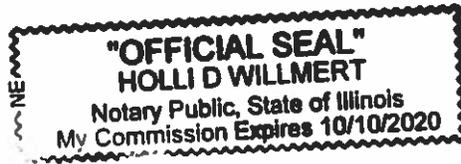
Keith E Goerss

NAME

SUBSCRIBED and SWORN to before me this 31 day of October, 2016.

Holli D Willmert

Notary Public



My commission expires: _____

CERTIFICATE OF SERVICE

I, Daniel V. Bradley, an attorney, certify that a copy of the foregoing Verified Reply to Responses to Comments and 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 31st day of October 2016.

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