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 REPLY TO RESPONSES
ON BEHALF OF THE ILLINOIS POWER AGENCY

The Illinois Power Agency ("IPA" or "Agency") respectfully submits its Verified Reply to Parties' Responses in Docket No. 16-0453, the IPA's petition for approval of its 2017 Procurement Plan ("2017 Plan") filed with the Illinois Commerce Commission ("Commission") on September 27, 2016.

Responses to parties Objections were filed by the Staff of the Commission ("Staff"), Ameren Illinois Company ("Ameren"), Commonwealth Edison Company ("ComEd"), the Environmental Law & Policy Center ("ELPC"), a coalition of three renewable energy suppliers ("Renewable Suppliers" or "RS"), the Energy Resources Center at the University of Illinois-Chicago ("ERC"), the Illinois Solar Energy Association ("ISEA"), the Office of the Illinois Attorney General ("AG"), and the Natural Resources Defense Council ("NRDC"). Taken broadly, the IPA's Reply to Responses address the subjects of renewable energy resource procurement (Chapter 8 of the 2017 Plan) and the approval of incremental energy efficiency programs under Section 16-111.5B of the PUA (Chapter 9). The IPA genuinely appreciates all parties' feedback and participation in this proceeding, and while few arguments in parties' Responses to Objections have impacted the positions taken by the Agency in the 2017 Plan itself or in its Response, the IPA believes that all perspectives shared have provided an important contribution to the development of a sound, well-rounded, and comprehensively vetted procurement approach.

I. RENEWABLE ENERGY RESOURCE PROCUREMENT (CHAPTER 8)

A. The Renewable Suppliers' Proposals Requiring Subordination of DG Contracts to their Financial Interests Should Be Rejected

In Response, the Renewable Suppliers attempt to tie Staff's proposal regarding distributed generation contract length back to their own flawed proposals requiring that: a) the first DG procurement not occur prior to the March 15 receipt of load forecasts, rather than as determined by the Agency based on appropriate scheduling criteria; and b) any new DG contracts entered into using hourly ACP funds be "subordinate to" any new contracts for the purchase of RECs from curtailed LTPPAs. (RS Response at 1-3). These proposals, however, are entirely disconnected from Staff's proposal; Staff's offer of longer contacts is a good faith (but flawed) attempt to maximize procurement participation while lowering administrative costs, while the Renewable Suppliers' proposals attempt to elevate their narrow financial interests at the expense of DG process participation. No parties are supportive of the Renewable Suppliers' proposals, and the IPA strongly advocates for their rejection.

As the IPA explained in its Response, the 2017 Plan takes a balanced, fair, and reasonable approach to recognizing the interests of existing LTPPA holders while also striving to ensure that statutory DG procurement targets are met. (See IPA Response at 3-4). While an LTPPA curtailment event is unlikely, in the event that a curtailment does occur hourly ACP funds are still proposed for the purchase of curtailed RECs. Further, should the hourly ACP funds be insufficient, the IPA maintains its offer to purchase any remaining curtailed RECs through the Renewable Energy Resources Fund. Not only is this approach fair, but as Staff highlights in Response, it is also quite conservative—the Agency is planning to allocate only hourly ACP funds already-collected for DG procurement events, despite the near certainty that significant additional hourly ACP dollars will be collected in future years.

As detailed in its Plan, despite the success of the Supplemental Photovoltaic Procurement process, the IPA has not yet made its DG procurements achieve their desired outcomes, with past DG procurements featuring limited participation and results falling well short of statutory goals. To fix this process (and informed by the analysis of the Commission's Procurement Monitor and parties commenting on the draft Plan), the 2017 Plan features thoughtful and balanced modifications to the DG procurement process to maximize participation and ensure that statutory goals are met at the lowest possible cost.

As multiple parties reference, making new DG contracts subordinate to existing LTPPAs in allocating hourly ACP funds would require the introduction of new curtailment provisions into DG contracts, essentially telling potential DG contract holders that the utilities cannot promise to actually purchase the RECs under contract because they cannot promise the availability of funds. This risks submarining all parties' extensive efforts at turning an ineffective process into a productive one. As generating participation from bidders for prior DG procurements *without* such provisions proved challenging, it is impossible to envision new bidders flocking to a process featuring such unfavorable new terms. And for what benefit? Merely to ensure that the Renewable Suppliers' most convenient (but not only) solution to an unlikely problem is held above all other interests—including meeting procurement targets established by law.

As the Commission knows, this is not the first time that the Renewable Suppliers have attempted to place their narrow interests above efficiently achieving the broader energy policy goals of the state. In Docket Nos. 13-0546, 14-0588, and 15-0544, LTPPA holders argued that the process for approval of spring load forecasts—a process which the Commission found "has been and will continue to be effective and successful" (Docket No. 13-0546, Final Order dated December 18, 2013 at 198)—instead required an independent proceeding to consider the

Renewable Suppliers' perspectives rather than simply relying on the consensus agreement of Staff, the IPA, the utilities, and the Procurement Monitor. As with requiring that the DG procurement process be designed for their needs, the Renewable Suppliers attempted to insert themselves into a load forecast approval process in a manner that would have added significant additional complexity and expense with corresponding benefits accruing only to them. After repeatedly annually rejecting these arguments, the Commission finally held that "the Renewables Suppliers are Collaterally Estopped from presenting this argument in future procurement dockets." (Docket No. 15-0541, Final Order dated December 16, 2015 at 79).

Just as the Renewable Suppliers could have benefitted from inserting themselves into the approval of March load forecasts, the IPA appreciates and understands that the Renewable Suppliers could benefit from a firm policy designating hourly ACP funds for curtailed LTPPA RECs above all other concerns. Those entities' financial concerns are not meaningless, and decisions made in developing the IPA's 2017 Plan were made mindful of the Renewable Suppliers' needs. But IPA Procurement Plans should not place additional benefits to beneficiaries of prior procurements above meeting statutory goals. As the IPA explained in both its Plan and Response, given the statutory 5 year minimum contract length requirement, hourly ACP funds currently constitute the only valid, reliable means of meeting the state's distributed generation goals. Making DG contracts that use hourly ACP funds subordinate to the purchase of curtailed RECs using those same funds would introduce large risk premiums at best, and would likely result in widespread non-participation in a procurement process for which participation is rightly sought be maximized, thus ruining many parties' efforts to make a flawed process operate more effectively. For all those reasons and the additional reasons referenced by the IPA and other parties' in Response, new DG contracts cannot be made subordinate to existing LTPPA contracts in accessing hourly ACP funds.

In Response, the IPA also indicated that the Renewable Suppliers proposal to use 110% as the estimated amount of the utility's accumulated hourly ACP Funds allocated to purchasing curtailed RECs was a reasonable approach. The IPA agrees that some estimate is necessary, and 110% (or a 10% buffer) does not appear unreasonable to the Agency. (See IPA Response at 5). Staff, however, asks that "the Renewable Suppliers, IPA, or some other party . . . explain and justify using a factor of 110%." (Staff Response at 4). Responding to Staff, the IPA itself has no independent justification for 110% (other than that the amount appears *prima facie* reasonable), but agrees with Staff that, if to be adopted, this proposal would benefit from supporting analysis, and, at a minimum, a clearly stated methodology and rationale.

B. Staff's Proposal for Mixed 5- and 10-year Contract Lengths for the DG Procurement Should Be Rejected

Multiple parties express concerns in Response about Staff's proposal for the inclusion of 10-year DG contracts in addition to the proposed 5-year DG contracts from the Plan. The IPA agrees with comments offered by ELPC and ISEA that bid evaluation under a mix of contract lengths would offer new challenges that have not been encountered in prior IPA procurements, likely adding additional costs, complexity, and uncertainty to both bidders' bidding behavior and to bid evaluation and selection. Multiple contract lengths also carry the additional downside of an increase in administrative burden faced by the utilities serving as the counterparty to DG contracts, forcing utilities to both assume contract administration responsibilities resulting from the same procurement for a longer period (10 years, as opposed to only 5), and administering a second set of contract types. While the utilities are in a better position than the Agency to explain changes in administrative burden, the 2017 Plan's proposed modifications to the DG procurement approach were made very mindful of the law's guidance to "minimize the administrative burden on contracting entities." (20 ILCS 3855/1-75(c)(1)).

Further, to the extent Staff's proposal is driven by a desire to reduce procurement costs, the costs of an additional procurement would not be borne by ratepayers. Instead, procurement administrative costs are funded through supplier fees collected from winning suppliers in the procurement event. (See 83 Ill. Admin. Code 1200.220). This is not to say that procurements should be conducted and scheduled inefficiently, only that the downside associated with a more expensive process (such as through multiple procurement events) is borne by winning bidders. Notably, to the extent that bidders' perspectives were represented in comments on the IPA's draft Plan or have been expressed in filings in this proceeding, all have been strongly supportive of multiple procurement events. (See ISEA Response at 1-2). As this feedback demonstrates that, on balance, the benefits of multiple procurement events outweigh additional costs to the very entities forced to bear those costs, the IPA continues to believe that holding two DG procurement events constitutes a sound approach to maximizing DG procurement participation.

II. INCREMENTAL ENERGY EFFICIENCY PROGRAMS (CHAPTER 9)

While the Agency maintains fundamental disagreement with certain parties on some energy efficiency issues contested in this proceeding, the Agency truly appreciates all parties' input and feedback and the attention to detail generally demonstrated in filings. Select issues raised in parties' Responses are addressed below.

A. Parties Arguments Requiring the Commission to Consider Tests Other than the Total Resource Cost Test ("TRC") Should Be Rejected (Section 9.5.4.3 and Section 9.6.8 of the 2017 Plan)

Various parties opine upon on the merits of the Utility Cost Test ("UCT"), whether as a secondary test to address cross-subsidization by electric customers for benefits received by gas customers or as a secondary test used to further scrutinize cost-effective energy efficiency programs. Staff seeks to have two programs disqualified by the Commission on the basis of a UCT score below 1.0, while ERC seeks to have its program approved despite a UCT score of 0.95.[1] Ameren and Staff also contend that Ameren's Cost of Supply analysis can be utilized for the Commission to disqualify OPower's behavior modification program. While NRDC does not seek to have programs disqualified on the basis of UCT scores, it maintains that the UCT is a proper way to judge the impacts of cross-subsidization and superior to an "electric only" TRC.

Unfortunately, only infrequently do these arguments actually reference back to the governing law. This may because the law makes no mention of the Utility Cost Test, Ameren's Cost of Supply Test, an "electric only" TRC, or any other test other than of the Total Resource Cost Tet ("TRC Test"). As explained below, the IPA firmly believes that 1) the law dictates that the Total Resource Cost Test must apply to the Commission's evaluation of Section 16-111.5B programs, 2) Commission reliance on tests other than the TRC would effectively serve to write the drafters' choice to rely on the TRC out of the law, and 3) any discretion exercised by the Commission in disqualifying cost-effective programs should be limited only to situations where approval of a program would not be "practicable"—i.e., the program would be incapable of being put into practice or accomplished, such as when a proposal would be "duplicative" of an existing Section 8-103 program or a Section 16-111.5B proposal.[2]

First, the governing law directly addresses how the Commission is to weigh the costs and benefits of energy efficiency programs, and which costs and benefits may be considered in that

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[1] The program was determined to be cost-effective with a TRC test result of 1.65.

[2] Also potentially qualifying as not "practicable" would be a proposal for which the vendor has an established track record of woefully low under-performance, as with the 5% performance threshold used in in the performance risk evaluation described in Section 9.6.5 of the Plan; such extreme underperformance would create near certainty that the program could not be accomplished as proposed. (See 2017 Plan at 125-126).

analysis. As the IPA highlighted in its Response, Section 16-111.5B requires that programs be "cost-effective," with that definition drawn from Section 8-103 of the PUA (the TRC Test). (220 ILCS 5/16-111.5B(b)). The statutory definition of the TRC Test provides the manner for weighing costs and benefits, expressly and specifically detailing which inputs may be used and compared in its calculation:

> the sum of avoided electric utility costs, representing the benefits that accrue to the system and the participant in the delivery of those efficiency measures, as well as other quantifiable societal benefits, including avoided natural gas utility costs, to the sum of all incremental costs of end-use measures that are implemented due to the program (including both utility and participant contributions), plus costs to administer, deliver, and evaluate each demand-side program, to quantify the net savings obtained by substituting the demand-side program for supply resources

(20 ILCS 3855/1-10). Stated differently, the TRC Test is best understood as a ledger, with the benefits and costs listed in its definition serving as entries akin to credits and debits, and the final result expressed as a ratio of the two. If credits exceed debits—or benefits exceed costs—the resulting ratio is above 1.0, and the program is cost-effective.

The Utility Cost Test and Cost of Supply analysis are simply different ledgers in which certain entries present in the TRC are adjusted or deleted. For example, Ameren's Cost of Supply analysis excludes both gas benefits and transmission and system distribution benefits (which the law requires be considered in a TRC Test), while a Utility Cost Test does not include societal or gas benefits on one side of the ledger and only looks at utility-incurred costs on the other. Cells on a spreadsheet are deleted to reflect these differences, and outcomes in the ledger change accordingly. Debits may now exceed credits; benefits may now fall short of costs.[3]

[3] As the ERC highlighted in its Response (ERC Response at 3), the following link is helpful in understanding what categories of benefits and costs are generally included in one test versus another: http://www.mwalliance.org/node/3032.

Utilizing a different ledger to weigh costs and benefits might be sensible if the law was silent on what ledger to use. But the law is not silent: Section 16-111.5B mandates that a test of cost-effectiveness apply, this test is required by law to be the TRC Test, the statutory definition of the TRC Test mandates that items such as gas savings and T&D benefits be considered, and no other test weighing costs and benefits is mentioned elsewhere in Section 16-111.5B. Conducting a first review using the ledger required by law (TRC), but then allowing that ledger to be ignored by deleting certain entries for an stricter review (UCT or Cost of Supply) effectively writes the first ledger out the law. It no longer matters that the governing statute expressly mandates recognition of gas benefits, as a second test is applied which ignores those benefits entirely. This is no different than, say, state law mandating that 70% shall be considered a passing grade for a driver's test, but the agency implementing that test ignoring that provision to state that only an 80% score will result in the issuance of a license. Whatever the policy merits of an 80% score or a UCT Test above 1.0, the determination of how a driver or a program passes has been made through statute, and an administrative agency cannot simply set state law aside to create new, stricter limitations. (See generally <u>In re Ill. Bell Tel. Co.</u>, Docket No. 01-0614, 2002 WL 1943561, at 30-31 (finding that the Commission "may not . . . add exceptions and limitations to the statute's applications, regardless of its opinion regarding the desirability of the results of the statute's operation)).

Second, the statutory provisions referenced by advocates of utilizing the Utility Cost Test or Cost of Supply Test (specifically, subsections (D) and (E) of Section 16-111.5B(a)(3))[4] are

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[4] These provisions refer to inclusion of 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" and an "[a]nalysis 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." Perhaps notably, this language may not even apply to *any*

clearly not operative on the Commission's review process. Those subsections are requirements for a *utility* submittal to the IPA, and in no way connect to *Commission* review of energy efficiency programs. More specifically, Section 16-111.5B(a)(3) contains requirements applicable to "each Illinois utility procuring power pursuant to [Section 16-111.5]," and concern what must be included in an assessment provided to the IPA. The statute does not even require that the Agency include those analyses in its Plan; it only requires that the Agency include "energy efficiency programs and measures it determines are cost-effective and the associated annual energy savings goal."[5] (220 ILCS 5/16-111.5B(a)(4)). If the analyses under Section 16-111.5B(a)(3)(D)-(E) were intended to inform Commission review of programs, the law would have required those results to be included in the Plan. Instead, the statutory provision providing the Commission with guidance on *its* program review process—Section 16-111.5B(a)(5)—requires only that programs be "cost-effective" (and that the Plan "<u>fully capture</u> the potential for <u>all</u> achievable cost-effective savings, to the extent practicable"), a requirement that Section 16-111.5B expressly traces back to the TRC Test. (See 220 ILCS 5/16-111.5B(b) (directing that cost-effective have the meaning found in Section 8-103); 220 ILCS 5/8-103(a) (stating that "cost-effective" refer to the Total Resource Cost Test)).

Further, in addition to being *utility* requirements and not part of Commission program review, the statutory provisions referenced by advocates of secondary tests weighing costs and benefits (Section 16-111.5B(a)(3)(D)-(E)) may not even refer to the specific test being advocated. For Ameren's first submittal under Section 16-111.5B in 2012, it applied the Utility Cost Test to meet the Section 16-111.5B(a)(3)(E) requirement of its submittal to the IPA. For its

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individual program; given the use of the plural "programs" and "measures," these provisions may actually be best understood to require an analysis applicable to *all* cost-effective proposals taken together.

[5] The Agency does elect to include supporting information and non-confidential portions of a utility's assessment as an appendix to the Plan, although such analyses often do not include UCT or Cost of Supply scores.

2013 and 2014 submittals, consistent with consensus language agreed to by stakeholders in 2013, Ameren used the TRC Test for its Section 16-111.5B(a)(3)(E) analysis. It was only in the summer of 2015 that Ameren introduced this new Cost of Supply analysis; this was found in its July 15, 2015 submittal, developed without any stakeholder input and framed as an "evolution" of its understanding, and has only been applied in its submittal in two of the five years in which such submittals have been made. That Ameren's specific approach is sacrosanct or obvious extension of the statute is flatly contradicted by *actual practice* under this provision; even today, ComEd utilizes the TRC Test to meet its Section 16-111.5B(a)(3)(E) requirement, and no party has ever been found to be non-compliant with this requirement despite the inconsistent interpretations applied to it. It is simply that utility's choice for its analysis, as that requirement is operative on only the utility—and not on the Commission in conducting program review.

And while the IPA understands that the Commission did utilize Ameren's Cost of Supply analysis in choosing not to include two cost-effective programs in Docket No. 15-0541, it is also instructive that for each prior year for which Section 16-111.5B submittals were made, tests other than the TRC were *not* used to disqualify proposals even if the resulting ratios fell below 1.0. For instance, in Docket No. 13-0546, programs were approved for both Ameren's and ComEd's service territories despite a UCT score below 1.0 because each program featured a TRC of above 1.0. (See 2014 Plan at 87, 89). In Docket No. 14-0588, two programs proposed for ComEd's service territory were approved despite a UCT score below 1.0 because each program featured a TRC of above 1.0. (See 2015 Plan at 80). As years of past practice were not determinative for the Commission last year, a lone year of a different approach should not be determinative for the Commission this year either.

Third, and perhaps most importantly, if the drafters of Section 16-111.5B had sought to have the Commission apply a second test in addition to the TRC in considering incremental energy efficiency programs, they know full well how to do so. Indeed, they <u>did</u> do so—and then subsequently stripped that language from the law to maintain exclusive focus on the TRC.

To understand how information such as the UCT and a Cost of Supply Test may be used by the Commission, a review of Section 16-111.5B's history is instructive. Section 16-111.5B was initially enacted as part of a suite of new statutory provisions in the Energy Infrastructure and Modernization Act ("EIMA") with an effective date of October 26, 2011.[6] However, prior to the inclusion of incremental energy efficiency programs in any IPA procurement plan under this section, the bill would be modified in July 2012 to address two issues as explained below.

First, the initial version of Section 16-111.5B(a)(3)(C) called for the "identification of new or expanded cost-effective energy efficiency programs or measures . . . that would be offered to eligible retail customers." This was problematic, as an "<u>eligible</u> retail customer" is one which actually takes fixed-price bundled service from the utility—a fluid, dynamic population (as customers switch between fixed-price bundled service and service from an alternative retail electric supplier, especially through municipal aggregation), and no energy efficiency programs are designed to target only those customers taking supply from the utility. As a result, through Public Act 97-0824, this provision was modified to allow programs targeting "all retail customers whose electric service has not been declared competitive under Section 16-113 of this Act and who are eligible to purchase power and energy from the utility under fixed-price bundled service tariffs, regardless of whether such customers actually do purchase such power and energy from the utility."

[6] A copy of the Public Act 97-0616 may be found at: http://www.ilga.gov/legislation/publicacts/97/097-0616.htm.

More pertinent to this discussion was a second change made through Public Act 97-0824. As originally enacted, Section 16-111.5B(b) not only stated that "cost-effective" shall have the meaning set forth in Section 8-103 of the PUA (i.e., a Total Resource Cost test score of 1.0 or greater), but also that an additional requirement applied to approving Section 16-111.5B programs: "the estimated costs to acquire an additional energy efficiency measure, when divided by the number of kilowatt-hours expected to be saved over the life of the measure, shall be less than or equal to the electricity costs that would be avoided as a result of the energy efficiency measure."[7] But this requirement was the stripped from the law in 2012 through Public Act 97-0824, leaving only focus on the TRC.

Originally passing a law including a second test for weighing costs and benefits demonstrates that drafters of Section 16-111.5B knew full well how to create an additional test for Commission consideration of energy efficiency programs beyond only the TRC. As shown above, the original version of Section 16-111.5B required a second calculation of costs and benefits distinct from the TRC Test—an additional requirement that "the estimated costs to acquire an additional energy efficiency measure, when divided by the number of kilowatt-hours expected to be saved over the life of the measure," needed to be "less than or equal to the electricity costs that would be avoided as a result of the energy efficiency measure." While the analyses required under Section 16-111.5B(a)(3)(D) and (E) still applied only to the utilities, this requirement was specifically framed to apply to singular energy efficiency measures included in a Procurement Plan. But the drafters then thought better of such a provision, passed new legislation striking it from the law, and left only the requirement that programs be "cost-effective" as determined by the TRC in place to govern IPA and Commission review.

[7] As parties were never required to interpret this language in developing submittals, it is unclear which test weighing costs and benefits would have applied to an analysis made under this provision.

The fundamental rule of statutory construction is to ascertain and give effect to the General Assembly's intent. (See Michigan Ave. National Bank v. County of Cook, 191 Ill. 2d 493, 503-04, 732 N.E.2d 528 (2000)). It cannot have been the General Assembly's intent that the Commission would effectively write new requirements and limitations back into the statute, creating a second litmus test after having stripped such a requirement away. Applying a new test to program evaluation beyond the TRC inappropriately writes those changes out of the law, allowing an administrative process to create new limitations that the drafters specifically sought to exclude from the statute. While the UCT, the Cost of Supply analysis, or an "electric only" TRC may present appealing policy arguments, the grounds for their utilization in the Commission's review of proposals stems from a fundamental misunderstanding of the statutory intent of Section 16-111.5B.

In light of the above, the Agency believes that, contrary to Staff's recommendation, the Middle School Energy Education Campaign Program and the Low Income Multifamily Retrofits Program proposed for the ComEd service territory must be approved as part of the 2017 Plan. Each program is cost-effective, is not duplicative of another proposal or existing Section 16-111.5B program, and would be disqualified only on the basis of using a test distinct from the test mandated by law to be used for evaluation. Utilizing a Utility Cost Test result as grounds for disqualification would essentially write the TRC out of the statute in favor of the policy preferences of Staff. As this is not a tenable interpretation of Section 16-111.5B, the UCT is not a valid basis for disqualifying those programs, and they must be approved as currently proposed in the 2017 Plan.

Also in light of the above, the Agency believes that the Behavioral Modification program proposed for the Ameren service territory should be approved as part of the 2017 Plan. This program is cost-effective, is not duplicative of another proposal or existing Section 16-111.5B program, and would be disqualified only on the basis of using a test distinct from the test mandated by law to be used for evaluation. Utilizing Ameren's Cost of Supply test as grounds for disqualification would essentially write the TRC out of the statute in favor of the policy preferences of Ameren and Staff. As this is not a tenable interpretation of Section 16-111.5B, Ameren's Cost of Supply Test is not a valid basis for disqualifying those programs, and they must be approved as currently proposed in the 2017 Plan.

B. Additional Issues Raised Related to the Behavior Modification Proposal (Section 9.5.4.3 of the 2017 Plan)

In Response, Ameren notes Staff's concern regarding the persistence of past program participants' energy savings. Ameren further suggests that "that the rejection of the OPower behavioral modification bid will give AIC's independent evaluator a useful opportunity to actually measure the persistence of savings achieved through the program's application, which will aid in determining accurate TRC, UCT and COS values for behavioral modifications in AIC's service territory in the future." (Ameren Response at 18). While the AG continues to support the IPA's overall point regarding the allocation of gas and other benefits, the AG now supports the exclusion of this program to provide time for additional research and evaluation:

> While the OAG supports the recognition of gas and all other benefits in the evaluation of the cost-effectiveness of an IPA program bid, as noted in the previous section of this pleading, the OAG sees value in examining the veracity of the most recent TRM-reported savings persistence of the Behavioral Program at issue here – particularly given the reported program design in this particular bid, which includes sending the behavioral reports to the same customers that have received them in the past. The OAG recommends that this particular bid at issue in Section 9.5.4.3 of the IPA's Plan be excluded from the IPA Plan so that independent evaluators can assess the persistence of the program over a single year when the program is not being provided. Of course, in doing so, the Commission should include a directive to Ameren that requires it commit to conduct such an evaluation on a timely basis and follow procedures regarding the development and review of EM&V work plans that are consistent with the Illinois Energy Efficiency Policy Manual.

(AG Response at 11-12).

Although the IPA appreciates the desire to gain additional information and knowledge regarding this type of behavioral program, using that desire to exclude this program is misguided. As the IPA noted in its Response regarding the Community-Based LED program, "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." (IPA Response at 20). That same logic applies here: if this program was shut down to examine persistence, several years may elapse before evaluations are concluded, a new RFP issued, a program approved by the Commission, and then a program restarted. Potential vendors would presumably be cautious in proposing a new program given this past experience and delay. Previously non-participating all-electric homes (who by their very nature have higher electric usage, and thus costs) would be deprived of the new opportunity to participate and save energy and money.

On October 18, 2016 the American Council for an Energy-Efficient Economy ("ACEEE") published "Behavior Change Programs: Status and Impact," a survey and analysis of the effectiveness of a wide range of types of behavioral energy efficiency programs.[8] This report examines 20 dual fuel home energy report programs (the type of program at issue here) as well as 21 electric home energy report programs and six gas home energy report programs. While the IPA has not conducted an exhaustive review of the report, it is clear that behavioral energy efficiency programs have been extensively researched and evaluated (including two studies in the Ameren service territory, one in the ComEd service territory, and one for Peoples Gas)

[8] That ACEEE report can be found at the following link (with registration): http://aceee.org/research-report/b1601

And while the ACEEE report does acknowledge an ongoing need to study persistence, further analysis does not necessitate ceasing behavioral program operation. Instead, to the extent that the Commission determines that persistence in behavioral program energy savings needs to be further evaluated, a superior approach than rejecting the program to study its persistence would be approving the program and having a randomized group of current participants discontinued (and replaced by other dual fuel customers to maintain the proposed overall participation level), with the discontinued participants' savings persistence studied. This approach would allow for capturing ongoing benefits of the program for existing customers, the expansion of the program to new all-electric customers, and the new research and evaluation opportunities sought by Ameren and the AG.

C. The AG's Contract Scrutiny Proposal Should Be Rejected (Section 9.4.2)

In Response, the AG continues to advocate for the development of a new layer of utility review of Section 16-111.5B proposals not envisioned by the statute. (AG Response at 5-7). Under this proposal, rather than evaluating a bidder's proposal as presented (and working with the bidder on problematic aspects of a bid, as is current practice), the utility would additionally be tasked with negotiating stricter contract terms and proposing modifications to program design with renewed "vigor and scrutiny." For all the reasons stated in its Response (IPA Response at 12-14), including that this proposal would make a challenging process even more difficult to navigate for potential bidders, the IPA continues to view this proposal as highly problematic.

While how this proposal would operate in practice is still mostly opaque, the AG's Response was somewhat illuminative. Specifically, the IPA now appreciates that this proposal would require the utilities to "scrutinize the <u>implementation strategy</u> and <u>program design</u>, including the energy efficiency measure mix" of each proposal. (AG Response at 7 (emphasis added)). To the Agency, one of the primary distinctions between Section 8-103 versus Section 16-111.5B is that while Section 8-103 requires *the utility* to build and submit a portfolio of programs presented for Commission approval, Section 16-111.5B allows *the market* to essentially develop that portfolio through independently developed bids. Novel program designs, new technologies, and innovative delivery approaches are all possible if a resulting bid is cost-effective, with the bidder itself bearing the risk of an ineffective program under a pay-for-performance contract. Unlike a Section 8-103 portfolio, the utility is not the gatekeeper; the objective merits of the bid, as evaluated for cost-effectiveness, serve as the gatekeeper instead.

The AG's proposal inverts that construct and forces the utility to assume a portfolio development role not envisioned in the law. Perhaps more problematic, any existing assumptions about the right way to design a program would likely have to be imposed onto the bid review process, and innovative new approaches may suffer.[9] Even if the utility would not want to force a bidder to revisit a novel, innovative new program's design, the AG's proposal would force the utility to "scrutinize" those aspects "for consistency with best practices," and the utility would presumably run afoul of this new requirement if it failed to call for the bid's modification.

The Agency believes that this mandated funneling of ideas undermines that which is most promising about the Section 16-111.5B paradigm: the ability for new ideas to benefit from an objective review disconnected from established practices. That leveling of the playing field is not only good policy, it is what the law envisions through minimizing any party's role to a passive one in approving cost-effective bids. As the AG's proposal would elevate a flawed idea

[9] This is not to say that the utilities would improperly use gatekeeper status; it is only to say that the utility is not all-knowing, and startups and other nimble market participants may have beneficial new ideas that the utilities (or any other party) have simply never previously seen in operation.

unenvisioned by the law above the most promising elements of Section 16-111.5B that are actually present in the legal construct, the AG's proposal should be rejected by the Commission.

D. ComEd's Requested Approval of Contract Templates (Section 9.6)

With respect to the approval of ComEd's proposed contract templates, the IPA agrees with Ameren that approval of ComEd's contract templates cannot serve to require Ameren to use contract templates mirroring ComEd's, and reiterates a concern raised in its petition that, if considered at all, the IPA would prefer that both Ameren and ComEd's contract templates be considered together. And while not opposing approval of ComEd's contract templates, the IPA is sympathetic to Staff's concerns that these templates would have benefitted from stakeholder review before their September 14th submittal with comments on the IPA's Draft Plan.

Further, the only apparent regulatory uncertainty necessitating approval of these templates is an issue specific to pre-payment of vendors who later become insolvent, and the Agency understands this to be something now insulated against by disallowing pre-payment. If other issues manifest in these templates also raise regulatory uncertainty, posing the question of "can we do this?" on a specific facet of the templates (with supporting explanation about why that approach was justified) would have been far more helpful than the inclusion of entire lengthy contract documents and a request of "can you approve all of these?" Resolving identified issues is challenging enough in a 90 day proceeding; forcing parties to additionally detect and highlight issues buried in the terms of contract templates layers new, deeper challenges on top of that.

E. Potentially "Duplicative" Programs Proposed for the Ameren Illinois Service Territory (Section 9.5.5)

In Response, Ameren states that while it had previously supported the 2017 Plan's approach to conditionally approve the Franklin Small Business Direct Install program as a potentially "duplicative" program (only proceeding if the comparable Small Business Direct Install program in Ameren's proposed Section 8-103 portfolio was not approved), in light of the stipulation reached in Docket No. 16-0413 (approval of Ameren's Section 8-103 portfolio), Ameren now supports a revised conditional approval of the program as incremental to the Section 8-103 program. (Ameren Response at 19). The AG and NRDC also note the stipulation (to which they are both signatories) in Response. (AG Response at 14; NRDC Response at 5-6).

As the IPA understands the settlement, the Small Business Direct Install program at issue in this proceeding would now be an expansion of the Section 8-103 Small Business Direct Install program and thus should be approved. While not a party to the stipulation, the IPA has reviewed the stipulation, and to the extent that aspects of the stipulation apply to the 2017 Procurement Plan's inclusion of small business programs, the IPA does not object to those parties' proposals.

F. Staff's Proposal Requiring the Reporting of an Administrative Cost Estimate in IPA Procurement Plans Should Be Rejected

In Response, ComEd also contests Staff's proposal requiring utility submittals and the Agency's Plan to include an estimate of Section 16-111.5B administrative costs. (ComEd Response at 7-8). The IPA again agrees with ComEd that this requirement "would serve no ostensible purpose," and would point out that only incremental transparency—i.e., parties could see the estimate—and the resulting Plan being more "auditable" have been presented by Staff as the supporting rationale. Since offering its Response on October 21, the IPA has not been made aware of how its Procurement Plans would be subject to "audit," nor how an estimate of administrative costs disconnected from Agency activity could become the subject of an audit process. The IPA continues to believe that this requirement is entirely unnecessary, that it has not been adequately justified by Staff, and that any new, non-statutory, prescriptive requirements on the contents of its annual procurement plan only be imposed by the Commission on the basis of a clear, convincing, and well-supported rationale.

CONCLUSION

The IPA respectfully recommends that the Commission resolve open issues consistent with the IPA's positions articulated herein.

Dated: October 31, 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 Reply to Responses 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 M. Star

Subscribed and sworn to me
This 31st day of October, 2016

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 31, 2016, the undersigned, an attorney, caused the Verified Reply to Responses on Behalf of the Illinois Power Agency to be filed via e-docket with the Chief Clerk of the Illinois Commerce Commission in a new proceeding:

October 31, 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 31, 2016.

/s/ Brian P. Granahan___
Brian P. Granahan