

**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 BRIEF ON EXCEPTIONS
ON BEHALF OF THE ILLINOIS POWER AGENCY**

The Illinois Power Agency (“IPA” or “Agency”) respectfully submits its Verified Brief on Exceptions to the November 14, 2016 Proposed Order in Docket No. 16-0453, the IPA’s petition for approval of its 2017 Procurement Plan (“Procurement Plan,” “Plan,” or “2017 Plan”). The IPA generally agrees with the Proposed Order’s conclusions, and finds that the reasoning behind those conclusions is thoughtful, well-articulated, and justified. The IPA appreciates the work of the Administrative Law Judge in producing a Proposed Order under an expedited timeline, and appreciates the contributions of all parties participating in this proceeding in helping refine and improve the IPA’s procurement approach. The Agency takes exception or offers further comment on only a select few issues discussed below.¹

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

In its Response to Objections and Reply to Responses, the IPA argued that Staff’s proposal for the Commission to mandate that an estimate of Section 16-111.5B administrative costs be included in each utility’s Section 16-111.5B submittal and in the IPA’s annual procurement plan should not be adopted:

¹ To the extent that not all sections addressed by the Proposed Order are addressed herein, the failure to address a particular section should not be construed as agreement with or acquiescence to the Proposed Order’s conclusion. Similarly, nor should a failure to address a section of the Proposed Order be considered the abandonment of a position previously articulated by the IPA in its filings or the abandonment of a position expressed through the 2017 Plan itself.

While the Commission certainly has authority to force parties' filings to include additional items beyond statutory requirements, the IPA believes it should not impose extra-statutory requirements without sound justification . . . [b]ut in reviewing Staff's offered justifications, Staff readily concedes that this information is irrelevant to understanding the cost-effectiveness of individual energy efficiency programs proposed for approval. Further, Staff makes no argument that this information is a) not available to it, b) not available to other parties, c) not otherwise reported through more appropriate proceedings or filings, or d) could not be reported by the utilities should they elect to do so. Instead, its thin rationale for a new, extra-statutory, prescriptive requirement is merely that the resulting Plan would be "transparent and auditable" without any explanation of who would "audit" the IPA's annual Plan and under what authority, let alone how requiring reporting an estimate of expected utility administrative costs would aid in any audit process. And while the IPA agrees that transparency is generally a laudable goal, this requirement would not create transparency around known information; it would simply require the reporting of best guess estimates that may prove inaccurate, introducing potential confusion with little corresponding benefit. As a result, Staff's proposal should be rejected.

(IPA Response at 10-11). However, in the interest of reducing the number of contested issues in this proceeding, the Agency takes no exception to the Proposed Order's conclusion. While the Agency continues to believe that the potential confusion created through the disclosure of these estimates carries greater cost than any benefits associated with requiring their inclusion, compliance with this requirement would create a negligible burden for the IPA and the Agency is prepared to accept whatever conclusion the Final Order reaches.

II. Section 9.5.4 Programs Deemed "Not Responsive to the RFP" by Ameren Illinois and Section 9.5.4.1 Policy Implications

While the IPA does not take exception to any specific directive from this Section, it reiterates its position exhaustively discussed in both this proceeding and in Docket No. 15-0541 that energy efficiency programs featuring non-incident levels of gas savings should be evaluated taking those savings into account rather than excluded from consideration. (See IPA Response at 14-19; IPA Reply at 6-15). As the IPA explained in its Reply to Responses, reliance on a test other than the TRC Test – such as Ameren's Cost of Supply Test or the Utility Cost Test ("UCT"), each of which ignore gas savings as a benefit – effectively writes the specific

requirements of the TRC out of the law, as benefits required to be recognized under the TRC are unaccounted for in that second test. (See IPA Reply at 6-15). The choice made by the drafters to recognize “other quantifiable societal benefits, including avoided natural gas utility costs” (20 ILCS 3855/1-10) through reliance on the TRC Test for program evaluation would be inappropriately ignored in favor of the policy preferences of an administrative agency. (See generally In re Ill. Bell Tel. Co., 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”)).

Nevertheless, the Agency recognizes that proposed Section 16-111.5B programs featuring non-incident levels of gas savings may present a cross-subsidization problem. As the IPA stated in its Response to Objections:

The IPA understands and appreciates AIC’s concerns regarding cross-subsidization. Electric ratepayers subsidizing gas ratepayers through the approval of any programs primarily benefitting gas ratepayers is problematic. While the extent to which it can be limited under the Section 16-111.5B paradigm necessitates a close examination of governing law (and not merely an identification of policy concerns, as done by AIC in its Objections), there are indeed legitimate arguments on both sides.

(IPA Response at 17). As a result, the IPA stated that it “would support workshops after the conclusion of this proceeding undertaken in an effort to reach consensus regarding what level of gas savings are permissible in future years’ bids.” (Id.).

The Proposed Order takes a different approach, stating that “[w]ithout having been provided a clear definition of when a program would not be primarily focused on electric savings, the Commission will consider dual-fuel programs on a case-by-case basis” and concluding that the “best measure” for guiding that determination may be the Utility Cost Test. (Proposed Order at 84). While the IPA agrees that the UCT may indeed provide useful

information for understanding cross-subsidization, the Agency is concerned that making dual-fuel program determinations on a “case-by-case basis” is suboptimal.

As the IPA stated in its 2017 Plan (the validity of which was recognized in the Proposed Order at 62), “the best mechanism for driving bidders to produce the most honest and accurate proposals oriented around minimizing costs and maximizing benefits may instead be through having clear and explicit processes and rules, and increasing participation to encourage competition between bidders.” (2017 Plan at 112 (emphasis added)). “Case-by-case” discretion, however, leaves Section 16-111.5B bidders *without* clear rules as to how dual-fuel programs will be evaluated. A bidder with a dual-fuel program that the Commission may well approve using its discretion could mistakenly believe that its program runs afoul of the Commission’s standard and elect to withhold its proposal, thus reducing competition and compromising efforts to “fully capture” all potential cost-effective savings. To avoid this outcome, a better approach may developing clear rules on the treatment of gas savings through workshops held after the conclusion of this proceeding, with the goal that conclusions reached in those workshops may be used to inform both the Section 16-111.5B RFPs issued in 2017 and proposals for the 2018 Plan received in response.

In light of the above, the Agency proposes the following revisions to pages 83-84 of the Proposed Order:

The question here is whether the Commission has the authority to exclude a dual-fuel program that passes the TRC test from a procurement plan, and if so, how that judgment be exercised. The two dual-fuel programs that Ameren recommends not including in the 2017 Plan are discussed below, in Sections V.G. and V. H. of the Order.

As discussed in the 2016 Plan Docket, the Commission approves cost-effective programs and measures to the extent practicable and, ~~the Commission has the authority to use its judgment to set practical limits on the procurement of energy efficiency. 2016 Plan Docket, Order at 100.~~ Generally speaking, if an energy efficiency program passes the TRC, it should be included in the procurement plan. Staff and Ameren argue that programs that are not primarily focused on electric savings should not be included in procurement plans. Without having been provided a clear definition of when a program

would not be primarily focused on electric savings, the Commission adopts the IPA's proposal that workshops be held after the conclusion of this proceeding to develop clear rules regarding the treatment of gas savings. These workshops shall be administered by the SAG and should be scheduled such that consensus reached can both guide the Section 16-111.5B RFPs issued by the utilities for programs to be included in the 2018 Plan and the evaluation of any proposals made in response to those RFPs.~~will consider dual fuel programs on a case-by-case basis.~~ The Commission agrees with the parties that ~~in exercising this judgment,~~ the best measure for guiding its a determination of whether cross-subsidization exists is the UCT because it only compares what electric ratepayers would spend to all the benefits they would receive. For the most part, however, the Commission agrees with the IPA that if a program passes the TRC, it should be included in the procurement plan.

While the Commission agrees that the UCT will best inform the Commission regarding cross-subsidization, the Commission acknowledges the parties' discussion regarding the COS. The Commission sees no reason for the COS provided by Ameren and ComEd to differ. Apparently, the COS provided by ComEd is consistent with past practice and, indeed, is the same type of COS provided by Ameren up until last year's plan.

~~The Commission agrees with Ameren that the reason for the PUA's inclusion of the comparison of the cost of procuring additional cost effective energy efficiency measure to the prevailing cost of comparable supply is because 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 Commission further agrees that that is why Section 16-111.5B(a)(3)(G) requires the utilities to provide "[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 this is why the PUA 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). Ameren Rep. at 17. The IPA uses the assessments provided to prepare a procurement plan for Commission approval. 220 ILCS 5/16-111.5B(4). The Commission agrees with the IPA, however, that the statute's directive to the Commission differs from the directive offered to the utilities under Section 16-111.5B(a)(3) and the Commission is required to "approve the energy efficiency programs and measures included in the procurement plan, including the annual energy savings goal, if the Commission determines they fully capture the potential for all achievable cost-effective savings, to the extent practicable, and otherwise satisfy the requirements of Section 8-103 of this Act." 220 ILCS 5/16-111.5B(a)(5). The differences between ComEd's and Ameren's approaches to calculating the COS are not fully explained, thus the Commission cannot say which COS is appropriate. This should be discussed in the SAG and if no resolution is reached, the parties can raise this issue in next year's docket with a more fully developed record regarding the differing approaches by the utilities.~~

III. Section 9.5.4.3 Behavioral Program

The IPA takes exception to the Proposed Order's exclusion of a cost-effective behavioral program "so that the independent evaluator can assess the persistence of the program savings over a single year when the program is not being provided." (Proposed Order at 94). While the IPA understands the Proposed Order's desire to study the persistence of behavioral program savings, a) behavioral programs have already been exhaustively studied (including those from Illinois) and b) savings persistence may, in fact, be *more effectively* studied by continuing the

existing program and developing a control group to compare savings from those participating in the program against those for whom the program is discontinued. (See IPA Reply at 15-17). Under the Proposed Order's approach, it is unclear how ceasing the program entirely could produce an informed analysis of savings persistence or under what circumstances (and by what time) a behavioral program could next be considered under Section 16-111.5B.

In addition to the above, the Agency also notes the following: First, while rejecting this cost-effective behavioral program, the Proposed Order also rightfully recognizes that “for the most part, however, the Commission agrees with the IPA that if a program passes the TRC, it should be included in the procurement plan.” (Proposed Order at 84). Against that backdrop, the IPA would expect that for a program which passes the TRC to be excluded, there would be a sound, unassailable reason for its exclusion. But for the behavioral program, the explanation offered is simply that savings persist after the program ceases to operate for those customers, and thus it is “not clear” that approval of the program would “fully capture the potential for all achievable cost-effective savings, to the extent practicable.” While this may be true initially, it is not necessarily true indefinitely, and ceasing the program immediately simply accelerates the point at which that persistence begins to erode, with that erosion increasing in each subsequent year. Alternatively, continuing with existing customers extends the period of full savings and defers the savings decline to future years. Stated differently, even if the savings erosion occurs in, say, three to five years time versus next year due to a high level of persistence, the net overall effect—and net benefit—is unchanged, and all cost-effective savings still fail to be fully captured. Ending the program now still leaves those same savings on the table; persistence effects simply ensure that those lost savings are from future years.

Second, while the IPA appreciates the Proposed Order's efforts to "fully capture" cost-effective savings by authorizing adoption of the "expansion" to new customers,² the IPA has concerns about an approach under which elements of a bidder's proposal can be parsed and separately analyzed for inclusion in the Plan. The proposal, as bid, called for the evaluation of continuation with some level expansion as a combination together. To the best of the IPA's knowledge, no one has ever actually asked the bidder whether the elements of the program can be parsed. Without the bidder's acquiescence to the parsing of that bid as part the record in this proceeding, the Agency believes that the proposal must be evaluated as bid and as included by the IPA in its Plan. A Commission conclusion authorizing dividing elements of a program proposed as a combination of elements may set a challenging precedent to work under in managing the consideration of future Section 16-111.5B proposals.

Third, even if the "expansion" *could* be parsed and considered separately, the Proposed Order would benefit from further clarity as to what steps should occur next in determining whether the bidder agrees to that approach. Specifically, what party is responsible for reaching out to the bidder? Is the specific "expansion only" option required to be the option included by the IPA in its Plan? By when is a decision from the bidder on whether to move forward with an "expansion only" approach required? And how will that decision be reported back to the Commission? While these questions should not be difficult to answer, the resulting process would benefit from further direction and clarity.

Fourth, to the extent that persistence must be evaluated, further clarity should be provided on exactly what that means and what new barrier it creates. For how long should this issue be studied and by when can a program of this type next be considered? This is a concern of the Agency's, as analyzing, say, a full year of post-program behavior requires the development of an

² Specifically, this would be the first opportunity for high-use all electric homes to participate in the program.

analysis construct, application of that construct to a group of customers, and then time spent reviewing results. Under this approach, an intended one-year moratorium could easily become three years. Also, what if a cost-effective behavioral program is proposed next year, but with a different delivery approach by a different bidder and without dual-fuel elements—can it still be evaluated for inclusion in the IPA’s Plan? And must the Technical Reference Manual be updated to reflect any conclusions reached through this process? Again, these questions may not be difficult to answer, but serve to highlight that adopting a proposal to study persistence is not so straightforward and may require additional guidance.

In light of the foregoing, the IPA proposes the following revisions to page 94 of the Proposed Order:

~~The Commission declines to approve the inclusion of this behavioral program as bid and as proposed by the Agency in the 2017 Plan. While the Commission appreciates that programs of this type feature some persistence of savings, the Commission declines to find that this issue is a valid basis for excluding a cost-effective proposed program from an IPA Procurement Plan or adopting only individual elements of the program as proposed. Programs of this type have been comprehensively evaluated, and while there could perhaps be benefits derived from further study of savings persistence, the Commission believes that studying this issue is not necessarily aided by ceasing the continuation element of the program as proposed. No party has demonstrated that this issue cannot continue to be studied and analyzed without electing to exclude a cost-effective Section 16-111.5B proposal in an IPA Procurement Plan.~~

~~Further this type of program has not previously been offered to all-electric customers. As these are inherently larger users of electricity than other households, they should not be unfairly excluded from the benefits of participation in well-established behavioral programs. The Commission finds that this program should be excluded from the 2017 Plan so that the independent evaluator can assess the persistence of the program savings over a single year when the program is not being provided. Moreover, the Commission notes that Staff states that excluding the continuation program from the procurement plan would not significantly affect energy savings, due to the high level of persistence associated with this behavioral program. For example, Staff explains, customers who have been in Ameren's behavioral program for many years 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. See Staff Cmmts. at 18 (citing IL TRMv5.0 Vol. 4 at 16). For these reasons, the Commission does not approve this energy efficiency program because it is not clear that it will "fully capture the potential for all achievable cost-effective savings, to the extent practicable." 220 ILCS 5/16-111.4B(a)(5).~~

~~Staff offers the option that just the expansion portion of this bid be approved, although it is not clear whether the bidder would consider separating the continuation and expansion programs. If it is a possibility, the Commission agrees with Staff that the expansion program should be included in the 2017 Plan because it clearly passes the TRC test.~~

Finally, the Commission will not adopt a rule against bundled bids as suggested by Staff because each program could be structured so differently that it is impossible to say that all bundled bids are improper.

IV. Section 9.5.8 Ameren Illinois Reservations and Requested Determinations

The IPA takes no exception to the conclusions reached in this Section, but notes that the Proposed Order requires that its 2017 Plan commentary "should be re-worded to avoid use of the word 'duplicity' in describing Ameren's bid process." (Proposed Order at 105). The IPA agrees that this phrasing may have been inadvertently confusing, and suggests the following revision to the text in its 2017 Plan:

It is unclear at this time how this reservation of rights will be applied by Ameren Illinois, but the Agency will approach any such posthoc assertion ~~of duplicity~~ that a third party program is duplicative with a newly identified Section 8-103 program with an eye toward a request for proposal process that took place without any such overlapping programs having been identified to bidders.

Consistent with the foregoing, the IPA suggests the following edits to pages 104-105

of the Proposed Order:

The Commission notes that with respect to the current IPA plan and the current Section 8-103 plan, there is no longer a dispute regarding energy efficiency programs because of the settlement reached by the parties in the Section 8-103 docket. However, the parties request that the Commission address Ameren's RFP process in advance of the next three year cycle.

The Commission agrees with the AG and the IPA that utilities should clearly indicate in the RFP what program they intend to propose for inclusion in their Section 8-103 plan. In other words, the Commission finds that ComEd's process provided a clearer picture for bidders.

Ameren states that its RFP process was vetted and approved as a consensus item by the SAG. Ameren Cmnts. at 23. The 2016 SAG Report states the following:

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.

2016 SAG Report at 6-7. The Commission does not find that this consensus language provides support for Ameren's RFP language. The consensus language clarifies that Ameren may request conditional approval of duplicative programs, but it does not support Ameren's vague RFP language.

The Commission will not order the IPA to remove its commentary about Ameren's bid process from the 2017 Plan, but does find that it should be re-worded to avoid use of the word "duplicity" in describing Ameren's bid process and directs that the re-wording proposed by the Agency in its Brief on Exceptions be included in the filed 2017 Plan.

CONCLUSION

The IPA thanks the Administrative Law Judge for her diligent, thoughtful work in an extraordinarily tight timeframe. The Agency recommends that the Commission resolve identified exceptions consistent with the IPA's positions articulated herein.

Dated: November 21, 2016

Respectfully submitted,

Illinois Power Agency

By:

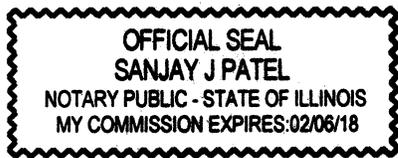
/s/ Brian P. Granahan

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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 Brief on Exceptions 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.



A handwritten signature in black ink, appearing to read "Anthony M. Star". The signature is written in a cursive style and is positioned above a horizontal line.

Anthony M. Star

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

A handwritten signature in black ink, appearing to read "Sanjay J Patel". The signature is written in a cursive style and is positioned above a horizontal line.

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NOTICE OF FILING

Please take notice that on November 21, 2016, the undersigned, an attorney, caused the Verified Brief on Exceptions 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:

November 21, 2016

/s/ Brian P. Granahan
Brian P. Granahan

CERTIFICATE OF SERVICE

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

/s/ Brian P. Granahan
Brian P. Granahan