

**STATE OF ILLINOIS**  
**ILLINOIS COMMERCE COMMISSION**

ILLINOIS POWER AGENCY	:	
	:	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	:	

**BRIEF ON EXCEPTIONS OF COMMONWEALTH EDISON COMPANY**

Commonwealth Edison Company (“ComEd”) submits this Brief on Exceptions (“BOE”) relating to the Administrative Law Judge’s (“ALJ”) Proposed Order (“Proposed Order” or “PO”) served on November 14, 2016. Pursuant to Section 200.830 of the Rules of Practice of the Illinois Commerce Commission (the “Commission” or “ICC”), 83 Ill. Admin. Code § 200.830, suggested replacement language is provided following each exception in legislative format.

ComEd appreciates the Proposed Order’s careful consideration of a variety of complex issues, and finds that the Proposed Order generally reflects a thoughtful and balanced treatment of the issues. ComEd’s exceptions are thus limited to two issues. *First*, the Proposed Order erroneously adopts Commission Staff’s proposal that projections of *non-program-specific* administrative costs should be provided as part of the planning process, which is based on the incorrect assumption that these costs are relevant to the *program-specific* determinations required to be made in this docket. Indeed, the Proposed Order correctly concludes in two other sections of the Order that the *program-specific* analyses are determinative under Section 16-111.5B of the Public Utilities Act (“PUA”) and rejects the extra-statutory proposals. To ensure the Proposed Order is internally consistent and comports with Section 16-111.5B, it should be revised to reject Staff’s proposal.

*Second*, following requests by the Illinois Power Agency (“IPA”), the Illinois Attorney General’s Office (“AG”), Ameren Illinois (“Ameren”), and ComEd that the Commission provide guidance and clarity regarding third-party energy efficiency contract terms and conditions, the Proposed Order declines to provide any guidance to the parties to address the regulatory uncertainty that has persisted over the past 15 months. While the Proposed Order cites to evidentiary and timing constraints, it is unclear to ComEd what additional evidence would be helpful to the Commission (and the Proposed Order offers no specific suggestions in this regard). Since Staff first raised the issue of vendor contract terms and conditions during the summer of 2015, the Commission has issued two orders regarding this issue, and the parties have also participated in workshops to address vendor contracts. All of this information is before the Commission, as well as ComEd’s revised contract terms and conditions and the contracts themselves.

Indeed, in the absence of evidence that utilities should, or routinely do, withhold payment from vendors, the Commission previously disallowed costs associated with an insolvent vendor based on Staff’s view that ComEd should withhold payment from vendors until final evaluation results are known. *See* ICC Docket No. 14-0567. It is therefore unclear why the Proposed Order now declines to provide guidance on the vendor contracting issue – especially when presented with concrete proposals and contracts that are responsive to, and can be considered in the context of, the extensive proceedings, orders, and workshops of the past 15 months. ComEd therefore requests that the Commission resolve the regulatory uncertainty surrounding this critical issue and provide the guidance and contract approval requested in this docket.

**EXCEPTION 1: SECTION 9.2 2016 SECTION 16-111.5B SAG WORKSHOP  
SUBCOMMITTEE. NON-PROGRAM-SPECIFIC ADMINISTRATIVE COSTS.**

As the Proposed Order correctly observes, the Commission has previously “direct[ed] Ameren and ComEd to track administrative costs *by program* in order to aid in future determinations of appropriate administrative cost assumptions to use in the TRC analysis of the Section 16-111.5B programs.” *Illinois Power Agency*, ICC Docket No. 14-0588, Final Order (Dec. 17, 2014) at 224 (emphasis added). The clear identification and tracking of these program-level costs are useful to the utilities, stakeholders, and Commission in ensuring that a given program’s costs are accurately reflected in the cost-effectiveness analysis, which is required by Section 16-111.5B. 220 ILCS 5/16-111.5B(a)(2) (requiring that proposed programs must be cost-effective in order to be included in the proposed plan). In its subsequent *2016 Procurement Plan Order*, moreover, the Commission declined to adopt Staff’s unclear proposal for additional reporting, and directed that the issue be taken up during workshops. *Illinois Power Agency*, ICC Docket No. 15-0541, Final Order (Dec. 16, 2015) (“*2016 Procurement Plan Order*”) at 95. During the workshop process, Staff clarified that it was proposing that utilities be required to submit projections of all of their Section 16-111.5B costs, including *non-scalable non-program-specific* administrative costs. Staff Objections at 7-8. Because stakeholders could not reach consensus regarding the adoption of Staff’s proposal, Staff proposes that its new reporting requirement be adopted in this docket. Staff Reply at 7.

The Proposed Order mistakenly adopts Staff’s proposal based on several misunderstandings, and the Proposed Order should be revised to correct its analysis and reject Staff’s proposal. *First*, the Proposed Order notes that “[t]he Commission has found that administrative costs need to be tracked, and there is nothing in this proceeding that leads the Commission to overturn that decision.” PO at 38. To be clear, Staff’s proposal here is not about

*tracking* administrative costs. ComEd already tracks all of its administrative costs – program-specific administrative cost projections are included in the cost-effectiveness analysis, and non-program-specific costs are tracked and reported in the annual reconciliation dockets.<sup>1</sup> The issue Staff raises is thus new to the parties and Commission, and would require that utilities additionally provide upfront projections of their *non-program-specific* administrative costs. The Commission has never considered this particular proposal before, and therefore a rejection of the proposal would not depart from or overturn any prior Commission order or otherwise relieve utilities from their duty to track all administrative costs.

*Second*, the projections that Staff seeks are not relevant to any determination to be made in this docket. The Proposed Order cites to Section 16-111.5B(a)(3)(D), and claims that these *non-program-specific* costs are “relevant to determining whether the Section 16-111.5B *programs* reduce the overall cost of electricity for ratepayers.” PO at 38 (emphasis added). This is an apples-to-oranges comparison, however, and the cited statutory provision makes no provision for considering *non-program-specific* costs. Rather, Section 16-111.5B is limited to requiring 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) (emphasis added). Fixed, *non-program-specific* costs that ComEd would incur regardless of whether a single *program* is approved simply do not factor into this statutory analysis at the program or measure level.<sup>2</sup>

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<sup>1</sup> The Report from the Illinois Energy Efficiency Stakeholder Advisory Group 2016 Section 16-111.5B Workshop Subcommittee summarizes ComEd’s and Ameren’s tracking and reporting of costs incurred due to Section 16-111.5B requirements. *See* 2017 IPA Procurement Plan, Appendix H, at 11-13.

<sup>2</sup> Fixed costs include, for example, the potential study that ComEd must undertake. *See* 220 ILCS 5/16-111.5B(a)(3)(a).

*Third*, the Proposed Order’s focus on this extraneous information – which has no bearing on the approval of programs under Section 16-111.5B – appears to be inconsistent with other Analysis and Conclusions sections of the Order. For example, the analysis of dual-fuel programs notes that “[g]enerally speaking, if an energy efficiency program passes the TRC, it should be included in the procurement plan.” PO at 80. The Proposed Order further observes that “[f]or the most part [] the Commission agrees with the IPA that if a program passes the TRC, it should be included in the procurement plan.” *Id.* Similarly, the Proposed Order rejects Staff’s proposal to exclude a program because it did not pass the extra-statutory Utility Cost Test. PO at 103. Quoting the statutory requirement that “the Commission shall also approve the energy efficiency programs and measures ... if the Commission determines they fully capture the potential for all achievable cost-effective savings, to the extent practicable,” the Proposed Order concludes that “[i]n general, therefore, the Commission must approve cost-effective programs, i.e., those that pass the TRC.”<sup>3</sup> In sum, these portions of the Proposed Order correctly emphasize that the TRC analysis is generally determinative, and thus wisely reject extra-statutory requirements that conflict with the statutory framework. To ensure that the Proposed Order is internally consistent, it should be revised to reject Staff’s extra-statutory, *non-program-specific* reporting requirement, which serves no purpose in the program- and measure-level analysis required by Section 16-111.5B.

ComEd thus proposes that the Commission Analysis and Conclusion on page 38 should be corrected as follows:

~~The Commission has found that administrative costs need to be tracked, and there is no dispute that the utilities are in fact tracking all administrative costs there is nothing in this proceeding that leads the Commission to overturn that decision. The Commission agrees with the IPA and ComEd Staff that the utilities’ administrative costs are program-specific administrative costs, which are not only relevant to proceedings where the utilities seek to be reimbursed for these costs, but also~~

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<sup>3</sup> The Proposed Order also notes that “[t]he Commission has found that it has some discretion in the approval of energy efficiency programs based upon the qualifier ‘to the extent practicable.’” PO at 103.

relevant to determining whether the Section 16-111.5B programs are cost effective and reduce the overall cost of electricity for ratepayers, are already being included in the utilities' upfront energy efficiency submittals to the IPA. This is consistent with the Section 16-111.5B(a)(3)(D) requirement of 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).

The Commission therefore declines to adopt Staff's proposal, which would not provide the Commission with information relevant to the determinations to be made under Section 16-111.5B. The non-program-specific administrative costs are tracked and reported by the utilities in their annual reconciliation dockets, and thus the Commission is not lacking in any reporting and directs the utilities to report, and the IPA to include in its future plans, the total expected costs to be incurred for Section 16-111.5B.

**EXCEPTION 2: SECTION 9.4.2 IMPROVING/REFINING BIDS. VENDOR CONTRACTING GUIDANCE AND APPROVAL OF CONTRACT TEMPLATES, TERMS, AND CONDITIONS.**

In its Plan, the IPA highlighted the regulatory uncertainty regarding the terms and conditions of energy efficiency vendor contracts, and specifically requested that the Commission provide clear guidance in this docket to address this confusion:

While many programs have performed very successfully, other programs have been less successful, and in one case, as extensively litigated in ICC Docket No. 14-0567, a vendor bankruptcy led to costs incurred that did not result in any energy savings. While the IPA appreciates that the ICC must consider whether utilities prudently manage their expenditures, balance must be achieved between necessary risks to achieve cost-effective energy reductions and completely insulating ratepayers or shareholders from any lost expenses.

One suggestion for achieving this balance could be general guidance from the Commission about the terms and conditions utilities should include in their contracts offered to vendors, as such clarity could also increase vendor confidence in the program structure.

Plan at 112. Although multiple parties to this docket have joined the IPA's request for guidance and clarity, the Proposed Order elects to remain silent on the issue, and provides the parties with no guidance. Rather, the Proposed Order would send the parties back to workshops for a second

time on the same issue, without any direction regarding the specific issues or evidence that the Commission wishes the parties to explore. PO at 60.

As explained below, the parties have been addressing this issue for nearly 15 months – across two separate dockets and a Stakeholder Advisory Group (“SAG”) workshop process. *See* ICC Docket No. 14-0567 and ICC Docket No. 15-0541. The two Commission orders entered in these dockets, the consensus items from the SAG workshop process, and the evidence in this docket regarding Ameren’s and ComEd’s revised third-party contracting procedures ensure that the Commission has ample information and evidence upon which to provide guidance and approve the proposed contract templates at this time – indeed, the evidence here is far more substantial than that relied upon by the Commission in disallowing the costs associated with a small energy efficiency vendor that became insolvent. The Proposed Order thus should be revised to consider the evidence and approve the proposed contract templates.

**A. The Commission Should Provide Clear, Specific Guidance in This Docket to Put to Rest Persisting Uncertainty.**

As an initial matter, the Proposed Order should be revised to fully reflect the regulatory uncertainty facing energy efficiency stakeholders, which has remained unresolved for well over a year. During last year’s proceeding to approve the IPA’s 2016 Procurement Plan in Docket No. 15-0541, the parties addressed issues associated with underperforming third-party vendors, which was prompted by the Commission Staff’s proposed disallowance in a separate docket (Docket No. 14-0567) regarding costs associated with an IPA energy efficiency program vendor that unexpectedly became insolvent. *2016 Procurement Plan Order* at 105-112. While Staff proposed that utilities withhold payment from the vendors until final evaluation results are known (*id.* at 108), the IPA, ComEd, and others cautioned that this approach could have a chilling effect on vendors’ participation in IPA energy efficiency programs (*id.* at 106). Indeed, evaluation results

can take years to finalize, which would leave the vendors without payment during this time. In the *2016 Procurement Plan Order*, the Commission prudently rejected “Staff’s proposals to require the utility to withhold payment and to disallow under-performing programs,” and instead directed that interested parties further address contract issues through the workshop process facilitated by the SAG. *Id.* at 110-111. As the 2017 Plan observes, however, the Commission disallowed costs associated with the insolvent vendor just six months later because ComEd had not withheld payment from the vendor. Plan at 112; *In re Commonwealth Edison Co.*, ICC Docket No. 14-0567, Final Order (June 21, 2016) (“*Plan Year 6 Reconciliation Order*”) at 29-30.

Against this backdrop, several parties join the Plan in requesting that the Commission act now to resolve the confusion that lingers. The parties’ Objections generally expressed support for the Plan’s proposal to revisit the vendor contracting issue in this docket and obtain much needed clarity – (i) the AG requested additional guidance from the Commission “to ensur[e] that ratepayers are not paying more than they should for an energy efficiency program, and that smaller potential vendors are not unfairly shut out of the bid process before it begins” (AG Objections at 9); (ii) Staff questioned whether the revised vendor contracts went far enough in insulating customers from risk (Staff Objections at 20); and (iii) ComEd proposed that the Commission provide specific guidance and also review and approve ComEd’s revised contract templates to be used with energy efficiency vendors (ComEd Objections at 4-5). In their Responses, the AG and ComEd, now joined by the IPA and Ameren, continued to support the Plan’s recommendation that the Commission provide further guidance.<sup>4</sup> Indeed, the AG urged that “[i]t must be made clear [] that the Commission never provided *specific* direction in its Docket No. 14-0567 Order as to what ideal contract terms look like.” AG Resp. at 4 (emphasis in original).

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<sup>4</sup> Staff’s Response, however, departed from its prior Objections, and instead claimed that there is no regulatory uncertainty with respect to vendor contracting. Staff Resp. at 9.

**B. The Record Includes Substantial Evidence to Support Commission Guidance and Approval of Proposed Contract Terms and Conditions.**

While the present docket offers a convenient and timely forum for providing the clarity requested by the parties, the Proposed Order declines the invitation to clear up the persisting regulatory uncertainty, but bases its decision on two flawed premises – namely, that the evidence is deficient and that parties have not had an opportunity to provide input regarding the contract terms and templates. As explained below, however, the record includes substantial evidence regarding vendor contracting, which is more than sufficient to enable the Commission to provide the specific guidance requested by the parties, as well as to approve the vendor contract templates proposed by ComEd. In addition, interested parties have been briefing and commenting on this issue for 15 months through two docketed proceedings and a workshop process.

*First*, the Proposed Order claims that that the record does not show whether the contract terms are appropriate and otherwise finds the evidence lacking. PO at 60. Yet, it is unclear what additional evidence ComEd should or could have provided to support its revised and more restrictive contract provisions. In its order in Docket No. 14-0567, the Commission’s disallowance of the costs associated with the insolvent vendor appears to be based upon the fact that ComEd had provided start-up payments to the vendor and had not withheld funding from the vendor until final evaluation results were known. *Plan Year 6 Reconciliation Order* at 29. In response to this order, ComEd revised its vendor contracts to impose more restrictive contracting provisions, which now eliminate start-up payments and withhold a percentage of funding from the vendors based on the nature of the energy efficiency program. As part of its request in this docket for approval of these provisions and contracts, ComEd provided in its Objections detailed explanations of its contracting framework and changes to those contracts in response to the order, which are reproduced below for convenience:

As reflected in Appendix A, ComEd has included proposed changes to the Plan that elevate and identify the third-party vendor and contracting issues as key policy issues to be decided by the Commission in this docket. To this end, ComEd proposes that the Plan include additional discussion regarding the procedural history and relevant Commission orders on these issues, as well as descriptions of the utilities' proposed contracting approaches for both utility-managed and third-party managed programs. Specifically, ComEd proposes that the Plan be revised to highlight key terms of its vendor payment provisions in both its pay-for-performance contracts and its contracts for ComEd-managed programs. These include the following:

- ***Pay-for-Performance Contracting:*** Since the inception of the IPA third-party energy efficiency programs, ComEd has executed pay-for-performance contracts with the vendors whose programs are approved by the Commission in an IPA procurement plan. These contracts include standard terms and conditions, as well as a specific scope of work that describes the energy efficiency program to be offered, the promised kilowatthour savings, budgeting, reporting requirements, invoicing, and payment terms. As a pay-for-performance contract, moreover, the vendor is required to give back funds in proportion to any shortfall in promised kilowatthour savings, as determined by the independent evaluator. Under the original version of these contracts, vendors could begin receiving payment to cover start-up costs incurred prior to the commencement of the planning year, and also received in-progress payments throughout the year. At the end of the year, expenses were “trued up” under the pay-for-performance structure based on the actual net kWh savings achieved by the program as validated by the independent evaluator.

In response to the disallowance approved by the Commission in ICC Docket No. 14-0567, ComEd has revised its pay-for-performance contracts to eliminate payment of start-up costs, and has also implemented enhanced verification and withholding provisions that limit the amounts ComEd will pay prior to receiving final evaluation results from the independent evaluator. Specifically, ComEd will only pay 90% of verified savings for those measures whose energy savings have been “deemed” by the Illinois Technical Reference Manual. If the measure’s energy savings have not been deemed, ComEd will only pay 75% of the verified savings for such measure. The withheld amounts will only be paid if the independent evaluator’s final evaluated results justify such payment.

- ***Contracting and Payment Process for ComEd-Managed Programs:*** Several of the programs ComEd proposes for this Plan are ComEd-managed programs (as opposed to third-party administered programs). In other words, these programs are similar in structure to those ComEd implements and manages under its overall energy efficiency portfolio and its various programs and program elements, as approved by the Commission under Section 8-103 of the PUA. For ComEd-managed programs, ComEd relies on a broad network of third-party vendors to assist with the implementation of its energy efficiency

plans (*e.g.*, marketing, outreach, engineering and technical analysis, incentive fulfillment, inspections, appliance pick-up, data tracking). Each contract that ComEd executes with these vendors contains a unique and well-defined scope of work that clearly articulates the vendor's specific tasks and deliverables. Each contract also includes key performance indicators, which measure the vendor's performance under various metrics related to the contract's tasks and deliverables (*e.g.*, safety, customer experience, timeliness of rebates, data accuracy). Vendors generally submit invoices to ComEd on a monthly basis for the work performed during the prior month. Subject to ComEd's verification of the accuracy of the invoice and that the goods or services were delivered, ComEd will typically pay invoices within 45 days, and will expedite payment if the invoice is for rebate and incentives reimbursement.

To assist the Commission in providing additional clarification regarding contract terms and conditions, ComEd recommends that the Plan also be revised to attach the contract templates that the utilities propose to execute with third-party vendors, whether they are pay-for-performance contracts related to third-party managed programs or contracts related to utility-managed programs.

ComEd Objections at 5-8.

It is unclear to ComEd what additional evidence the Commission seeks, and no specific direction is provided in this regard. Indeed, in Docket No. 14-0567, the Commission disallowed the costs associated with a small energy efficiency vendor that became insolvent despite there being no evidence in the record that any utility in the country withholds payment from vendors as Staff proposed in that docket. The Commission now has the benefit of its two prior orders, a workshop process that addressed vendor contracting, and revised contracts addressing the orders and workshops. The Commission thus should rule on and approve these contracts without delay.

*Second*, the Proposed Order claims that it cannot approve the proposed contracts because ComEd "fail[ed] to include interested parties in the development of these contracts," citing to a statutory requirement that the "utility shall consider input from the [IPA] and interested stakeholders on the procurement and administration process." PO at 60 (quoting 220 ILCS 5/16-111.5B(a)(5)). In light of the two dockets and workshop process that have already addressed this issue, however, the Proposed Order's criticism is misplaced. For example, all of the parties

commenting in this docket on the issue of vendor contract terms and conditions participated in last year's procurement docket where Staff suggested that utilities withhold payment from vendors or impose performance or surety bond requirements. *2016 Procurement Plan Order* at 108-109. Moreover, as reflected in the Plan, the parties addressed third-party vendor contracting as part of the workshop process conducted during the months of January through June of this year. Plan at 109-110. This led to 10 consensus items, which are laid out on pages 109-110 of the Plan. Any interested party, including all of those commenting on the issue in this docket, thus has had ample opportunity over a 15-month period to provide input regarding third-party energy efficiency contract terms and conditions, and ComEd's proposed contracts reflect this input.

Given that the Commission did not deny ComEd's Application for Rehearing in Docket No. 14-0567 until August 9, 2016,<sup>5</sup> ComEd worked as expeditiously as possible to prepare and finalize revised vendor contract terms and conditions so that they could be considered and reviewed in the present docket. As a result, ComEd was able to provide stakeholders with the proposed contract templates when it filed its Comments on the Draft Procurement Plan on September 14, 2016.<sup>6</sup> No party has taken issue with any particular proposed contract term or condition, and the contracts thus should be approved.

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<sup>5</sup> See *Illinois Commerce Commission v. Commonwealth Edison Co.*, ICC Docket No. 14-0567, Notice of Commission Action (Aug. 9, 2016).

<sup>6</sup> See Commonwealth Edison Company's Comments on the Illinois Power Agency's 2017 Draft Procurement Plan, Attachments B-F, available at: <https://www.illinois.gov/sites/ipa/Pages/DraftProcurementPlanComments2017.aspx>.

### **C. Nothing Precludes the Commission from Approving ComEd's Contract Templates and Ordering Additional Workshops.**

As a final matter, ComEd notes that the Commission is free to provide guidance and approve contract templates based on the evidence provided here, while also directing that the parties continue discussions in the SAG workshop process regarding third-party vendor contracting. If the Commission elects to order more workshops, however, ComEd requests that the Commission provide specific direction regarding the number of workshops to be conducted, the topics to be discussed at each workshop, the particular evidence the Commission wishes to see developed, and a timeline for the ultimate resolution of this issue. As the Commission is aware, its *2016 Procurement Plan Order* directed the parties to discuss the vendor contracting issue during the SAG workshop process. *2016 Procurement Plan Order* at 110-111. The parties did so, and the consensus items identified during that process are reflected on pages 109-110 of the Plan. Thus, if the Commission directs the parties to return to workshops, it would be helpful for the Commission to articulate the specific topics, issues, and facts to be addressed and developed during this process.

ComEd accordingly proposes that the Commission Analysis and Conclusion on page 60 should be corrected as follows:<sup>7</sup>

In the *2016 Plan Docket*, the Commission said that the same level of scrutiny should be applied to third party energy efficiency contracts entered into under Section 8-103 and Section 16-111.5B of the PUA. The Commission provided no further explanation regarding the intent or meaning of this statement. The Commission notes that the AG requests that the Commission require Ameren and ComEd to include in their RFPs notice to vendors that the utilities shall, as a condition of the contracting process, and after Commission approval of a program that passes the TRC and performance risk criteria: 1) scrutinize the cost per kilowatt hour saved to ensure that the price, while passing the TRC, is not inflated and, if necessary, negotiate a reduced cost consistent with the utility's Section 8-103 contracting

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<sup>7</sup> ComEd's proposed revisions also include a change to the first sentence of the Commission Analysis and Conclusion to accurately reflect the precise issue that the *2016 Procurement Plan Order* directed the parties to explore – *i.e.*, “the same level of scrutiny” to be applied to contracts. *2016 Procurement Plan Order* at 110 (emphasis added).

practices; and 2) scrutinize the implementation strategy and program design, including the energy efficiency measure mix, to ensure that the program is consistent with best practices. AG Resp. at 6-7. The Commission declines to adopt the AG's proposal. The Commission finds that the AG's proposal is inconsistent with the statutory differences between these two types of programs.

The AG's proposal to require the utilities to scrutinize program design fails to account for the utilities' different roles in Section 8-103 and Section 16-111.5B energy efficiency programs. The Commission notes that Section 8-103 requires that ComEd and Ameren offer or procure various energy efficiency programs for the purpose of reducing energy consumption. Unlike the utility-designed and implemented energy efficiency plans under Section 8-103, the core of Section 16-111.5B's efficiency procurement is an RFP process where third-party bidders implement those winning programs that are approved by the Commission. In other words, the AG's proposal fails to reflect that Section 16-111.5B envisions a market-driven process.

The Commission agrees with the IPA that the AG's proposal could also make the bid process more subjective, contrary to the statutory scheme. Notably, an extra step of price negotiation could reduce bid participation and increase administrative costs. The Commission finds that increased bid participation is a better method for ensuring that contracts are properly priced, rather than a subjective price negotiation after the RFP. For these reasons, the AG's proposal is not adopted.

With respect to the issue of the appropriate contract terms for use with third-party energy efficiency vendors, the Commission appreciates the high level of interest in this issue, and understands that a certain degree of regulatory uncertainty persists following recent Commission orders on the issue of vendor contracts. Based on the Commission's order and disallowance of costs in Docket No. 14-0567 associated with an energy efficiency vendor that became insolvent, the Plan observes that both Ameren and ComEd implemented more stringent contracting provisions. The Commission notes that the different contract terms discussed in comments seek to address different issues. Ameren explains that surety bonds are required to ensure that a vendor has the ability to return dollars to customers if actual savings, as determined by the independent evaluator, are less than the savings reported by the implementer. Ameren further explains that holdbacks are designed to encourage implementers to deliver the entire amount of savings as bid. According to Ameren, it sets the surety bond level at 25% of the program cost and its holdback at 5%. This holdback provision means that implementers that fail to achieve 95% of their contractual commitment are subject to losing some or all of the 5% holdback. ComEd explains that, in response to the Commission's order in Docket No. 14-0567, its new pay for performance contract eliminates the payment of start-up costs, and that it has also implemented enhanced verification and withholding provisions that limit the amounts ComEd will pay prior to receiving final evaluation results from the independent evaluator. Specifically, ComEd will only pay 90% of verified savings for those measures whose energy savings have been "deemed" by the

Illinois Technical Reference Manual. If the measure's energy savings have not been deemed, ComEd will only pay 75% of the verified savings for such measures. In addition, ComEd explained the structure and payment terms of its third-party energy efficiency contracts that are used for energy efficiency programs managed by ComEd (rather than the vendor). Based on our prior orders in Docket Nos. 14-0567 and 15-0541, as well as the workshop consensus items on this issue, the Commission concludes that the contract revisions implemented by Ameren and ComEd are prudent and reasonable terms and conditions that strike the correct balance between protecting ratepayers and incenting investment in energy efficiency. We further find that ComEd's contract templates, as attached to its Objections, are prudent and reasonable. The Commission will continue to monitor how these contracting terms and conditions impact both ratepayers and the growth of energy efficiency in the State.~~The Commission notes that the record does not show whether these specific contract terms are appropriate. That these provisions are designed to protect ratepayers is apparent, but whether they are too protective of ratepayers at the expense of reducing bid participation is not clear.~~

~~Moreover, the record lacks evidence to support the adoption of ComEd's proposed contract templates. ComEd did not discuss or explain its reasoning for any specific contract terms. In addition, Staff made clear that these contracts have not been discussed in SAG workshops. Section 16-111.5B states that the "utility shall consider input from the [IPA] and interested stakeholders on the procurement and administration process." 220 ILCS 16-111.5B(a)(5). Based on the record presented and the failure to include interested parties in the development of these contracts, the Commission will not adopt ComEd's contract templates. While the Commission is not opposed to approving contract templates that would be applicable to both utilities, under these circumstances it cannot do so.~~

~~The Commission finds that the question of the appropriate level of contract scrutiny, as well as which contract terms best protect ratepayers while not reducing bid participation should be discussed further in SAG workshops. Issues like these are best reviewed in the workshop context, where the stakeholders can consider all of the relevant facts and circumstances in a collaborative environment, rather than in an expedited approval docket.~~

## CONCLUSION

Based on the record and the arguments made herein, ComEd respectfully requests that the Proposed Order be revised as set forth in the above exceptions.

Dated: November 21, 2016

Respectfully submitted,

Commonwealth Edison Company

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