OFFICE OF THE ATTORNEY GENERAL
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September 16, 2013

Via Electronic Mail
Mr. Anthony Star
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Dear Director Star:

The People of the State of Illinois ("the People"), by and through Illinois Attorney General Lisa Madigan, hereby submit these comments on the 2014 Draft Procurement Plan ("Plan") released by the Illinois Power Agency ("IPA") on August 15, 2013, in accordance with Section 16-111.5(d)(2) of the Public Utilities Act.

Section 7.1 -- Incremental Energy Efficiency

In Section 7.1.3 of the Plan, the IPA seeks feedback on a number of issues that were not fully resolved in workshops that were conducted at the request of the Illinois Commerce Commission ("the Commission"), as specified in its Order in the 2013 IPA Procurement docket, ICC Docket No. 12-0544[1]. OAG responses to the listed issues follows below.

1) Feedback Mechanisms For Capturing "All Achievable Cost-Effective Savings"

The first issue of concern to the IPA is the lack of an adequate "feedback loop" in the development of programs for consideration for inclusion in the procurement plan to ensure the statutory goal of fully capturing the potential for all achievable cost-effective savings, to the extent practicable. The IPA defines "feedback loop" as a process or processes that ensures that energy efficiency opportunities identified in the utility's required potential study that are not met by the third-party RFP process are somehow filled. IPA Draft Plan at 80. The IPA notes that it

[1] ICC Docket No. 12-0544, Order of December 19, 2012 at 271.

is concerned that the combination of the new programs and expanded utility programs may not fully meet the outer boundaries of the potential study in any given year. *Id.*

The OAG shares the concern raised by the IPA, and believes that the key to maximizing cost-effective, achievable efficiency lies in the expansion of programs authorized under Section 8-103[2] of the Public Utilities Act. While the IPA appropriately highlights the difficulty of approving Section 8-103 program expansions in years when the Section 8-103 programs are up for review for a new three-year cycle, and Commission approval of said programs has not yet occurred, the problem is not insurmountable, even absent a statutory change in the timing of the IPA[3] and Section 8-103 filing deadlines. When the utilities prepare RFPs and submit by July 15 each year their assessments and recommendations to the IPA for achievable, cost-effective Section 16-111.5B efficiency programs, they have undoubtedly also prepared in those years when required to do so, their draft plans for Section 8-103 three-year programs, which are filed by September 1. Stated another way, the utilities are more than likely aware of which programs will be the centerpieces of their Section 8-103 program portfolios when they submit their recommendations to the IPA for achievable, cost-effective efficiency programs.

Given that reality, there is no reason utilities should not be bidding into the IPA portfolio planned expansions of proposed Section 8-103 programs that they have concluded are cost-effective and are likewise proposing be approved by the Commission in the Section 8-103 dockets. The onus should be on the utilities to prepare their Section 16-111.5B IPA submissions in coordination with their planned Section 8-103 filings. Approval of Section 8-103 programs occurs within 30 days of the Commission's final order in the IPA procurement docket. Prior to that approval, it will be clear to all interested parties whether challenges exist to a utility's proposed Section 8-103 efficiency portfolio. For example, in Docket 13-0498, Ameren Illinois Company's ("Ameren") three-year efficiency plan docket, Commission Staff and intervenors are scheduled to submit direct testimony responding to the Ameren filing by October 18, 2013. A Commission final order in the IPA Procurement Plan docket is not due until December 30, 2013. Including proposed expansions of planned Section 8-103 programs (subject to Commission approval) is an easy, effective way to help ensure that achievable, cost-effective efficiency is provided within a utility's service territory. In short, the OAG believes that it is up to the utilities to plan IPA procurement RFPs and Section 8-103 filings every three years so that maximum, cost-effective Section 8-103 programs expansions can be included in their July 15 submissions to the IPA.

2) Transition Year Program Expansion

The second issue raised by the IPA for comment is inextricably linked to the first identified issue: addressing the uncertainty surrounding the transition year wherein the Section

[22] 220 ILCS 5/8-103.
[33] *See* 220 ILCS /16-111.5B.

8-103 programs for the following three years are not yet approved. The OAG incorporates by reference the discussion above in item (1) response to this question.

3) DCEO Participation

The third issue identified by the IPA for comment is the failure (for the second year in a row) of the Department of Commerce and Economic Opportunity ("DCEO") to participate in the IPA's Procurement Plan. As noted by the IPA, there was consensus in the Commission-directed workshop process that cost-effective DCEO programs should be included in the procurement of energy efficiency for the IPA's annual portfolio. The IPA Draft Plan notes that DCEO did not participate in the utility-run RFP process, but rather submitted its proposed cost-effective efficiency programs to the IPA directly. The IPA states that it "determined that it could not include the programs proposed by DCEO pursuant to Section 16-111.5B at this time because DCEO is not a utility as the term is used in Sections 16-111.5 and 16-111.5B. The IPA notes that this was the same perceived problem that precluded inclusion of DCEO programs in last year's IPA procurement plan. Notwithstanding these perceived limitations, the IPA states that it "is open to entertaining additional proposals for creating a mechanism for their inclusion in this plan" and notes that it would follow any Commission order that included DCEO programs in this year's procurement and prospectively. IPA Draft Plan at 81-82.

The OAG is particularly concerned with the lack of DCEO participation, given that DCEO is the entity that oversees the delivery of Section 8-103 programs targeted to low income customers. Existing DCEO low income Section 8-103 programs are ripe for expansion and represent significant cost-effective opportunities[4] to both increase the delivery of overall achievable energy efficiency, but also provide needed benefits to low income electric utility customers who often struggle to pay utility bills. Rather than attempt to assign blame for the failure to include DCEO proposals in the utilities' July 15 submissions, the OAG believes it would be helpful for DCEO to explain why it is that the utility RFP process that occurs each Spring forecloses any DCEO submissions. The IPA Draft Plan notes that it "understands that DCEO may have some administrative limitations regarding contracting that could preclude that option in future years". IPA Draft Plan at 81. Once a clearer understanding of these contracting difficulties is presented, it is the OAG's hope that the IPA, DCEO and the Utilities can craft an amendment to the Draft Plan that permits Commission consideration of cost-effective DCEO programs in the 2014 IPA procurement plan as well as in future annual procurements.

4) Consideration of All Third-Party Bids

Two additional issues raised by the IPA for comment revolve around competition between incumbent utility programs and third-party RFP programs. The first question raised is what it means for a third-party bidder's proposed program to be "competing" with or "duplicative" of a utility program. The second issue is the authority of the Commission to reject a third-party bidder's program that is "competing" with or "duplicative" of a utility's program but which otherwise passes the standard for cost-effectiveness. IPA Draft Plan at 82.

[4] The IPA Draft Plan notes at page 81 that both programs proposed by DCEO to the IPA have calculated TRCs that "easily exceeded one." IPA Draft Plan at 81.

A review of the relevant statutory language should, of course, be a guide for the consideration of these issues. Section 16-111.5B(a)(2) and (a)(3)(c) provides that IPA assessments of assessments of cost-effective energy efficiency potential should include an assessment of:

> (2) …opportunities to expand the programs promoting energy efficiency measures that have been offered under plans approved pursuant to Section 8-103 of this Act or to implement additional cost-effective energy efficiency programs or measures.

220 ILCS 5/16-111.5B(a)(2). In addition, Section 16-111.5(a)(3)(c) requires utilities to include in their submissions to the IPA of potential, cost-effective energy efficiency programs, proposals for:

> …cost-effective energy efficiency programs or measures that are incremental to those included in energy efficiency and demand-response plans approved by the Commission pursuant to Section 8-103 of this Act and that would be offered to 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.

220 ILCS 5/16-111.5B(a)(3)(c). The language above referencing opportunities to "expand" the Section 8-103 programs, offer "additional" and "incremental" programs or measures supports IPA concern about including programs perceived to be in competition with Section 8-103 programs. That being said, establishing whether a program is indeed duplicative or competitive may be obvious in certain situations and less than obvious in others. The existing Section 16-111.5B Comment process before the Commission provides an appropriate forum for assessing competitive programs and their viability and desirability. What is clear is that it is important to exclude programs that might create an environment in which multiple market actors are competing for the same customers/projects and offering the same efficiency services. It is reasonable to assume that such an environment would create inefficiencies, increase administrative costs, and could create perverse incentives that are not in ratepayers' interests.

That being said, it is important that individual utilities not assume the role of judge and jury when it comes to assessing whether a program is truly duplicative, competitive and likely to disrupt the existing Section 8-103 efficiency market. In order to ensure that utilities alone have not pre-judged whether a program was competing or duplicative, however, all RFPs that pass the total resource cost ("TRC") test should be submitted to the IPA for consideration of inclusion in the proposed procurement portfolio. The bottom line is that the Commission should have the final word on assessing whether a cost-effective program is indeed competitive, duplicative and therefore, disruptive to existing Section 8-103 efficiency markets. In the IPA submittal, the

utilities should explain fully why they believe a particular program is duplicative or competing, including a description of specific aspects of the program that are deemed problematic so that the IPA could determine in its Plan possible steps to eliminate problematic aspects of a particular program.

For example, programs that are "duplicative" or "competing" may or may not be problematic depending on the type of program and its target market. The reasons to avoid duplication/competition are to avoid unnecessary confusion in the market or unnecessary duplication of administrative and other services that increase costs or decrease efficiency. However, the extent to which these are issues will depend heavily on the types of programs and markets involved. For example, a duplicative broad-based upstream program such as residential CFL buy downs would be problematic. This is because this program by its nature works upstream from the customer and therefore depends on very broad-based advertising and overall contracts with major retailers throughout the State. In this instance, any duplication would by nature create competing broad-based advertising and competing for the same retailers and shelf space, competing point of purchase displays, duplicative administrative tracking and evaluation, etc. However, some programs can easily duplicate by segmenting the market by vendor. For example, small business direct install programs typically capturing participants through direct in-person marketing, and delivery of audits and measure installation. Because the core utility programs will likely only reach a few percent of the eligible population in any given year, multiple vendors offering similar or even exactly duplicative programs can be handled efficiently and allow for capture of a greater share of the eligible population each year. For example, competing vendors can be assigned discrete and mutually exclusive customer lists to market from. Similarly, they can be each given separate mutually exclusive geographic territories to market to, or mutually exclusive customer segments (e.g., one vendor serves retail, one small grocery, one office space, etc.) In these cases, duplication should not be viewed as an insurmountable problem. Rather, the utilities should submit to ICC the issues and potential concerns and suggested remedies where feasible to ensure smooth delivery of duplicative programs.

More importantly, inclusion of expansions of existing *or proposed* Section 8-103 programs would help ensure that utilities and the IPA truly identify all cost-effective opportunities for efficiency available within service territories. It is reasonable to assume that expansions of existing or proposed Section 8-103 programs will be highly cost-effective, given the ability of utilities to oversee and manage the delivery of these program expansions.

Section 7.1.4 – Ameren Proposal

As noted in the IPA Draft Plan, Ameren's submission to the IPA included a statement that it was excluding any expansions of Section 8-103 programs that have not yet been approved by the Commission, and therefore was including only programs of one-year in length. IPA Draft Plan at 82. This decision resulted in a smaller MWH efficiency goal than that of the previous year. *Id.* As noted above, the OGA submits that such an exclusion is both unwise and

inconsistent with the Section 16-111.5B's stated goal of capturing all achievable energy efficiency. As noted above, while the inconsistent filing deadlines of the IPA July 15 submission and the Section 8-103 submission are less than ideal, nothing prevents the utilities from proposing those programs that are ripe for expansion in their respective Section 8-103 filings. Again, the utilities are more than likely aware of which programs will be the centerpieces of their Section 8-103 program portfolios when they submit their recommendations to the IPA for achievable, cost-effective efficiency programs. Simply because they have yet to receive formal Commission approval of certain Section 8-103 programs is not reason to exclude them as proposals in an IPA portfolio.

As noted above, in order to maximize successful expansion of programs, the onus should be on the utilities to prepare their Section 16-111.5B IPA submissions in coordination with their planned Section 8-103 filings. In that regard, expansions of proposed 8-103 programs are no different than any utility-proposed IPA program that has yet to receive Commission approval. Again, including proposed expansions of planned Section 8-103 programs is an easy, effective way to help ensure that achievable, cost-effective efficiency is provided within a utility's service territory. In short, absent statutory modification of filing deadlines, the OAG believes that it is up to the utilities to plan IPA procurement RFPs and Section 8-103 filings every three years so that maximum, cost-effective Section 8-103 programs expansions can be included in their July 15 submissions to the IPA. It is worth noting, too, that Commonwealth Edison Company ("ComEd") proposed both multi-year and single-year programs. IPA Draft Plan at 85. Ameren, thus, was alone in assuming that three-year offerings were prohibited by the differing IPA and Section 8-103 timelines.

Section 7.1.5 – ComEd Proposal

The IPA notes in its description of the ComEd submission that the utility excluded from its submission of recommended programs six programs that ComEd considered to be duplicative. Five of these six programs passed the TRC test. IPA Draft Plan at 85.

As noted above, Section 16-111.5B makes clear that both the IPA, in its submission to the Commission, and the Commission as final arbiter, should be presented with all programs that pass the TRC for purposes of evaluating what programs should be included within the IPA's procurement portfolio. As the IPA correctly notes, the Commission has not provided any specific guidance on what constitutes "duplicative" or "competing" programs, and whether inclusion of such programs in an IPA portfolio would be disruptive to the existing ratepayer-funded energy efficiency market.

ComEd's stated rationale for excluding a program it deemed duplicative also highlights the inherent contradiction of excluding duplicative or competing programs that will end *before* the 2014 procurement takes place, but not including expansions of programs that have yet to be formally approved by the Commission in Section 8-103 dockets, but are nevertheless being

proposed by the utilities in those dockets. This incongruity only highlights the need for utility submissions to include in their IPA filings some kind of proposed expansions of programs that they intend to offer under Section 8-103 of the Act.

7.1.6 – Energy Efficiency as Supply Resource

In Section 7.1.6, "Energy Efficiency as a Supply Resource", the IPA contends that the current energy efficiency procurement rules are based only on MWh (energy) savings goals but do not directly require or guarantee peak demand (MW) reductions. The IPA further proposes a possible parallel track of procurement that would be focused primarily or possibly solely on peak demand reductions. The OAG does not completely agree with the IPA that the current process ignores or has to ignore peak impacts. The programs are subject to passing the TRC test, which includes achieving benefits from both energy savings (valued differently for different time periods) as well as benefits from coincident peak demand savings. We therefore believe this construct is sufficient to encourage, validate and track both energy and peak savings, and for the IPA to rely on these bids when procuring peak power. Rather than creating a separate track for peak demand focused programs, we believe the efficiency RFPs can be clear on allowing any cost-effective combination of energy and peak savings, and require that energy impacts be documented by avoided cost period and that coincident peak demand impacts also be quantified. This is necessary information to perform the TRC screening in any case. Thus, the only change that is needed is to ensure that any goals and performance-based payments include peak demand goals as well as energy goals.

The OAG believes this approach can encourage bidders to offer the most cost-effective combinations of energy and peak demand savings in a more holistic way, and will provide the utilities and the IPA with the direct information about peak impacts to inform future procurement. We also believe these programs can be evaluated consistent with Section 8-103 evaluation methods, and do not necessarily require direct measurement of peak impacts through smart meter technology.

In theory, this approach could also allow demand response (“DR”) programs to be bid-in that directly focus only on peak demand load shedding and/or shifting. However, we believe this is problematic because the nature of DR programs is that a customer must be activated to "respond" to some sort of signal during a time of peak need (e.g., price signal, email request, direct radio-controlled technology, etc.). Unlike efficiency programs that capture both energy and peak savings for some relatively durable timeframe based on installation of measures or adoption of practices, DR programs only provide value when temporarily activated. Decisions about the need and appropriateness of activating these programs should reside with and be under the direct control of either the utility or the ISO. Accordingly, it would be problematic to allow third parties to directly control and run a DR program without very close coordination and direction from the utilities or ISO. It is possible a separate procurement RFP could be developed for DR programs where the bidders would directly work for the utilities and

allow activation decisions and control to be maintained by the utilities. However, because this control must reside with the utilities and/or ISO, we are not sure whether it is appropriate or desirable for the IPA to base procurement on them without some express commitment from the utilities and/or ISO that they will be activated whenever needed for IPA customers.

Additional OAG Comments Related To Oversight of IPA Efficiency Program Offerings

One topic not specifically addressed in the draft IPA Plan is oversight and evaluation of Commission-approved IPA programs. During the workshops, the utilities mentioned that the utilities do not oversee the IPA programs in the same manner as provided for Section 8-103 programs. While Section 16-111.5B(a)(6) lists evaluation costs as recoverable costs through the Section 8-103 rider charges, no clear roadmap exists for the evaluation of the IPA programs.

The OAG notes that while the utilities are not subject to energy savings goals and penalties, as exists under Section 8-103 programs, ratepayers are nevertheless paying increased surcharges for the IPA programs. While the utilities propose a pay-for-performance contract regime for IPA efficiency programs, the IPA, in its Plan should provide the Commission with some explanation as to what role, if any, it plans to play in the IPA efficiency program evaluation process, and its views on whether pay-for-performance contracts adequately protect ratepayer interests. If it does not intend to assume such an oversight role, then the IPA should request that the Commission enter an Order that makes clear that the Utilities will assume responsibility for the evaluation and successful delivery of these programs.

Respectfully submitted,

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