

**COMMENTS BY THE STAFF OF THE ILLINOIS COMMERCE
COMMISSION ON THE ILLINOIS POWER AGENCY'S 2016 DRAFT
POWER PROCUREMENT PLAN FILED AUGUST 14, 2015**

September 14, 2015

JOHN C. FEELEY
JAMES V. OLIVERO
Office of General Counsel
Illinois Commerce Commission
160 North LaSalle Street, Suite C-800
Chicago, IL 60601
Phone: (312) 793-8824
Fax: (312) 793-1556
jfeeley@icc.illinois.gov
jolivero@icc.illinois.gov

Table of Contents

1	Executive Summary	1
1.1	Power Procurement Strategy.....	1
1.2	Renewable Energy Resources	3
1.3	Incremental Energy Efficiency	3
1.4	The Action Plan	3
2	Legislative/Regulatory Requirements of the Plan	5
2.1	IPA Authority.....	5
2.2	Procurement Plan Development and Approval Process.....	5
2.3	Procurement Plan Requirements.....	5
2.4	Standard Product Procurement and Load-Following Products.....	5
2.5	Renewable Energy Resources	5
2.6	Energy Efficiency Resources.....	5
2.7	Demand Response Products.....	6
2.8	Clean Coal Portfolio Standard	6
2.9	2015 Legislative Proposals.....	6
3	Load Forecasts	6
4	Existing Resource Portfolio and Supply Gap	6
4.1	Ameren Resource Portfolio.....	6
4.2	ComEd Resource Portfolio	6
4.3	MidAmerican Resource Portfolio	6
4.4	Allocation of Supply Volumes Associated with Ameren Illinois and ComEd LTPPAs	8
5	MISO and PJM Resource Adequacy Outlook and Uncertainty	8
6	Managing Supply Risks	9
7	Resource Choices for the 2015 Procurement Plan	9
7.1	Incremental Energy Efficiency	9
7.1.1	Incremental Energy Efficiency in Previous Plans	9
7.1.2	2015 Workshops.....	9
7.1.3	Prior Year Consensus Items.....	10
7.1.4	Policy Issues for Consideration in the 2017 Plan	20
7.1.5	Ameren Illinois.....	20
7.1.6	ComEd	25
7.1.7	MidAmerican	31

7.2 Procurement Strategy.....	32
7.3 Indicative Quantities and Types of Products to be Procured	34
7.4 Ancillary Services, Transmission Service and Capacity Purchases	34
7.5 Demand Response Products.....	34
7.6 Clean Coal.....	34
7.7 Summary of Strategy for the 2015 Procurement Plan	34
8 Renewable Resources Availability and Procurement.....	34
9 Procurement Process Design	38
Appendices	38
Appendix A. Regulatory Compliance Index	38
Appendix B. Ameren Illinois Load Forecast.....	38
Appendix C. ComEd Load Forecast	38
Appendix D. MidAmerican Load Forecast	38
Appendix E. Ameren Load Forecast and Supply Portfolio by Scenario	38
Appendix F. ComEd Load Forecast and Supply Portfolio by Scenario	38
Appendix G. MidAmerican Load Forecast and Supply Portfolio by Scenario	38
Conclusion	39

Note: In these comments, aside from adding a “Conclusion” section, Staff retains the same outline that is used in the body of the Illinois Power Agency’s “2016 Electricity Procurement Plan,” which was distributed on August 14, 2015 (“Draft Plan”).

1 Executive Summary

On August 14, 2015, pursuant to Section 16-111.5(d) of the Illinois Public Utilities Act (“PUA”), the Illinois Power Agency (“IPA”) made available to the public a “2016 Electricity Procurement Plan” (“Draft Plan”) and invited affected utilities and other interested parties to submit comments on the Draft Plan by September 14, 2015. In response, the Staff of the Illinois Commerce Commission (“Staff”) hereby submits these comments to the IPA. The outline of these comments conforms to the outline of the Draft Plan.

1.1 Power Procurement Strategy

Staff recommends changes to the way that the hedging strategies are summarized. In particular, in the various tables used to summarize the hedging strategies, it should be made clear whether the hedging percentages shown are incremental percentages (to be added by the indicated procurement event) or cumulative percentages (to be established by the conclusion of the procurement event). Furthermore, in Staff’s view, only cumulative percentages (to be established by the conclusion of the procurement event) should be shown.

Consider Table 1-1 on page 2 of the Draft Plan. In this table, it is unclear whether the hedging percentages shown are supposed to be incremental percentages or cumulative percentages. Indeed, Staff believes that the IPA has mixed the two concepts, within the same table, inevitably leading to confusion. For instance, in the first column, it is clear that cumulative percentages (of between 75% and 106%) are being used, since roughly one-third of forecasted demand for June 2016 through May 2017 has already

been hedged during previously procurement events. The same is true of the fourth column, showing a target of 100% for the fall 2016 procurement for October 2016 through May 2017. However, the remaining columns are ambiguous. The first pair of 25% and 12.5% (for the spring 2016 procurement) could be either incremental or cumulative, although Staff is fairly sure that they are intended to represent cumulative percentages. On the other hand, the second pair of 25% and 12.5% (for the fall 2016 procurement) is more likely to represent incremental percentages (since elsewhere the IPA Plan indicates that the IPA recommends hedging 50% of the expected load for the second delivery year, and 25% of the expected load for the third delivery year). The ambiguity can be easily and thoroughly eliminated with the following edits to Table 1-1:

Table 1-1: Summary of Energy Hedging Strategy¹

Spring 2016 Procurement			Fall 2016 Procurement		
June 2016-May 2017 (Upcoming Delivery Year)	Upcoming Delivery Year+1	Upcoming Delivery Year+2	October 2016-May 2017	Upcoming Delivery Year + 1	Upcoming Delivery Year + 2
June 100% peak and off peak July and Aug. 106% peak, 100% off peak and Sep. 100% peak and off peak Oct. - May 75% peak and off peak	25%	12.5%	100%	25 50%	12.5 25%

¹ Table shows the cumulative percentage of load to be hedged by the conclusion of the indicated procurement events.

Similarly, Table 1-3 should be modified as follows:

Table 1-2: Summary of Capacity Hedging Strategy for Ameren Illinois²

June 2016-May 2017 (Upcoming Delivery Year)	June 2017-May 2018	June 2018-May 2019
50% RFP in Sep. 2015 50 100% MISO PRA*	25 50% RFP in Sep. 2015 5075% RFP in Fall 2016	25% RFP in Fall 2016 50 75% RFP in Fall 2017 25 100% MISO PRA***

	25100% MISO PRA**	
--	-------------------	--

[Table shows the cumulative percentage of capacity requirements to be hedged or purchased by the conclusion of the indicated procurement events.](#)

* MISO [AuctionPRA](#) is expected to clear in April 2016.

** MISO [AuctionPRA](#) is expected to clear in April 2017.

***MISO [Auction PRA](#) is expected to clear in April 2018.

In addition to making it clear that the table refers to cumulative percentages, the above edits also eliminate the “25% RFP in Sep. 2015” in the middle column, since, subsequent to the Draft Plan’s filing, that event was modified to exclude the procurement of capacity for the June 2017-May 2018 period.

Other tables in the Draft Plan may also require changes to clarify whether or not the numbers represent incremental or cumulative values.

1.2 Renewable Energy Resources

1.3 Incremental Energy Efficiency

1.4 The Action Plan

In Section 1.4, the Draft Plan recommends the Commission take the following action: “11. Approve consensus items from the 2015 energy efficiency stakeholder workshops and prior years’ energy efficiency stakeholder workshops related to the implementation of Section 16-111.5B of the IPA Act.” (Draft Plan, 6.) The IPA should be more explicit about what it is requesting the Commission to approve in order to minimize potential for misinterpreting what language is recommended for adoption and increase

certainty for parties concerning what specific language the Commission may (or may not) choose to adopt. Further, there are statements contained in the Appendix B-2 that are no longer relevant at this time, as described in Section 7.1.3. The IPA was specific in its 2015 Procurement Plan concerning language recommended for adoption, see pages 72-74 of the IPA's final 2015 Procurement Plan in ICC Docket No. 14-0588. Staff notes that while the consensus items from the 2014 Section 16-111.5B energy efficiency workshops were approved in ICC Docket No. 14-0588, the Commission never officially adopted all of the consensus items from the 2013 Section 16-111.5B energy efficiency workshops, and some of those items contradict the consensus items in the 2014 workshops. Accordingly, Staff proposes the IPA include the specific consensus language from past years' workshops that it recommends be adopted in its Plan in Section 7.1.3 Prior Year Consensus Items. Item 11 of Section 1.4 of the Draft Plan should be modified to reference the section of the Plan containing the consensus language recommended for adoption. Staff provides its recommendation for specific consensus language that should be adopted herein in its comments on Section 7.1.3. Additionally, item 11 of Section 1.4 contains an incorrect reference to the IPA Act that should be deleted, as Section 16-111.5B is part of the Illinois Public Utilities Act ("PUA"), not the IPA Act. For the above reasons, item 11 of Section 1.4 of the Draft Plan should be modified as follows:

11. Approve specific consensus items from the 2015 energy efficiency stakeholder workshops and prior years' energy efficiency stakeholder workshops related to the implementation of Section 16-111.5B of the ~~IPA~~ PUA that are set forth in Section 7.1.3 Prior Year Consensus Items.

(Draft Plan, 6.)

2 Legislative/Regulatory Requirements of the Plan

2.1 IPA Authority

2.2 Procurement Plan Development and Approval Process

2.3 Procurement Plan Requirements

2.4 Standard Product Procurement and Load-Following Products

2.5 Renewable Energy Resources

2.6 Energy Efficiency Resources

In Section 2.6, the Draft Plan states:

Additionally, past years' disputes have resulted in a series of Commission-mandated workshops leading to consensus language being reached among stakeholders. As some parties have questioned the applicability of past Commission-approved consensus language to future solicitations and contracts, all such consensus language reached in prior years is included this year in Appendix B-2 and the IPA is expressly requesting that such language be approved by the Commission with the intention that it be applied prospectively, informing the requests for proposals developed by the utilities pursuant to Section 16-111.5B(a)(3) for the solicitation of programs to be included in the 2017 Procurement Plan.

(Draft Plan, 15.) As noted in Section 1.4, Staff believes the IPA needs to be more explicit about the exact language it is requesting the Commission to adopt. Accordingly, Staff proposes the IPA include the specific consensus language from past years' workshops that it recommends be adopted in Section 7.1.3 Prior Year Consensus Items. Staff provides its recommendation for specific consensus language that should be adopted herein in its comments on Section 7.1.3. Accordingly, Section 2.6 of the Draft Plan should be modified to reference the section of the Plan containing the consensus language recommended for adoption, as follows:

Additionally, past years' disputes have resulted in a series of Commission-mandated workshops leading to consensus language being reached among stakeholders. As some parties have questioned the applicability of past

Commission-approved consensus language to future solicitations and contracts, ~~all such~~specific consensus language reached in prior years is included this year in Section 7.1.3 Prior Year Consensus Items~~Appendix B-2~~ and the IPA is expressly requesting that such language be approved by the Commission with the intention that it be applied prospectively, informing the requests for proposals developed by the utilities pursuant to Section 16-111.5B(a)(3) for the solicitation of programs to be included in the 2017 Procurement Plan.

(Draft Plan, 15.)

2.7 Demand Response Products

2.8 Clean Coal Portfolio Standard

2.9 2015 Legislative Proposals

3 Load Forecasts

4 Existing Resource Portfolio and Supply Gap

4.1 Ameren Resource Portfolio

4.2 ComEd Resource Portfolio

4.3 MidAmerican Resource Portfolio

The IPA describes the existing supply available to MidAmerican Energy's ("MidAmerican" or "MEC") Illinois load as if that supply was comprised of standard energy block contracts, with fixed quantities, in megawatts, specified for each hour, differentiated by on-peak and off-peak periods, by month, and by year. However, to date, the existing supply available to MidAmerican's Illinois load has not been comprised of anything like standard energy block contracts. Rather, retail customers within MidAmerican's Illinois service territory have utilized the energy from MidAmerican's generators whenever their cost has been less than the cost of acquiring energy in the MISO market. Utilizing this

approach, the amount of energy available has varied hour-to-hour rather than in fixed blocks. Based on a response to a Staff data request, it seems that MidAmerican intends to continue this practice. It is unclear how, if at all, the IPA has taken this into account in constructing its procurement plan for MidAmerican. For instance, in review of the hourly forecasts of generation and load provided by MidAmerican to the IPA, for each year, month, period (on or off-peak) grouping, there tends to be a positive correlation between generation and load. (See table, below) Since there tends to be a correlation between load and spot market prices, too, this correlation should lead to lower costs (all else equal) and could affect the hedging strategy employed by the IPA. The IPA should analyze this factor and explain how it affects the procurement plan for MidAmerican.

Correlation Between Illinois Load and Existing Supply Allocated to Illinois Load, within the indicated years, months, and periods, based on MidAmerican's Hour-by-Hour Forecasts			
Year	Month	Period	
		On-Peak	Off-Peak
2016	6	16%	53%
2016	7	10%	53%
2016	8	37%	63%
2016	9	-5%	55%
2016	10	6%	30%
2016	11	28%	32%
2016	12	17%	39%
2017	1	-2%	14%
2017	2	-3%	2%
2017	3	19%	20%
2017	4	2%	37%
2017	5	-5%	28%
2017	6	27%	48%
2017	7	48%	47%
2017	8	41%	70%
2017	9	22%	55%
2017	10	-11%	33%

2017	11	37%	34%
2017	12	41%	54%
2018	1	25%	18%
2018	2	12%	30%
2018	3	33%	26%
2018	4	7%	18%
2018	5	23%	36%
2018	6	37%	53%
2018	7	53%	57%
2018	8	39%	70%
2018	9	17%	50%
2018	10	-5%	38%
2018	11	36%	31%
2018	12	49%	56%
2019	1	28%	34%
2019	2	9%	33%
2019	3	20%	37%
2019	4	-17%	13%
2019	5	-10%	35%
2019	6	20%	59%
2019	7	16%	59%
2019	8	50%	65%
2019	9	-6%	60%
2019	10	9%	35%
2019	11	30%	28%
2019	12	46%	65%
2020	1	25%	32%
2020	2	23%	31%
2020	3	2%	28%
2020	4	-3%	27%
2020	5	-15%	4%

4.4 Allocation of Supply Volumes Associated with Ameren Illinois and ComEd LTPPAs

5 MISO and PJM Resource Adequacy Outlook and Uncertainty

6 Managing Supply Risks

7 Resource Choices for the 2015 Procurement Plan

The heading of Section 7 should be modified to read the correct year of the Procurement Plan under consideration, namely 2016 rather than 2015. “7 Resource Choices for the 2016 Procurement Plan”. (Draft Plan, 79.)

7.1 Incremental Energy Efficiency

7.1.1 Incremental Energy Efficiency in Previous Plans

7.1.2 2015 Workshops

7.1.2.1 Energy Efficiency as a Supply Resource Workshops

7.1.2.2 Stakeholder Advisory Group TRC Subcommittee Workshops

Staff notes that there is inconsistency in the hyphenation of the word, subcommittee or sub-committee, throughout the Draft Plan. The IPA may wish to modify this term in the Draft Plan for the sake of internal consistency.

Footnote 173 on page 83 of the Draft Plan should be modified to specify the correct docket number, namely, the Docket No. “15-0588” should be revised to Docket No. “14-0588”. (Draft Plan, 83.) Footnote 173 on page 83 of the Draft Plan should be modified as follows: “Docket No. 154-0588, Final Order dated December 17, 2014 at 224.”

The Draft Plan, page 84, footnote 176 references the Draft TRC Subcommittee Report and provides a website link. Staff believes the link should be revised to direct to the TRC subcommittee webpage rather than the SAG subcommittee webpage. Accordingly, footnote 176 on page 84 should be modified as follows: “Draft TRC

Subcommittee Report dated 6/11/2015, available at <http://www.ilsag.info/subcommittees.html>http://www.ilsag.info/subcommittee_ipa-trc.html

Alternatively, if the TRC Subcommittee Report is finalized prior to the filing of the Procurement Plan with the Commission, the IPA could attach the finalized TRC Subcommittee Report to its Plan as Appendix H, consistent with the approach the IPA has used for Staff Reports pertaining to past Section 16-111.5B workshops. Staff believes this alternative approach is preferable because it has the added benefit of ensuring the filed Plan (while the information would be in an attachment) at least covers the workshop issues more comprehensively than the current Draft Plan does, while allowing the discussion in the main Plan to remain relatively short.

7.1.2.2.1 Use of Marginal Line Losses

7.1.2.2.2 Demand Reduction Induced Price Effects (“DRIPE”)

7.1.2.2.3 Use of Non-Energy Benefits in TRC Tests

7.1.2.2.4 Application of Administrative Costs in TRC Tests

7.1.2.2.5 Independent TRC Tests by IPA

7.1.3 Prior Year Consensus Items

With respect to the 2014 Plan, the Draft Plan states:

The 2014 Plan included a number of consensus items from ICC staff-led workshops and the IPA requested (and received) Commission approval of those items. The consensus items included:

- Both new and expanded programs may be approved for up to three-year increments.
- DCEO may bid programs into the utility-run RFPs and should pass the TRC test as indicated in the legislation.

- Any utility savings goals pursuant to Section 8-103 and contractor performance “goals” pursuant to Section 16-111.5B are separate and non-transferrable. Budgets should also be kept separate.
- Utilities should provide the IPA with all bids to the RFP (on a confidential basis) so the IPA may independently evaluate the bids.
- The IPA also believes that parties should work collaboratively on contract principles for successful bidders, which may include pay-for-performance language and grant the utility “flexibility” to reward successful programs while minimizing resources spent on unsuccessful programs.

(Draft Plan, 87.) Staff requests that the IPA provide citations to the Commission Order where the bulleted items listed on page 87 of the Draft Plan were officially adopted. Based on Staff’s review of the Commission’s Order in ICC Docket No. 13-0546, the 2014 Procurement Plan, and the Staff Report regarding the consensus items from the workshops, Staff is unable to verify that all of the bulleted items were explicitly adopted. For example, the first bullet indicates that programs may be approved for “up to three-year increments.” The actual consensus language from the workshops states: “Multi-year EE procurement is allowed in the context of the annual EE procurement plan proceeding.⁵⁴” (Draft Plan, Appendix B-2.) The final 2014 Procurement Plan acknowledges as much, stating:

ComEd has requested that, “[t]o the extent that the IPA and the ICC approve procurement of the programs ComEd requests that the approval be for all three years.”¹²¹ In light of the consensus item that multi-year programs should be approved through the Section 16-111.5B process and because the programs’ TRC calculations are greater than one for a multi-year timeframe, The IPA agrees with that request.¹²²

(2014 Procurement Plan, 91.) The Commission approved ComEd’s clarifying requests, including that approval should be for all three years, and also stated that the “Commission is not convinced at this time, however, that an RFP with an open-ended time period is a

good idea.” Illinois Power Agency, ICC Order Docket No. 13-0546, 147, 149 (December 18, 2013) (“2014 Procurement Order”). The current language in the Draft Plan indicating the programs “may be approved for **up to three-year increments**” could be misinterpreted to mean that the Commission disapproved of expanding the programs beyond three years. Thus, for the sake of clarity, and to minimize any potential for misinterpretation, the language should be deleted. Unless adequate citations to Commission Orders is provided to support items identified as consensus and adopted by the ICC, page 87 of the Draft Plan should be modified as follows:

~~The 2014 Plan included a number of consensus items from ICC staff-led workshops and the IPA requested (and received) Commission approval of those items. The consensus items included:~~

- ~~• Both new and expanded programs may be approved for up to three-year increments.~~
- ~~• DCEO may bid programs into the utility-run RFPs and should pass the TRC test as indicated in the legislation.~~
- ~~• Any utility savings goals pursuant to Section 8-103 and contractor performance “goals” pursuant to Section 16-111.5B are separate and non-transferrable. Budgets should also be kept separate.~~
- ~~• Utilities should provide the IPA with all bids to the RFP (on a confidential basis) so the IPA may independently evaluate the bids.~~
- ~~• The IPA also believes that parties should work collaboratively on contract principles for successful bidders, which may include pay-for-performance language and grant the utility “flexibility” to reward successful programs while minimizing resources spent on unsuccessful programs.~~

(Draft Plan, 87.)

With respect to the 2015 Plan, the Draft Plan states:

The 2015 Plan included a number of consensus items from the staff led workshops and the IPA requested (and received) Commission approval of those items.¹⁸⁸ The consensus items included:

- Deeming and Evaluation for Future Section 16-111.5B Energy Efficiency (“EE”) Programs
- Deeming and Evaluation for Previously Approved Section 16-111.5B EE Programs, Program Year (“PY”) 6 and PY7
- Responsible entity
- Policy or Clarity on Status of Bid Accepted into IPA Procurement Plan and Approved by the Commission and Flexibility
- Continuity for Multi-Year EE Programs
- Evaluation Budget and Process Evaluations

The Agency requests that the Commission reaffirm its past approval of the consensus items from prior years’ workshops. Further, the Agency requests that the Commission approve such items prospectively, expressly allowing for their application to the 2016 RFP solicitation and bid evaluation process.

(Draft Plan, 87-88.) Staff supports the IPA’s request in part, but as noted in Section 1.4 and Section 2.6 above, for the sake of clarity, the IPA should include the actual relevant consensus language that it requests the Commission adopt. For example, Staff does not believe it is relevant to request the Commission to adopt the consensus language pertaining to “Deeming and Evaluation for Previously Approved Section 16-111.5B EE Programs, Program Year (“PY”) 6 and PY7” in the 2016 Procurement Plan docket given that PY6 and PY7 evaluations will be complete by the time the Commission enters an order in the 2016 Procurement Plan docket. Accordingly, the text on page 88 of the Draft Plan should be modified as follows:

The Agency requests that the Commission ~~reaffirm its past explicitly~~ approve ~~of the certain~~ consensus items from prior years' workshops, as set forth below. Further, the Agency requests that the Commission approve such items prospectively, expressly allowing for their application to the 2016 RFP solicitation and bid evaluation process in order to increase certainty for all affected parties.

Consensus items from the 2013 Section 16-111.5B Energy Efficiency ("EE") Workshops recommended for Commission approval are as follows:

A. Coordination of Energy Efficiency Programs

The utilities should include cost-effective expansions of the Section 8-103 EE programs in the annual EE assessment they submit to the IPA, unless Section 8-103 EE programs are already expected to achieve the maximum achievable cost-effective savings.

An "expansion" of a Section 8-103 EE program per Section 16-111.5B is not strictly defined and could include expanding the EE program in such a way as to facilitate tracking of the Section 16-111.5B portion of the expanded EE program.

Expansion of DCEO's Section 8-103 EE programs would need to be shown to be cost-effective per Section 16-111.5B requirements.

Sections 8-103 and 16-111.5B EE portfolios can be kept separate.

Sections 8-103 and 16-111.5B EE budgets would be kept separate.

EE program expansions would be expanded in such a way as to facilitate utility tracking of the original Section 8-103 portion and the Section 16-111.5B portion of the expanded EE program.

Savings from the Section 8-103 portion of an expanded EE program would count toward achievement of a utility's Section 8-103 savings goal.

Savings from the Section 16-111.5B portion of an expanded EE program would count toward achievement of a utility's Section 16-111.5B savings goal, not the Section 8-103 savings goal.

For general reporting purposes, it would be appropriate to report each Section's EE goals, achieved savings, budgets, and impact on EE rider

surcharge to show the impact of the utilities' EE portfolios across the state, both individually and collectively, so that progress can be tracked separately for each EE portfolio.

B. Procurement of Energy Efficiency Programs

Multi-year EE procurement is allowed in the context of the annual EE procurement plan proceeding.

Utilities should include all bids in their EE assessments submitted to the IPA.

Utilities should include bid reviews in their EE assessments submitted to the IPA.

Utilities should have flexibility to structure Section 16-111.5B EE contracts in a manner which best balances the potentially competing objectives of making the procurement process attractive to as many bidders as possible and providing confidence that the savings which are proposed/bid will actually be delivered.

To the extent parties are concerned with EE replacing power purchase needs under Section 16-111.5B, it would be appropriate for the IPA and procurement administrator in consultation with the utilities and/or evaluators to attempt to estimate the amount that the Section 16-111.5B EE programs reduce the IPA's need to procure supply, to serve as a check on the utilities' original estimate required by Section 16-111.5B(a)(3)(G), and to provide useful information to customers.

In general, the IL-TRM should be used for Section 16-111.5B EE programs.

There may be special circumstances where deviation from the IL-TRM may be appropriate; the utility/vendor should have the option to make the case for the special circumstance. However, the IL-TRM values must also be provided for comparison purposes.

Evaluation of the Section 16-111.5B EE programs should be performed by the Section 8-103 EE program evaluators.

Evaluation of Sections 8-103 and 16-111.5B EE programs should be coordinated.

Evaluation sampling (e.g., NTG) could occur on an expanded EE program-level basis, or could be based on each component of the expanded EE program (the Section 8-103 portion and the Section 16-111.5B portion of the expanded EE program), depending on the specific circumstance.

There must be a balance in the evaluation of Section 16-111.5B EE programs between the degree of evaluation and the size of the program, wherein larger programs justify more complete evaluations.

Expenditures on evaluation should be capped for the Section 16-111.5B EE programs as they are for the Section 8-103 EE programs.

Section 16-111.5B EE evaluation reports should be provided to the Commission in a public docket, either reconciliation proceeding or savings docket.

Ex-post cost-effectiveness analysis should be performed for the Section 16-111.5B EE programs.

Ex-post cost-effectiveness analysis should be performed using actual participation and the best available information (e.g., updated NTG).

Under the pay for performance contract, the ICC could authorize on a program basis, a maximum energy savings achieved and spending cap.

There is prudence accountability in a docketed proceeding but no docketed proceeding for savings goals is required per Section 16-111.5B.

C. Energy Efficiency Program Management

Funds approved pursuant to Section 16-111.5B could not be spent on EE programs that were not approved in the procurement plan docket.

The Commission may authorize on a program basis an expected spending level and the spending level cap.

D. Cost-Effectiveness of Energy Efficiency Programs and Measures

The Total Resource Cost (“TRC”) test should be calculated at the program or measure level.

Cost-ineffective programs should be dropped during the procurement plan proceeding.

Section 16-111.5B(a)(3)(D) can be interpreted as the Utility Cost Test (“UCT”).

Section 16-111.5B(a)(3)(D) should be calculated for each program.

Section 16-111.5B(a)(3)(E) can be interpreted as the Total Resource Cost (“TRC”) test.

The Commission should determine how the additional information provided pursuant to Section 16-111.5B(a)(3)(D)-(E) should be used (i.e., litigate).

Consensus items from the 2014 Section 16-111.5B Workshops recommended for Commission approval are as follows:

1. Deeming and Evaluation for Future Section 16-111.5B Energy Efficiency (“EE”) Programs

Deeming should be permitted for the Section 16-111.5B energy efficiency programs just as it is for the Section 8-103 energy efficiency programs. Annual updates to the deemed Illinois Statewide Technical Reference Manual for Energy Efficiency (“IL-TRM”) and net-to-gross (“NTG”) ratio values should occur for the Section 16-111.5B energy efficiency programs, and as a result, reasonable changes to the vendors’ savings goals and/or cost structure are permitted during contract negotiations based in part on these updates to the IL-TRM and NTG. Multi-year contracts should be constructed to re-negotiate savings calculations based on annual IL-TRM and NTG updates and should leave open the possibility for utilities to update savings calculations and contract terms based in part on IL-TRM updates or errata and NTG updates. The IL-TRM Policies¹ adopted in ICC Docket No. 13-0077 should apply for the Section 16-111.5B energy efficiency programs (e.g., applicability and effective dates for updated versions of the IL-TRM should be consistent for both Section 16-111.5B and Section 8-103 energy efficiency programs). Prospective application of standard measure-level savings values from the updated IL-TRM and NTG values recommended by the evaluator that are available prior to the start of a program year should be deemed for one program year. Evaluators should perform IL-TRM savings verification for the Section 16-111.5B energy efficiency programs in a manner consistent with that performed for the Section 8-103 energy efficiency programs. Ex-post evaluation results for

¹ “Policy Document for the Illinois Statewide Technical Reference Manual for Energy Efficiency” Final As of October 25th, 2012.

gross savings calculations should be applied retrospectively for custom measures, behavioral measures, and for EE measures with uncertain savings, which is consistent with the approach used for these types of energy efficiency measures under the Section 8-103 energy efficiency programs.

3. Responsible Entity

The utilities have primary responsibility for prudently administering the contracts with the vendors approved by the Commission for the Section 16-111.5B energy efficiency programs.

4. Policy or Clarity on Status of Bid Accepted into IPA Procurement Plan and Approved by the Commission and Flexibility

Once the Commission approves the procurement of energy efficiency pursuant to Section 16-111.5B(a)(5) of the PUA, the utilities and approved vendors should move forward in negotiating the exact terms of the contract based on the terms of the Request for Proposal (“RFP”) and the bid itself (and that are “not significantly different” from the initial bid), with the clarification that negotiation around other details of the contract/scope of work/ implementation plan still might need to occur depending on a variety of factors (e.g., lessons learned since bid submittal, updates to the IL-TRM and NTG, changes in the market, desire to add new energy efficiency measures). The utilities should use reasonable and prudent judgment in negotiating the exact terms of the contract after Commission approval and should rely upon the best available information and ensure any modifications continue to result in a cost-effective energy efficiency program. Negotiations may result in reasonable adjustments to savings goals for the energy efficiency program in comparison to the amount proposed in the bid and reasonable and prudent modifications to the cost structure (e.g., price paid per kWh) that are in line with the original design. Some degree of flexibility within an energy efficiency program should be allowed for vendors implementing energy efficiency programs under Section 16-111.5B of the PUA. Flexibility should not be allowed insofar as the modifications to the EE program result in the following: (1) less confidence in the quality of service, (2) the addition of new energy efficiency measures with no confidence in the savings, (3) duplicates or competes with other energy efficiency programs, (4) cost-ineffective energy efficiency program, or (5) a completely different energy efficiency program proposed in comparison to what was bid and approved. The utilities/IPA should share the description of the vendor’s energy efficiency program included in the draft procurement plan with the vendor to help ensure the energy efficiency program is accurately characterized. An understood process for vendors to submit program changes should be clearly conveyed to all vendors by the

utilities. If a vendor decides to add (or remove) EE measures midstream, they should seek approval from the utility for such changes prior to implementing the change in order to allow for possible contract renegotiations. Vendors are allowed to receive credit for energy savings from implementing new EE measures if they have received pre-approval from the utility for adding that new EE measure. To help protect against gaming, any EE measure that has not received pre-approval from the utility or is not included in the vendor's approved proposal should not be considered for energy savings. The utility should notify the IPA, ICC, and the SAG when it has stopped negotiations with an approved Section 16-111.5B energy efficiency program vendor and a contract agreement cannot be reached, and if it has terminated a contract with an approved Section 16-111.5B energy efficiency program vendor. The utility should notify the Commission in a filing in the procurement plan docket for which the energy efficiency program was approved (similar to the approach ComEd used for PY7 and the approach proposed by Ameren in ICC Docket No. 13-0546 (Order at 112; Ameren RBOE at 14)). The utilities should notify SAG and keep the IPA apprised of any expected shortfalls in savings. The utility should notify the ICC of changes made (e.g., savings goal changes) in comparison to the approved energy efficiency programs.

5. Continuity for Multi-Year EE Programs

The utilities should have the capability for any of the Section 16-111.5B energy efficiency programs to have the option to expand into the Section 8-103 energy efficiency portfolio for a given program year (at the utility's discretion) if (1) the Section 16-111.5B savings goal for the energy efficiency program (from the ICC Order in the procurement plan docket or compliance filing/contract) is achieved and the approved budget (from ICC Order in the procurement plan docket) is exhausted and (2) the utility has budget available in the Section 8-103 energy efficiency portfolio. The utilities should make the vendor aware of this option in advance so as to help avoid stopping and re-starting the energy efficiency program (i.e., avoid program disruption).

The Commission could pre-authorize up to a 20% budget shift across program years for multi-year programs (assuming remains within total approved multi-year program budget) to allow for successful energy efficiency programs to continue operation in the early (or later) program years of the multi-year contract. In such a situation, it is assumed that the kilowatt-hour ("kWh") savings goals and budgets would be cumulative for the number of years of the contract. The utilities should make the vendor aware of this option in advance so as to help avoid energy efficiency program disruption.

6. Evaluation Budget and Process Evaluations

Consistent with the Section 8-103 evaluation process, Evaluators may conduct process evaluations where justified to encourage improvement in the implementation of the Section 16-111.5B energy efficiency programs.

Expenditures on evaluation should be capped for the Section 16-111.5B energy efficiency programs as they are for the Section 8-103 EE programs. Each energy efficiency program's evaluation budget should not necessarily be restricted to 3% of the energy efficiency program budget, but evaluation costs should be limited to 3% of the combined Section 16-111.5B energy efficiency programs' budget.

To the extent that certain third-party EE programs have innovative delivery mechanisms and potential to achieve significant savings, either generally or from key targets, a process evaluation may be justified, where the value of this effort must be weighed against the cost of conducting such an evaluation for an EE program that is a) not unique or innovative, b) achieves very small savings, or c) is not likely to gain traction as an ongoing EE program either in future Section 16-111.5B EE processes or as part of the Section 8-103 EE portfolio.

(Draft Plan, 88.)

7.1.4 Policy Issues for Consideration in the 2017 Plan

7.1.5 Ameren Illinois

7.1.5.1 Ameren Illinois Bid Review Process

7.1.5.2 Review of Ameren Illinois TRC Analysis

In relation to adjusting certain net-to-gross ("NTG") ratio values provided by the bidders, the Draft Plan states:

As described above in Section 7.1.5.2, Ameren Illinois (through its consultant AEG) adjusted certain net-to-gross ratios provided by bidders to more accurately reflect values in the Illinois TRM. Those adjustments appear to be reasonable to the IPA.

(Draft Plan, 90.) Staff agrees with the IPA that the NTG adjustments are reasonable.

That being said, in finding reasonable certain adjustments Ameren Illinois (through its

consultant AEG) made to the NTG ratio values provided by the bidders, page 90 of the Draft Plan provides an incorrect summary of the rationale for the NTG adjustment as well as an incorrect section reference.

First, the Draft Plan references Section 7.1.5.2 for an explanation of Ameren's NTG adjustments. NTG adjustments are not, however, discussed in Section 7.1.5.2 before the referenced sentence. The section preceding Section 7.1.5.2, Section 7.1.5.1, does address adjustments made by Ameren Illinois. The adjustments addressed in Section 7.1.5.1 again do not pertain to NTG values. Instead they pertain to Ameren Illinois' adjustments to the energy savings values for certain efficiency measures, which Ameren adjusted to more accurately reflect values in the IL-TRM.

With respect to the rationale for Ameren Illinois' adjustment of NTG values, the values were adjusted not to be consistent with the IL-TRM, but instead to reflect the NTG ratios recommended by Ameren's independent evaluator, as outlined under item 1 of the June 18, 2014 consensus language from the Section 16-111.5B Oversight and Evaluation Responsibility Workshop that was adopted by the Commission in ICC Docket No. 14-0588, as explained on page 11 of Appendix B, Ameren Illinois Section 16-111.5B Submittal. (Draft Plan, Appendix B, Ameren Illinois Section 16-111.5B Submittal, 11.)

Accordingly, for the sake of accuracy, page 91 of the Draft Plan should be modified as follows:

As described above in Section 7.1.5.2¹, Ameren Illinois (through its consultant AEG) adjusted the energy savings values for certain efficiency measures net to gross ratios provided by bidders to more accurately reflect values in the Illinois TRM. Ameren Illinois (through its consultant AEG) also adjusted certain net-to-gross ratios provided by bidders to reflect the NTG ratios recommended by Ameren's independent evaluator, consistent with the process set forth in the consensus language from the Section 16-111.5B Oversight and Evaluation Responsibility Workshop that was adopted by the

[Commission in ICC Docket No. 14-0588](#). Those adjustments appear to be reasonable to the IPA.

(Draft Plan, 91.)

The Draft Plan notes that Ameren did not include DRIPE in its TRC calculations and then makes reference to Section 7.1.2.2.2 of the Plan for a discussion of this issue.

(Draft Plan, 90.) Staff believes a reference to page 9 of Appendix B, Ameren Illinois Section 16-111.5B Submittal, where Ameren's rationale for excluding DRIPE appears, should be added to the reference, as the currently referenced Section 7.1.2.2.2 of the Plan does not provide for a complete overview of the DRIPE issues and various positions.

Accordingly, page 90 of the Draft Plan should be modified as follows: "Ameren also did not include DRIPE (see [page 9 of Appendix B, Ameren Illinois Section 16-111.5B Submittal and](#) Section 7.1.2.2.2 above for a discussion of this issue) in its calculations."

Alternatively, a better approach would be for the IPA to provide Ameren's rationale for excluding DRIPE in the text of the Plan, and also provide a more complete explanation of Ameren's rationale for excluding NEBs in the text. Accordingly, for the sake of completeness, Staff recommends the IPA modify page 90 of the Draft Plan as follows:

According to Ameren Illinois, the removal of a non-energy benefits adder was in response to [the SAG TRC Subcommittee research revealing that NEBs are not widely incorporated in calculating energy efficiency program cost-effectiveness as well as](#) feedback during the bid review process from ICC staff [expressing concern about using a default NEBs adder without a quantifiable study to support the value](#). Ameren also did not include DRIPE (see [page 9 of Appendix B, Ameren Illinois Section 16-111.5B Submittal and](#) Section 7.1.2.2.2 above for a discussion of this issue) in its calculations. [Ameren excluded DRIPE because it agrees with the presentation made by the Northbridge Group, which indicated that acceptance of DRIPE would not be in customers' best interest as it would lead to spending customers' money on resources that are not cost-competitive; would rely upon questionable and uncertain key assumptions regarding market response and would involve longer-term effects that raise \(not lower\) prices for](#)

customers in the long-run. According to Ameren Illinois' submittal, without the inclusion of DRIPE, interested electric suppliers will be reassured that they will be able to compete in Illinois without the threat that their long-term investments will be devalued by regulatory market manipulation and will better encourage innovation and competition across all resources on the basis of lowest cost, to the benefit of customers.

(Draft Plan, 90.)

7.1.5.3 Programs for which Ameren Illinois asserts the cost exceeds the cost of supply

7.1.5.4 Review of Duplicative Programs

7.1.5.5 Ameren Illinois Programs Recommended for Approval

7.1.5.6 Ameren Illinois Requested Determinations

The Draft Plan states:

AIC seeks express approval that it is permitted to recover costs that exceed the estimated program costs. In lieu of this express approval, AIC will be forced to prematurely discontinue approved programs prior to the estimated budget being expended.

The IPA does not object to these requests, as they appear to be consistent with consensus items from past workshops.

(Draft Plan, 94 (footnote omitted).) Staff opposes elimination of spending constraints as appears to be requested by Ameren because it does not promote effective cost management of the programs. In ICC Docket No. 13-0546, the Commission approved Ameren's request that it be "permitted to recover costs that incidentally (3 - 5%) exceed the estimated program costs," and Staff believes that such limitation should be imposed in the 2016 Plan as well. (2014 Procurement Plan, 88.) Furthermore, this unlimited spending request is inconsistent with the consensus items from the 2013 and 2014

Section 16-111.5B energy efficiency workshops.² Accordingly, page 94 of the Draft Plan should be modified as follows:

The IPA does not object to Ameren's first request above these requests, as they it appears to be consistent with consensus language adopted by the Commission in ICC Docket No. 14-0588 items from past workshops. With respect to Ameren's second request above pertaining to cost recovery of costs in excess of estimated program costs, the IPA requests the Commission impose certain limits on this request, consistent with provisions adopted in ICC Docket No. 13-0546. In particular, the IPA requests the Commission allow for the utilities to recover reasonable and prudent costs that incidentally (3 - 5%) exceed the estimated program costs.

(Draft Plan, 94.)

² Consensus language from the Section 16-111.5B energy efficiency workshops is set forth below.

2013 workshops:

- Under the pay for performance contract, the ICC could authorize on a program basis, a maximum energy savings achieved and spending cap.
- The Commission may authorize on a program basis an expected spending level and the spending level cap.

2014 workshops:

7. Continuity for Multi-Year EE Programs

Consensus Language:

The utilities should have the capability for any of the Section 16-111.5B energy efficiency programs to have the option to expand into the Section 8-103 energy efficiency portfolio for a given program year (at the utility's discretion) if (1) the Section 16-111.5B savings goal for the energy efficiency program (from the ICC Order in the procurement plan docket or compliance filing/contract) is achieved and the approved budget (from ICC Order in the procurement plan docket) is exhausted and (2) the utility has budget available in the Section 8-103 energy efficiency portfolio. The utilities should make the vendor aware of this option in advance so as to help avoid stopping and re-starting the energy efficiency program (i.e., avoid program disruption).

The Commission could pre-authorize up to a 20% budget shift across program years for multi-year programs (assuming remains within total approved multi-year program budget) to allow for successful energy efficiency programs to continue operation in the early (or later) program years of the multi-year contract. In such a situation, it is assumed that the kilowatt-hour ("kWh") savings goals and budgets would be cumulative for the number of years of the contract. The utilities should make the vendor aware of this option in advance so as to help avoid energy efficiency program disruption.

7.1.6 ComEd

7.1.6.1 ComEd Bid Review Process

7.1.6.2 Review of the ComEd TRC Analysis

7.1.6.3 Review of Duplicative Programs

7.1.6.4 ComEd Identification of “Performance Risk”

The Draft Plan states:

ComEd does not, however, recommend that such programs not be included in the IPA’s Plan or not approved by the Commission. The IPA agrees. Section 16-111.5B requires the IPA to include incremental “energy efficiency programs and measures it determines are cost-effective.”^[3] Under Section 16-111.5B, “the term ‘cost-effective’ shall have the meaning set forth in subsection (a) of Section 8-103 of this Act,”^[4] meaning “that the measures satisfy the total resource cost test.”^[5] As each of these measures passes the total resource cost test, they should be included in the IPA’s annual procurement plan.

(Draft Plan, 97.) Pursuant to Section 16-111.5B(a)(4) of the PUA, the IPA is not required to recommend approval of “all” cost-effective programs in its annual procurement plans. Statutory language must be given its plain and ordinary meaning. People v. Fink, 91 Ill. 2d 237, 239 (1982). Where statutory language is clear it must be given effect. Hadley v. Illinois Department of Corrections, 224 Ill. 2d 365, 371 (2007); GMC v. State Motor Vehicle Review Board, 224 Ill. 2d 1, 13 (2007). The requirement under the law is that the programs or measures included in the procurement plan must be cost-effective (220 ILCS 5/16-111.5B(a)(4)), not that “all” cost-effective programs or measures must be recommended for approval in procurement plans. A program projected to be cost-

³ 220 ILCS 5/16-111.5B(a)(4).

⁴ 220 ILCS 5/16-111.5B(b).

⁵ 220 ILCS 5/8-103(a).

effective but which is duplicative with the utilities' existing Section 8-103 programs may be excluded for sound reasons, as indicated by the Commission in the 2014 Procurement Plan docket. Illinois Power Agency, ICC Order Docket No. 13-0546, 148-149 (December 18, 2013) For the programs and measures included in the procurement plans, among other things, they have to fully capture the potential for "all achievable cost-effective savings, to the extent practicable." 220 ILCS 5/16-111.5B(a)(5). The legislature has given the IPA discretion in determining what to include in a plan. The IPA is to assess opportunities to expand the energy efficiency programs that have been offered under energy efficiency plans approved under Section 8-103 of the PUA or to implement additional cost-effective energy efficiency programs or measures. 220 ILCS 5/16-111.5B(a)(2). Section 16-111.5B(a)(5) of the PUA provides that:

Pursuant to paragraph (4) of subsection (d) of Section 16-111.5 of this Act, the Commission shall also 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) (emphasis added). Section 16-111.5B(a)(5) references Section 16-111.5(d)(4) of the PUA which provides that:

The Commission shall approve the procurement plan, including expressly the forecast used in the procurement plan, if the Commission determines that it will ensure adequate, reliable, affordable, efficient, and environmentally sustainable electric service at the lowest total cost over time, taking into account any benefits of price stability.

220 ILCS 5/16-111.5(d)(4) (emphasis added). The reference in Section 16-111.5B(a)(5) of the PUA to "all achievable cost-effective savings, to the extent practicable" requires the procurement plan to provide electric service at the "lowest total cost over time." In

addition, Section 16-111.5B(a)(3) sets forth a number of other metrics that the utilities must include with the energy efficiency assessments they submit to the IPA. 220 ILCS 5/16-111.5B(a)(3)(D)-(E). In particular, Section 16-111.5B(a)(3) requires the utilities to provide the following:

(D) 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.

(E) Analysis of how the cost of procuring additional cost-effective energy efficiency measures compares over the life of the measures to the prevailing cost of comparable supply.

Id. While all the programs or measures included in the procurement plan must be cost-effective using the Illinois total resource cost (“TRC”) test,⁶ the fact that the statute sets forth a number of additional analyses to include with the utilities’ assessments means that information other than the results from the TRC test must be considered by the IPA and the Commission when determining which programs or measures should be approved as part of the procurement plan. Thus, Staff considers the programs or measures being required to pass the TRC test to be a minimum requirement in deciding whether the programs or measures should be approved as part of the procurement plan. Further, Section 16-111.5B(a)(3)(D) requires each energy efficiency program to pass the Utility Cost Test (“UCT”), as noted in the 2013 consensus language.

The Draft Plan states that “[i]f risk of non-performance rested with ratepayers or the administering utility, then qualitative program factors would need to be considered to

⁶ Section 5/16-111.5B(b) of the PUA defines the term cost effective to have the meaning set forth in subsection (a) of Section 8-103. Section 8-103(a) of the PUA defines cost effective to mean measures that satisfy the total resource cost test.

protect those parties' interests." (Draft Plan, 97.) Staff believes that it serves the public interest to use qualitative program factors in the analysis of third party bids in order to protect parties' interests. Staff notes that use of qualitative program factors in analyzing bids is sensible and consistent with the approach currently used by the utilities in conducting the RFP process for the Section 8-103 energy efficiency programs. There is no logical reason for performing a less comprehensive review for the bids submitted pursuant to Section 16-111.5B in comparison to those submitted pursuant to Section 8-103, especially given the fact that there is no explicit spending cap to protect ratepayers under Section 16-111.5B of the PUA as there is for Section 8-103 energy efficiency programs.

The Draft Plan states that "under a pay for performance arrangement, the IPA understands risk of underperformance to rest with the winning bidders, and flawed program design will simply manifest itself in less payment for less performance." (Draft Plan, 97.) The Draft Plan then invites stakeholders to comment on "whether the 'pay for performance' model is indeed sufficient to insulate ratepayers and utilities from financial risk." (Draft Plan, 97.) Staff can say without a doubt that the pay-for-performance model that has been relied upon in the past is insufficient at insulating ratepayers and utilities from financial risk. As evidenced by testimony in the currently pending ComEd energy efficiency reconciliation docket, ICC Docket No. 14-0567, one of the Section 16-111.5B third party vendors became insolvent (Docket No. 14-0567, ComEd Ex. 3.0, 3:41-42.) in late 2014 and, thus, could not perform under the pay-for-performance contracts; forcing ratepayers and/or the utility to cover the loss of approximately \$390,000. Therefore, the

IPA should consider qualitative program factors when analyzing and evaluating whether to accept bids for Section 16-111.5B programs.

While qualitative factors should be analyzed and considered when analyzing the bids for Section 16-111.5B, it is possible to reduce the financial risk to ratepayers and utilities through more effective pay-for-performance contracting. For example, utilities could minimize the risk of unrecoverable start-up cost expenditures through performance bonding.

Additionally, some of what is characterized as qualitative program factors may be better accounted for within TRC analyses. For example, if a program design is infeasible or impossible to carry out, then the expected benefits from the program should be reduced or eliminated for purposes of the TRC analysis. With respect to the current programs identified as a performance risk, Staff believes the “performance risk” programs should be excluded from the IPA’s Plan because they are not cost-effective once reasonable TRC input assumptions are used. Staff recommends the IPA modify the Draft Plan as follows:

ComEd does not, however, recommend that such programs not be included in the IPA’s Plan or not approved by the Commission. The IPA disagrees. The IPA believes the original TRC analysis performed for the “performance risk” programs is flawed and does not provide an accurate depiction of the likely cost-effectiveness of the programs. Modifying the TRC inputs to more accurately reflect the expected performance of such programs, the IPA finds the programs are not cost-effective. Section 16-111.5B requires the IPA to include incremental “energy efficiency programs and measures it determines are cost-effective.”²¹² Under Section 16-111.5B, “the term ‘cost-effective’ shall have the meaning set forth in subsection (a) of Section 8-103 of this Act,”²¹³ meaning “that the measures satisfy the total resource cost test.”²¹⁴ As each of these measuresprograms failspasses the total resource cost test once reasonable TRC input assumptions are used, they should be inexcluded ifrom the IPA’s annual procurement plan.

(Draft Plan, 97.)

Finally, the Draft Plan includes an extra “currently” on page 96 that should be deleted as follows: “Of the remaining four programs, ComEd expressed concerns that the sales cycle for the applicable products in two of the bids is very slow and complex, one program that expands on an existing program has ~~currently~~ not currently expended its budget.” (Draft Plan, 96.)

7.1.6.5 ComEd Programs Recommended for Approval

As explained in Section 7.1.6.4 above, Staff believes that four of the programs that the IPA included in its Draft Plan do not pass the TRC test and should be excluded. The IPA should modify page 96 of the Draft Plan as follows:

Table 7-6: ComEd Energy Efficiency Offerings

Program	Net Savings (MWh)	Total Utility Cost	TRC
Agricultural EE	1,354	\$366,613	1.64
Assisted and Senior Housing	1,319	\$625,928	1.60
Community-based CFL Distribution (DCEO)	17,566	\$1,240,000	3.01
Efficient Products (DCEO)	3,711	\$778,179	6.24
Enhanced Building Optimization (DCEO)	12,274	\$2,500,000	2.68
Lit Signage	16,236	\$3,700,000	3.06
Low-income Kits (DCEO)	4,555	1,439,246	1.85
Low-income Multi-family (DCEO)	7,239	\$2,167,622	4.44
Luminaire Level Lighting Control	19,113	\$5,101,484	4.39
Monitoring-based Commissioning	3,008	\$1,553,800	1.67
Rural Small Biz EE Kits	1,078	\$582,970	4.54

The net savings at the busbar is ~~87,453,57,066~~ MWh. ~~These programs are forecasted to deliver 13 MW of reduction in peak procurement. The savings attributable to eligible retail customers is 35,812 MWh.~~

(Draft Plan, 97.) The forecasted reduction in peak procurement and the savings attributable to eligible retail customers should also be modified in the Plan to correspond to the removal of the four programs. Given Table 7-6 in the Plan does not provide these values broken out by program, Staff was not able to readily calculate these revised values.

Footnote 216 on page 97 of the Draft Plan should be modified to specify the correct number of energy efficiency programs that ComEd's results indicate passed the UCT test, namely ComEd's analysis indicates that eleven out of eleven passed rather than eight out of ten. Footnote 216 on page 97 of the Draft Plan should be modified as follows:

ComEd also provided the results of the UCT test and ~~eight~~eleven of the ~~ten~~eleven proposed programs passed the UCT test. The IPA considers that informational only and has not used the UCT test in its consideration of programs to include in this Plan.

(Draft Plan, 97.)

7.1.7 MidAmerican

Section 7.1.7 of the Draft Plan states that utilities participating in the IPA's procurement process are required, under Section 16-111.5B of the PUA, to provide additional information regarding their energy efficiency programs and measures to the IPA. (Draft Plan, 98.) MEC's energy efficiency submittal is attached as Appendix D to the Draft Plan. (*Id.*) In its submittal, MEC states that the following subsections to Section 16-111.5B(a) do not apply to MEC: (3)(B) (recent Section 8-103A study), (3)(C) (identification of new or expanded measures), (3)(D) (cost analysis), (3)(E) (comparison analysis), (3)(F) (energy savings goals), and (3)(G) (reduced need to procure supply). According to MEC, it is not subject to these subsections because the subsections rely upon Section 8-103 applying to the utility. However, subsection (h) of Section 8-103 exempts electric utilities, like MEC, that on December 31, 2005 provided electric service to fewer than 100,000 customers in Illinois. (IPA Draft Plan, Appendix D, 6-8.) The Draft Plan concludes that MEC's energy efficiency submission meets the requirements of Section 16-111.5B,

but, also, invites further feedback on the issue. (Draft Plan, 98.)

Staff agrees with the IPA that Subsections 16-111.5B(a)(3)(B) through (G) do not apply to MEC. Section 16-111.5B only applies to a utility if the utility is subject to Section 8-103. And, Section 8-103 does not apply to MEC since MEC provided electric service to fewer than 100,000 customers in Illinois on December 31, 2005. (220 ILCS 5/8-103(h)) (Draft Plan, 18, footnote 97.). Moreover, cost recovery of Section 16-111.5B energy efficiency programs and measures is permitted under Section 16-111.5B(a)(6) only through a tariff established pursuant to Section 8-103. Because Section 8-103 does not apply to MEC, it does not have a Section 8-103 tariff. Consequently, MEC does not have a funding mechanism for additional energy efficiency programs and measures. Accordingly, MEC cannot be required to implement additional energy efficiency programs and measures.

7.2 Procurement Strategy

MidAmerican Capacity Hedging Strategy

The IPA proposes to establish additional capacity hedges for MidAmerican's bundled customers for the five year delivery period of June 2017 through May 2022, through a single RFP to be held in fall 2016. These additional hedges would supplement the hedges that already exist due to an allocation of MidAmerican's generating assets to its Illinois jurisdiction. While it is not clear from the Plan, it appears from responses by MidAmerican to Staff data requests that the existing supply already provides over 80% of the capacity expected to be required over the next five plan years. It is noteworthy that, in the case of Ameren, the IPA proposes to hedge no more than 75% of any future plan

period. However, for MidAmerican, the IPA proposes to procure enough planning reserve credits through its fall 2016 RFP so that 100% of the expected capacity requirements of MidAmerican’s bundled customers, for each of the five delivery years, would be hedged. Staff recommends that the Plan be modified to reduce the percentage of MidAmerican’s expected capacity requirements to be hedged prior to each delivery year’s MISO planning reserve auction (“PRA”), as follows:

Delivery Year	Cumulative capacity hedge targets			
	After fall 2016 proc. event		After fall 2018 proc. event	
	IPA Proposal	Staff Proposal	IPA Proposal	Staff Proposal
2017	100%	80%	n/a	n/a
2018	100%	80%	n/a	n/a
2019	100%	50%	n/a	80%
2020	100%	50%	n/a	80%
2021	100%	50%	n/a	80%

The reason for Staff’s proposal is that the quantity of capacity requirements that will exist during the later years of the planning horizon are uncertain. Establishing capacity hedges that are unneeded could end up significantly raising rates. On the other hand, Staff recognizes that the IPA seeks to limit the number of separate procurement events for MidAmerican, in order to economize on administrative costs. Staff believes that the above strategy will enable the IPA to limit the number of procurement events to one event every three years and will result in MidAmerican maintaining, at all times, a more extensive capacity hedge than the IPA has planned for Ameren. In all likelihood, once the forecasts are revised, and following the above recommendation, it will be

unnecessary to acquire any additional capacity credits in a fall 2016 procurement event and it is even possible that it will be unnecessary to acquire additional capacity during a fall 2018 procurement event.

7.3 *Indicative Quantities and Types of Products to be Procured*

7.4 *Ancillary Services, Transmission Service and Capacity Purchases*

7.5 *Demand Response Products*

7.6 *Clean Coal*

7.7 *Summary of Strategy for the 2015 Procurement Plan*

The heading of Section 7.7 should be modified to read the correct year of the Procurement Plan under consideration, namely 2016 rather than 2015. “7.7 Summary of Strategy for the 2016 Procurement Plan”. (Draft Plan, 118.)

8 Renewable Resources Availability and Procurement

MidAmerican

Pursuant to Section 16-111.5(b) of the Illinois Public Utilities Act (“PUA”), MEC requested the IPA procure power and energy for just a portion of MEC’s total Illinois retail load. (Draft Plan, 11.) In addition to procuring power and energy, procurement plans also must include cost-effective renewable energy resources. In particular, the IPA Act provides that:

[a] minimum percentage of each utility’s total supply to serve the load of eligible retail customers, as defined in Section 16-111.5(a) of the Public Utilities Act, procured for each of the following years shall be generated from cost-effective renewable energy resources.

(20 ILCS 3855/1-75(c)) (emphasis added).

Section 16-111.5(a) of the PUA defines eligible retail customers as:

those retail customers that purchase power and energy from the electric utility under fixed-price bundled service tariffs, other than those retail customers whose service is declared or deemed competitive under Section 16-113 and those other customer groups specified in this Section, including self-generating customers, customers electing hourly pricing, or those customers who are otherwise ineligible for fixed-price bundled tariff service.

The Draft Plan provides for the procurement of renewable resource targets for MEC based upon MEC's "total supply to serve eligible retail customers" and not upon a portion of its Illinois load. (Draft Plan, 120.) Staff agrees with the IPA that renewable resources for MEC should be based upon MEC's total supply to serve eligible retail customers in Illinois. However, Staff does not agree with the IPA that the IPA Act is unclear as to whether renewable resources targets for MEC should be based upon total supply to serve MEC's retail customers or for only a portion of MEC's eligible retail load. (Draft Plan, 120.)

When interpreting a statute, the primary objective is to ascertain and give effect to the intent of the legislature. Metro Utility Co. v. Illinois Commerce Commission, 262 Ill.App.3d 266, 274 (1994). The best indication of legislative intent is the statutory language itself. Id. Clear and unambiguous terms are to be given their plain and ordinary meaning. (West Suburban Bank v. Attorneys Title Insurance Fund, Inc., 326 Ill.App.3d 502, 507 (2001)).

Moreover, where statutory provisions are clear and unambiguous, the plain language must be given effect, without reading into the language any exceptions, limitations, or conditions the legislature did not express. Davis v. Toshiba Machine Co., 186 Ill.2d 181, 184-185 (1999). The IPA Act provides that renewables resources shall be based upon the total supply needed by the utility to serve its eligible retail customers. If the legislature

had intended for the IPA to purchase renewables based upon a portion of the load that the IPA was procuring for a utility, and not the utility's total load, then the legislature would have stated that exception in the statute. Given the plain language of the statute, renewable resources for MEC must be based upon MEC's total supply to serve eligible retail customers.

If the IPA disagrees with Staff and continues to assert that the statute is ambiguous on this point, Staff still can support the IPA's position of purchasing more rather than fewer renewables for MEC. Assuming there is ambiguity in the statute, which Staff does not believe to be the case, Staff agrees with the IPA's conclusion that "the stronger argument may be that MidAmerican's renewable resource targets are determined based upon MidAmerican's 'total supply to serve eligible retail customers' — in other words, its entire eligible retail customer load." If the Commission and IPA agree that the statute is ambiguous, it is important to note that in the event this matter is appealed, courts give "substantial weight and deference to an interpretation of an ambiguous statute by the agency charged with the administration and enforcement of the statute." (Internal quotation marks omitted.) (People Ex. rel. Madigan, 2011 IL App (1st) 101776, ¶ 6.)

If the IPA agrees with Staff's analysis, Staff recommends that the changes below be made to the Draft Plan at page 120. If the IPA is not convinced, then no changes to the Draft Plan are necessary.

Proposed Modification

(IPA Draft Plan, 120.)

* * *

MidAmerican's involvement in the 2016 Plan raises new questions about how to calculate the renewable resource target appropriate to it. ~~Specifically, it is unclear~~ ~~There is a dispute as to~~ whether renewable energy resources procurement targets should be calculated for all of Mid-American's eligible retail customer load, or only for that portion of eligible retail customer load for which the utility specifically requests procurement. Section 1-75(c)(1) of the IPA Act references procurement percentages applicable to "each utility's total supply to serve the load of eligible retail customers, as defined in Section 16-111.5(a) of the Public Utilities Act."²³⁷ While Section 16-111.5(a) defines "eligible retail customer" by customer status that would appear to include Mid-American's entire eligible retail customer load, this same section also expressly contemplates that Mid-American may seek procurement for only "a portion of its eligible Illinois retail customers in accordance with the applicable provisions set forth in this Section and Section 1-75 of the Illinois Power Agency Act."

In communications with the Agency, MidAmerican has stated that its interpretation of Section 16-111 of the PUA is that the amount of RECs to be procured by the IPA should be determined based on the incremental amount of energy and capacity planned to be procured by the IPA to serve MidAmerican's eligible Illinois customers, rather than the load for all of its eligible customers in Illinois. Under MidAmerican's viewpoint, because a small jurisdictional utility may elect for the IPA to procure only a portion of the energy and capacity required for its eligible customers, the IPA would likewise procure RECs to match the procurement of this incremental energy and capacity.

Alternatively, the IPA believes that the stronger argument ~~ismay be~~ that MidAmerican's renewable resource targets are determined based upon MidAmerican's "total supply to serve eligible retail customers"—in other words, its entire eligible retail customer load. While procurement may be requested by a small, multijurisdictional utility for only a portion of that load, the renewable energy procurement target itself is set through the more direct language contained in Section 1-75(c)(1) of the IPA Act ("a minimum percentage of each utility's total supply to serve the load of eligible retail customers"), and that language remains controlling regardless of whether the broader procurement is for only a portion of eligible retail customer load. Because the IPA believes that this ~~ismay be~~ the appropriate reading of the law, renewable energy resource procurement targets reported in this Chapter are calculated consistent with this approach. ~~However, as these provisions are open to multiple interpretations, the IPA invites comments from interested stakeholders to aid with making its recommendation for its filed 2016 Procurement Plan.~~

9 Procurement Process Design

Appendices

Appendix A. Regulatory Compliance Index

Appendix B. Ameren Illinois Load Forecast

Appendix C. ComEd Load Forecast

Appendix D. MidAmerican Load Forecast

The IPA included with its Draft Plan a proposed cost-recovery mechanism for MidAmerican. Appendix D, Attachment 6, “Rider PE - Purchased Electricity.” It is unclear if the IPA is planning to include this Rider’s approval as part of the procurement plan that will be filed with the Commission. Furthermore, it is currently unclear how the proposed Rider PE would work in practice. Staff is particularly concerned with how MidAmerican would calculate the terms SPBR, SOBR, NPBR, and NOBR, which are defined in the proposed rider as summer peak, summer off-peak, non-summer peak, and non-summer off-peak “costs related to sections (a) and (b) in the Purchased Electricity Price section of this rider, which are currently recovered in base rates....” This aspect of the cost-recovery mechanism must be clarified by MidAmerican before Staff can comment further.

Appendix E. Ameren Load Forecast and Supply Portfolio by Scenario

Appendix F. ComEd Load Forecast and Supply Portfolio by Scenario

Appendix G. MidAmerican Load Forecast and Supply Portfolio by Scenario

Conclusion

Staff respectfully requests that the Illinois Power Agency revise its Draft Plan consistent with Staff's Comments herein.

Respectfully submitted,

JOHN C. FEELEY
JAMES V. OLIVERO
Office of General Counsel
Illinois Commerce Commission
160 North LaSalle Street, Suite C-800
Chicago, IL 60601
Phone: (312) 793-8824
Fax: (312) 793-1556
jfeeley@icc.illinois.gov
jolivero@icc.illinois.gov
*Counsel for the Staff of the
Illinois Commerce Commission*

September 14, 2015