TO: Stakeholder Advisory Group, Illinois Energy Efficiency
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This document is for the limited purpose of providing guidance on the issue surrounding fuel conversion for electric utilities within the context of Energy Efficiency ("EE") measures and programs governed by the Public Utilities Act ("PUA"). The issue is as follows:

> **Can an electric utility EE measure that increases end-use electricity consumption but reduces the total BTUs needed to meet an end use still qualify as an EE measure under the PUA?**
>
> **No. Section 5/8-103B (b-25) requires an electric utility engaging in a non-joint utility energy efficiency measure involving another fuel to reduce both the end use of electricity and the other fuel.**

ANALYSIS

1. Subsection b-25 requires an electric EE measure or program to save both electricity and another fuel.

This issue arises out of an alleged ambiguity between statutory language in the PUA authorizing an electric utility to design, create, and implement an electric-only EE measure involving the reduction or elimination of another fuel, (b-25) para 2, and the PUA's general definition of EE, which is derived from the Illinois Power Agency Act ("IPAA"). For purposes of this analysis, "measure" means an energy-using appliance, piece of equipment, audit, or practice that will result in measurable, reduced energy usage at a comparable level of service. Illinois Stakeholder Advisory Group, *Illinois Energy Efficiency Policy Manual v2.0*, 6 (2019), https://ilsag.s3.amazonaws.com/IL_EE_Policy_Manual_Version_2.0_Final_9-19-19.pdf, [hereafter *Policy Manual*]. A "program" means an initiative or path consisting of a measure or measures that are part of a utility's EE portfolio. *See id*. at 7.

The stated policy of the EE statute governing electric utilities reads:

> It is the policy of the State that electric utilities are required to use cost-effective energy efficiency and demand-response measures to reduce delivery load. Requiring investment in cost-effective energy efficiency and demand-response measures will reduce direct and indirect costs to consumers by decreasing environmental impacts and by avoiding or delaying the need for new generation, transmission, and distribution infrastructure…

220 ILCS 5/8-103(a); 8-103B(a).

Section (b-25) reads:

> In the event an electric utility jointly offers an energy efficiency measure or program with a gas utility under plans approved under this Section and Section 8-104 of this Act, the electric utility may continue offering the program, including the gas energy efficiency measures, in the event the gas utility discontinues funding the program. In that event, the energy savings value associated with such other fuels shall be converted to electric energy savings on an equivalent Btu basis for the premises. However, the electric utility shall prioritize programs for low-income residential customers to the extent practicable. An electric utility may recover the costs of offering the gas energy efficiency measures under this subsection (b-25).
>
> For those energy efficiency measures or programs that save both electricity **and** other fuels but are not jointly offered with a gas utility under plans approved under this Section and Section 8-104 or not offered with an affiliated gas utility under paragraph (6) of subsection (f) of Section 8-104 of this Act, the electric utility may count savings of fuels other than electricity toward the achievement of its annual savings goal, and the energy savings value associated with such other fuels shall be converted to electric energy savings on an equivalent Btu basis at the premises.
>
> In no event shall more than 10% of each year's applicable annual incremental goal as defined in paragraph (7) of subsection (g) of this Section be met through savings of fuels other than electricity.

220 ILCS 5/8-103B (b-25) (emphasis added). The first paragraph of (b-25) authorizes an electric utility to offer Joint EE programs. Joint EE programs are programs in which an electric utility and gas utility partner-deliver their respective EE measure(s) together, for the same customer at the same time, to streamline customer/utility contact and promote customer EE participation. *See* 8-104(f)(6) (requiring the integration of certain gas and electric EE measures into a single program to reduce program or participant costs to gas and electric ratepayers).

Given the disparity in utility budgets, the statute allows for the electric utility to continue the gas utility's measure for the remainder of the year or program cycle in the event the gas utility budget is exhausted. Any Therm savings derived from the gas utility measure but paid for by the electric utility are converted into kWh savings and credited accordingly, using a Therm to kWh conversion algorithm outlined in the Technical Reference Manual ("TRM"). The PUA specifically authorizes this type of conversion for joint programs and states that "the energy savings value [from such other fuels] …shall be converted to electric energy savings on an equivalent Btu basis for the

premises." 220 ILCS 5/8-103B (b-25). *See also* Policy Manual at 49, *11.3*: *Counting Fossil Fuel Savings Towards Electric Savings Goals*. This paragraph does not contemplate any other circumstance for which fuel conversion is allowed.

The second paragraph of (b-25) authorizes an electric utility to offer an electric utility-only EE program or measure that contemplates the end use reduction of electricity **and** another fuel, requiring a methodology to convert the savings from the other fuel into "electric energy savings on an equivalent Btu basis at the premises." 8-103B (b-25). This section does not authorize the utility to count BTU savings from a program or measure that **increases** electricity use but decreases the use of another fuel as part of its EE obligation.

2. The general definition of EE in the IPAA does not override the specific language of (b-25).

The PUA does not explicitly define EE for the electric utilities as it does for the gas utilities under Section 8-104(b), but rather incorporates by reference the general definition of EE as set forth in the IPAA. Some parties have suggested that this general definition conflicts with (b-25) and its requirement that the use of both electricity and the other fuel be reduced to qualify as EE, and argue that just the reduction of the total BTUs required to meet the targeted end use or uses is sufficient.

The IPAA's definition of EE reads:

> Energy efficiency means measures that reduce the amount of electricity or natural gas consumed in order to achieve a given end use. Energy efficiency includes voltage optimization measures that optimize the voltage at points on the electric distribution voltage system and thereby reduce electricity consumption by electric customers' end use devices. Energy efficiency also includes measures that reduce the total Btus of electricity, natural gas, and other fuels needed to meet the end use or uses.

220 ILCS 5/8-103B(a), referencing 20 ILCS 3855/1-10. The first sentence is a general definition of EE, specifically referencing the "reduc[tion] of electricity or natural gas consumed …to achieve a given end use," i.e. heating, cooling, lighting, etc. This sentence does not directly or implicitly address fuel switching or fuel conversion.

This point is further made evident by the second sentence in the IPAA's definition of EE specifying that the purpose of electricity EE is to "reduce electricity consumption by electric customers' end use devices" through another type of EE measure – voltage optimization. *Id.*

The last sentence of the IPAA definition paragraph suggests that an electric utility-only EE measure qualifies as an authorized measure under the statute if it "reduces the total Btus of electricity, natural gas, and other fuels needed to meet the end use or uses." *Id*. This sentence, if

viewed in isolation, could be interpreted to mean that an electric utility-only measure involving another fuel need only reduce the total Btus of energy needed to meet an end use, regardless of whether the measure increased the end use consumption of electricity.

This view of the IPAA definition, however, conflicts with the specific terms of Section 8-103B (b-25) that specifically addresses measures that reduce the use of other fuels and requires either a joint gas-electricity measure or an electric-only measure that reduces both electricity and gas usage. A statute should be evaluated as a whole, with each provision construed in connection with every other section, Cinkus *v. Vill. of Stickney Mun. Officers Electoral Bd*., 228 Ill. 2d 200, 217 (2008), and should be construed in a manner such that no term is rendered meaningless or superfluous. *Stroger v. Reg'l Transp. Auth*., 201 Ill. 2d 508, 524 (2002). The word "and" establishes the condition that the measure save both electricity and fuel. A reading to the contrary ignores the plain meaning of the statute and renders the policy guiding the provision, *i.e*. to reduce electric load, meaningless.

In addition to conflicting with the terms of (b-25), this approach conflicts with the other goals of 8-103B as such measures would drive-up end-use electricity consumption, *increase* overall delivery load, *increase* the environmental impact given the current makeup of baseload and non-baseload/marginal generation, and *accelerate* the need for new generation, transmission, and distribution infrastructure, rendering meaningless each and every point of the EE statute's stated policy and the plain language of the enabling provision in (b-25).

The third and final paragraph of Section (b-25) limits the amount of energy savings an electric utility can count towards its annual savings goal, achieved through the reduction of an energy source other than electricity, to 10%.

It is also noteworthy that the IPAA is a statute concerned with "improv[ing] the process of procuring electricity…to achieve a diverse electricity supply portfolio…[that] will ensure the lowest total cost over time for adequate, reliable, efficient, and environmentally sustainable electric service." 20 ILCS 3855/1-5. It is not an EE statute. The stated policy of 8-103B, which is a specific EE statute, is that "energy efficiency and demand response measures be used to reduce delivery load…and environmental impacts…" 220 ILCS 5/8-103B(a). Although an argument could be made that the elimination of the use of fossil fuels would somehow help support "environmentally sustainable electric service," there is no other statutory language indicating that the legislature intended 8-103B to act as a fuel conversion implementation tool to promote the sale of electricity. Additionally, no stakeholder to date has provided any evidence that *increased* delivery load equates to a lower environmental impact. And even if this were the case, as articulated above the plain language of (b-25) requires the reduction of both electricity and the other fuel.

Finally, the PUA under section 8-104 has an entire section dedicated to natural gas utilities which impose natural gas EE savings requirements and guidelines that differ from the electric utility requirements. Unlike the electric EE statute, the gas EE statute lacks a requirement that the EE measure save "both electricity and gas." The gas measure only needs to "reduce the amount of

energy required to achieve a given end use" or "reduce the total Btus of electricity and natural gas needed to meet the end use or uses." 220 ILCS 5/8-104(b). This distinction cannot be ignored, nor can the electric utility adopt the gas section's definition of EE; the electric utility is constrained to the definition of EE given it by the legislature.

A final but notable point is that the natural gas EE savings requirements and guidelines for the implementation of natural gas EE measures extend well into the future. 220 ILCS 5/8-104(c)(1)-(9). This fact implies that the legislature expected that natural gas would *continue* to be a viable source of energy and subject to EE efforts. Nothing in the statute indicates that natural gas service will no longer be available in Illinois or is to be replaced by electricity. The idea of replacing natural gas with electricity has no basis in the EE statute and cannot be the basis of electricity EE measures.

CONCLUSION

It is contrary to the well-established rules of statutory construction to suggest that the broader definition of EE in the IPAA negates or overrides the plain and specific language in Section 8-103B of the stated policy to reduce electricity usage, or the specific provisions in (b-25) that govern joint programs. Further, the establishment of electricity and natural gas programs under Sections 8-103B and 8-104 of the PUA fail to demonstrate a legislative intent to use EE to phase- out natural gas and replace it with electricity.