

## **Frequently Asked Questions (“FAQ”) about the Application Form for Notice for Opting Out of Electric Energy Efficiency Programs for Eligible Large Private Energy Customers**

*Note: This FAQ, which was collaboratively developed and agreed to by Commission Staff, Commonwealth Edison, Ameren Illinois and the Illinois Industrial Energy Consumers, is intended to assist eligible customers in understanding the opt out process. The answers provided have not been approved by the Illinois Commerce Commission, and should not be viewed as reflecting the policy, position or opinion of the Commission or any individual Commissioner. This FAQ is not, and should not be considered as conveying an ICC legal opinion or agency interpretation regarding the application of, responsibilities and obligations imposed by, or rights conferred by, Section 8-103B of the Public Utilities Act.*

### **I. GENERAL QUESTIONS**

#### **Who may submit an application form for notice to opt out of a given multi-year energy efficiency plan?**

Only an “Eligible Large Private Energy Customer,” as defined in 220 ILCS 5/8-103B(1)(1), qualifies to submit a form for notice to opt-out of a multi-year energy efficiency plan (“Opt-Out Notice”). An Eligible Large Private Energy Customer (or “Eligible Customer”) is a retail customer of an electric utility located in Illinois that is not a federal, State, municipal or other public customer and whose highest 30 minute demand (ComEd) or whose highest 15 minute demand (Ameren) in the 12 consecutive billing periods prior to the start of the plan cycle (e.g., January 1, 2022) was more than 10,000 kilowatts (“kW”).

Moreover, the law provides that for a business entity with multiple sites located in the State, where at least one of those sites qualifies as an Eligible Large Private Energy Customer, then any of that business entity’s sites, properly identified on a form for notice, shall be considered Eligible Large Private Energy Customers for the purposes of 220 ILCS 5/8-103B(1)(1).

#### **How does an Eligible Customer submit an Opt-Out Notice?**

If an Eligible Customer has reached, or anticipates that it will reach, demand that exceeds 10,000 kW within the 12 consecutive billing periods preceding the start of a multi-year plan (e.g., the January through December 2021 monthly billing period) and would like to opt out of participating in, and funding the costs of, the next energy efficiency plan (e.g., commencing January 1, 2022), the Eligible Customer will need to complete and submit the Opt-Out Notice and include the required information (collectively the “Opt-Out Notice submission”). The Opt-Out Notice is available on the ICC’s website: <https://www.icc.illinois.gov/programs/climate-and-equitable-jobs-act-implementation>. A complete Opt-Out Notice submission must be emailed to

ComEd ([EEOptOut@ComEd.com](mailto:EEOptOut@ComEd.com)), Ameren ([EEOptOut@Ameren.com](mailto:EEOptOut@Ameren.com)), or both utilities if the Opt-Out Notice includes customer accounts in both utilities' service territories.

### **When does an Eligible Customer need to submit an Opt-Out Notice?**

For this first opt-out opportunity applicable to the energy efficiency plans commencing on January 1, 2022, a complete Opt-Out Notice submission must be received by the applicable utility or utilities by December 31st, 2021 in order for the Eligible Customer to be considered for opting out for the four-year plan cycle covering 2022-2025. If an Opt-Out Notice submission is received by the utilities after December 31, 2021, but on or before January 28, 2022, then the Eligible Customer will be considered for opting out of the last three years (i.e., 2023-2025) of the four-year plan cycle. Any Opt-Out Notice submission received after January 28, 2022 will be automatically rejected.

For future four-year plan cycles (e.g., commencing January 1, 2026), an Eligible Customer must submit its Opt-Out Notice submission no later than 12 months before the plan cycle begins. For example, to opt out of the four-year plan cycle commencing January 1, 2026, an Eligible Customer must submit its complete Opt-Out Notice submission between January 1, 2024 and December 31, 2024, consistent with the submittal deadlines specified in the Opt-Out Notice application form.

An Opt-Out Notice only covers a single, four-year plan cycle, and an Eligible Customer must submit a new Opt-Out Notice submission for each plan cycle for which it seeks to opt out in accordance with the submittal deadlines specified in the Opt-Out Notice application form.

### **What information does an Eligible Customer need to submit with an Opt-Out Notice submission?**

The statutory requirements for the Opt-Out Notice submission are found at 220 ILCS 5/8-103B(l)(2)(A)-(F). These requirements include:

- (A) a statement indicating that the customer has elected to opt out;
- (B) the account numbers for the customer accounts to which the opt out shall apply;
- (C) the mailing address associated with the customer accounts to which the opt out shall apply;
- (D) an American Society of Heating, Refrigerating, and Air-Conditioning Engineers ("ASHRAE") level 2 or higher audit report conducted by an independent third-party expert identifying cost-effective energy efficiency project opportunities that could be invested in over the next 10 years. A retail customer with specialized processes may utilize a self-audit process in lieu of the ASHRAE audit;
- (E) a description of the customer's plans to reallocate the funds toward internal energy efficiency efforts identified in the audit report, including, but not limited to: (i) strategic energy management or other programs, including descriptions of targeted

- buildings, equipment and operations; (ii) eligible energy efficiency measures; and (iii) expected energy savings, itemized by technology. If the audit report identifies that the customer currently utilizes the best available energy efficient technology, equipment, programs, and operations, the customer may provide a statement that more efficient technology, equipment, programs, and operations are not reasonably available as a means of satisfying this requirement; and
- (F) the effective date of the opt out, which will be the next January 1 following notice of the opt out.

Importantly, the Commission's Opt-Out Notice requires that the Eligible Customer applicant certify, by an authorized agent that can bind the business entity submitting the Opt-Out Notice, that the information it provided is true and accurate. Electric utilities must file any approved Opt-Out Notices with the Commission, and the Commission's statutes<sup>1</sup> and penalty provisions applicable to the provision of false or misleading information accordingly apply.

### **What process will ComEd and Ameren follow to grant or deny an Opt-Out Notice?**

The law requires that, upon receipt of a properly and timely noticed request for opt out submitted by an eligible large private energy customer, ComEd and Ameren must grant the request. 220 ILCS 5/8-103B(1)(3). Accordingly, ComEd and Ameren must determine whether the Opt-Out Notice submission contains the statutorily-required elements.

To expedite the utilities' review, Eligible Customers are strongly encouraged to include with their Opt-Out Notice submission an executive summary (or other roadmap) indicating how the submission meets each of the statutory requirements and where each requirement is addressed in the submission. In the alternative, the Eligible Customer could include a completed Form Requirements Checklist, as included in the Appendix to this document, with page numbers included in the notes column. Omission of such summary, roadmap, or Form Requirements Checklist could result in delayed processing of an Opt-Out Notice.

To assist Eligible Customers and the utilities in the preparation and review of Opt-Out Notice submission, the Appendix to this FAQ document includes a checklist that Eligible Customers and utilities may use to confirm that each submission contains the required elements.

### **What happens if an Eligible Customer submits an incomplete or improper Opt-Out Notice submission?**

An Opt-Out Notice submission that does not contain the statutorily required elements will be rejected by the applicable utility (or utilities). The utility or utilities will, as soon as possible, provide a statement to the Eligible Customer, via the email address specified in the Opt-Out Notice, identifying the specific statutorily required element that was missing from the submission, and the Eligible Customer may submit a new, complete, and proper Opt-Out Notice

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<sup>1</sup> See e.g., 220 ILCS 5/5-202.1 and 5-203.

submission with the missing information if the submission deadline has not passed. If the Eligible Customer is able to submit a complete and proper Opt-Out Notice submission prior to the applicable deadline, then the Opt-Out Notice submission will be granted and the Eligible Customer will be opted out for the applicable period.

### **What happens if the utility does not approve a timely filed application before the deadline?**

In this case, if the application ultimately is approved but the utility has assessed energy efficiency charges, e.g. in January 2022, then the utility will provide a subsequent credit for amounts paid by Eligible Customers.

## **II. QUESTIONS RELATED TO OPTING OUT MULTIPLE SITES**

### **Which site(s) may be included in an Opt-Out Notice?**

The law provides that, for a business entity with multiple sites located in the State, where at least one of those sites qualifies as an Eligible Large Private Energy Customer, then any of that business entity's sites, properly identified on a form for notice, shall be considered Eligible Large Private Energy Customers. Thus, a business entity that has at least one site that meets the 10,000 kW demand threshold may include this site, and other of its Illinois sites, in an Opt-Out Notice.

For purposes of the Opt-Out Notice submission, "a business entity with multiple sites" includes those electric utility accounts whose owners are legally related by virtue of a shared or common parent company that holds, directly or indirectly, a controlling interest in each account's owner. The Eligible Customer shall be responsible for identifying each site in its Opt-Out Notice submission, including each associated utility account number and mailing address.

By signing and submitting the form, the Authorized Representative of an applicant certifies that the owners of the customer accounts listed are legally related by virtue of a shared or common parent company that holds, directly or indirectly, a controlling interest in each account's owner and that the Authorized Representative has the authority to opt out the listed sites from a utility's energy efficiency plan. Electric utilities will rely on the certified representations of the Authorized Representative made in the Opt-Out Notice submission and will not undertake any independent investigation or verification of such representations. If the electric utility subsequently receives information indicating that one or more of the customer accounts listed are not legally related by virtue of a shared or common parent company, the utility shall notify Commission Staff of its concern and provide the information, and Commission Staff, at its discretion, may undertake an independent investigation of such representations.

**Does an Eligible Customer seeking to opt out sites in both utility service areas have to submit separate Opt-Out Notices with each utility?**

No, the Customer should submit the same, complete and proper Opt-Out Notice submission to each utility.

**III. QUESTIONS RELATED TO THE AUDIT REQUIREMENTS**

**Is there a time requirement/implementation horizon for the opportunities identified by the audit report?**

The law does not identify any limitation on the issuance date of the audit report. However, the audit report must include cost-effective project opportunities that could be invested in over the next 10 years.

**Is there a specific format requirement for the audit reports of Eligible Customers who use a self-audit process?**

No. While the American Society of Heating, Refrigerating, and Air-Conditioning Engineers (“ASHRAE”) specifies a format for its audit reports, customers that choose to utilize a self-audit process are not required to utilize the ASHRAE report format. Both ASHRAE and self-audit reports must “identify cost effective energy efficiency project opportunities that could be invested in over the next 10 years,” or indicate that the “applicant currently utilizes the best available energy efficient technology, equipment, programs and operations.”

The law does not require, and ComEd and Ameren will not undertake, a qualitative assessment of the audit reports; however, ComEd and Ameren will perform a completeness check. However, to assist with the determination of whether the Opt-Out Notice submission is complete and proper, Eligible Customers are strongly encouraged to include a statement or summary of the audit report that clearly identifies the cost-effective energy efficiency project opportunities that could be invested in over the next 10 years that are identified in the audit, and the specific sites or site types to which those opportunities apply. Omission of such statement or summary could delay the processing of an Opt-Out Notice.

**Do separate audit reports need to be provided for each utility account identified in the Opt-Out Notice?**

The law does not include a specific requirement that a separate audit report be provided for each utility account identified in the application. However, the Eligible Customer must provide information to show how each site identified in the application (i.e., each utility account) is expressly covered either by an ASHRAE audit or the self-audit process. The audit report may

cover sites of a similar type (e.g., grain elevators, gas stations, small office buildings, etc.) with common energy efficiency measures, collectively. Moreover, the Opt-Out Notice submission must describe the Customer's plans to reallocate funds toward internal energy efficiency efforts identified in the ASHRAE or self-audit report, as applicable.

#### **IV. CONFIDENTIAL INFORMATION**

##### **How can an Eligible Customer protect the confidential information that is submitted with an Opt-Out Notice?**

A Customer should mark as CONFIDENTIAL any information it deems confidential in its Opt-Out Notice. The utilities will redact information designated by a customer as confidential and file a public version of the Opt-Out Notice with the Illinois Commerce Commission. However, neither the Commission nor the utilities can guarantee that the information provided in the Opt-Out Notice submission will not be shared with third-parties pursuant to applicable laws, rules or orders of the Commission or Courts of competent jurisdiction.

### Appendix: Form Requirements Checklist

Statutorily Required Element	Contained in Opt-Out Notice?	Notes
Applicant name and contact info		
Signature of authorized representative		
Account number with peak demand over 10,000 kW during 2021		
Applicant's other qualifying accounts, if applicable		
Opt Out Dates Sought		
Audit report attached (ASHRAE level 2 or higher or self audit if specialized processes are used)		
Audit report identifies energy efficiency project opportunities that could be invested in over the next 10 years		
Audit report identifies energy efficiency project opportunities at each site or site type listed on form		
Description of customer's plans to reallocate funds to internal energy efficiency efforts		
Spending plan includes: (i) strategic energy management or other programs, including descriptions of targeted buildings, equipment and operations; (ii) eligible energy efficiency measures; and (iii) expected energy savings, itemized by technology  <b>Or</b> A statement that the Audit Report identifies that the Applicant currently utilizes the best available energy efficient technology, and therefore more efficient technology, equipment, programs, and operations are not reasonably available		
Certification of intention to opt out for all accounts identified in the Opt-Out Notice submission		
Certification of understanding of eligibility		
Certification of understanding regarding sharing of customer account information		
Certification of truth and accuracy of information submitted		