

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

ILLINOIS POWER AGENCY	:	
	:	
Petition for Approval of the 220 ILCS	:	Docket No. 11-0660
5/16-111.5(d) Procurement Plan	:	

RESPONSE AND OBJECTIONS TO THE ILLINOIS POWER AGENCY'S
PROCUREMENT PLAN FILED SEPTEMBER 28, 2011
BY THE STAFF OF THE ILLINOIS COMMERCE COMMISSION

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Staff of the Illinois Commerce Commission (“Staff”), by and through its counsel, respectfully submits this response and objections to the Procurement Plan (“Plan”) and the Illinois Power Agency (“IPA”) Petition for Approval of the 220 ILCS 5/16-111.5(d) Procurement Plan (“Petition”) filed on September 28, 2011 pursuant to Section 16-111.5 of the Public Utilities Act (“PUA”), 220 ILCS 5/16-111.5. Staff also submits the Affidavit of Richard J. Zuraski in support of facts and non-legal matters contained herein.

I. INTRODUCTION

On August 28, 2007, Public Act 095-0481 (“PA 95-0481”) was signed into law. PA 95-0481 established the Illinois Power Agency Act (the “IPA Act”) (20 ILCS 3855/1-1 et seq.), and made certain modifications and additions to the PUA. This legislation fundamentally modified the method of procurement of power and energy requirements of Illinois electric utilities with more than 100,000 customers as of December 31, 2005.

On August 15, 2011 the IPA filed a draft procurement plan. The IPA’s procurement plan must follow the requirements as set out in Section 16-111.5(b), which requires compliance with the requirement of Section 16-111.5 as well as the IPA Act.

On September 15, 2011 comments to the IPA on its draft procurement plan were due. Staff, 3D Solar, Inc., Ameren Energy Resources, Ameren Illinois Company (“Ameren Illinois”, “Ameren” or “AIC”), Commonwealth Edison Company (“ComEd”), Converge, Inc., Constellation Energy Commodities Group, Inc. and Constellation NewEnergy, Inc. (“CNE”) (collectively “Constellation”), Environmental Law and Policy Center (“ELPC”), Exelon Generation Company, LLC (“ExGen”), Iberdrola Renewables, Inc. (“IBR”), Illinois Competitive Energy Association (“ICEA”), the Solar Alliance, Wind on the Wires (“WOW”), the Illinois Wind Energy Association (“IWEA”), Sierra Club, Illinois Chapter, FutureGen Industrial Alliance, Inc. (“FutureGen Alliance”), Freedom Field, and numerous other individuals and entities provided comments on the IPA’s draft procurement plan.

On September 28, 2011, the IPA filed the Plan for the five year procurement planning period from June 2012 through May 2017. The IPA’s Plan incorporated and addressed many of the various listed parties’ comments on the draft procurement plan. As set forth below, Staff recommends that any remaining issues classified as objections be addressed through the hearing process described below.

II. PROCESS AND PROCEDURE FOR REVIEW OF THE IPA’S PLAN UNDER PUBLIC ACT 95-0481

Section 16-111.5 of the PUA, adopted as part of Public Act 095-0481, sets forth various provisions relating to procurement of power and energy. 220 ILCS 5/16-111.5. Subsection (d) of Section 16-111.5 sets forth the process and procedure for the review and approval of IPA procurement plans, beginning in 2008. The statute states, among other things, that: (1) “[w]ithin 5 days after the filing of a procurement plan, any person objecting to the plan shall file an objection with the Commission”; (2) “[w]ithin 10 days

after the filing, the Commission shall determine whether a hearing is necessary”; and (3) the Commission must “enter its order confirming or modifying the procurement plan within 90 days after the filing of the procurement plan by the [IPA].” 220 ILCS 5/16-111.5(d)(3). Pursuant to these statutory guidelines, objections must be filed by October 3, 2010, the Commission must determine whether a hearing is necessary on or before October 13¹, 2011, and a final Commission order must be entered on or before December 27, 2011.

Section 16-111.5 of the PUA further provides the standard by which the Commission must assess a procurement plan. The statute provides that the Commission shall approve a procurement plan, including 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 the benefits of price stability. 220 ILCS 5/16-111.5(d)(4).

In Docket 08-0519, Staff provided additional comments for the Commission’s consideration regarding the process for review and approval of the IPA’s Plan. Staff will not repeat those comments here. Consistent with those comments, Staff recommends that the Commission hold hearings to address Staff’s and other parties’ objections not addressed by voluntary acceptance by the IPA. Staff sees no benefit to not holding hearings this year. The issues that exist are important and the Commission should develop the most complete record possible to support its determination in the most efficient manner. Staff recommends that if the Commission determines hearings are

¹ Section 5/16-111.5(d)(3) has some ambiguity as to which filing the phrase “10 days after the filing” refers. Under another interpretation, the Commission must determine whether a hearing is necessary on or before October 8, 2011. October 8, 2011 is a Saturday.

necessary, a status hearing to adopt a schedule should be set for October 11, 2011. The parties and Administrative Law Judge can determine at that time if a paper hearing is feasible or desirable.

If the Commission decides to hold a hearing pursuant to Section 16-111.5(d)(3) of the PUA, Staff will recommend at the status hearing the schedule set forth below for the remainder of the 2012 Plan cycle, which includes the dates from last year’s schedule for comparison purposes:

	Last Year Actual	Days	This Year Projected	Days
Comments on Draft Plan	Wed 9/15/2010		Wed 9/14/2011	
Revised Plan	Tues 9/28/2010	13	Wed 9/28/2011	14
Objections to IPA Plan	Mon 10/4/2010	6	Mon 10/3/2011	5
Responses to Objections	Mon 10/18/2010	14	Tue 10/18/2011	15
Replies to Responses	Wed 10/27/2010	9	Tue 11/1/2011	14
Motion to Amend Procedural Schedule and file Supplemental Comments	Wed 11/10/2010	14	n/a	
Reply to Supplemental Comments	Tues 11/16/2010	6	n/a	
Reply to Response to Supplemental Comments	Wed 11/17/2010	1	n/a	
ALJ Proposed Order	Mon 11/22/2010	6	Fri 11/18/2011	17
BOE	Wed 12/01/2010	9	Tue 11/29/2011	11
RBOE	Mon 12/06/2010	5	Tue 12/6/2011	7
Commission Order	Tue 12/21/2010	15	Wed 12/21/2011	15
Commission Deadline	Tue 12/28/2010		Tues 12/27/2011	
Note:	Fixed by Statute		Fixed by Statute	

III. OBJECTIONS AND CONCERNS REGARDING THE PROCUREMENT PLAN

A. The IPA's plan to purchase capacity for AIC during spring 2012 for plan years 2013-2014 and 2014-2015 has not been justified

The Plan states:

For the planning year 2012, MISO will utilize its existing tariff which is based on monthly resource requirements. The IPA will therefore procure 100% of the Capacity required to fully comply with the MISO resource adequacy requirements for the 2012 planning year with such quantities based on monthly requirements. For planning years 2013 and 2014, the IPA proposes to procure 50% and 35% respectively of the annual Capacity based on MISO's anticipated change to an annual forward construct. The IPA notes that FERC has not ordered on the MISO proposal and it's possible that the MISO proposal may be modified or rejected outright. As a solution, the IPA proposes that the Commission approve the IPA proposal to pursue annual Capacity for 2013 and 2014. But the IPA also asks that the Commission acknowledge the dynamic nature of the MISO proposal and therefore authorize the IPA to make modifications to this plan as warranted during the 2012 procurement process after consultation with the Procurement Administrator, Procurement Monitor, ICC Staff and Ameren Illinois.²

Staff has no objection to the IPA's proposal to acquire capacity for Ameren for the proximate 2012-2013 planning year. However, given the current state of flux acknowledged by the IPA, Staff sees no reason to use the spring 2012 procurements to secure capacity for AIC for the 2013-2014 and 2014-2015 planning years. Furthermore, looking forward to plan years beginning on and after 2013-2014, it is unclear why the IPA proposes that AIC continue to obtain capacity through IPA procurement events rather than through the forward capacity market that MISO has proposed to implement. That is, while the Plan (and all IPA plans, to date) have called for ComEd to satisfy capacity requirements through participation in the PJM forward capacity market, the IPA has apparently rejected, for reasons not stated, this approach for AIC in a MISO forward market similar to the PJM structure.

² Plan, p. 49.

For the reasons given above, Staff objects to the IPA's plan to purchase capacity for AIC during spring 2012 for plan years 2013-2014 and 2014-2015. Staff recommends modifying the Plan to include capacity purchases for AIC only for the June 2012-May 2013 plan year. Furthermore, moving forward, if the IPA is intent on rejecting an RTO-organized market mechanism for AIC that the IPA has already accepted for ComEd, then the IPA should provide valid reasons for the apparent inconsistency.

B. The IPA's plan to solicit "clean coal facility" proposals and require ComEd and Ameren to enter into long-term contracts with a "clean coal facility" is not justified, is likely to increase retail electric rates, and should be rejected

The Plan states:

Section 1-75(d) of the IPA Act includes a requirement that annual procurement plans shall consider sourcing agreements covering electricity generated by power plants that were previously owned by Illinois utilities and that have been or will be converted into clean coal facilities (referred to as "Retrofitted Clean Coal Sourcing Agreements").

Moreover, it is the goal of the State that by January 1, 2025, 25% of the electricity used in the State shall be generated by cost-effective clean coal facilities. Further, under the IPA Act, the IPA's "procurement planning process" may propose to the IPA sourcing agreements "with utilities" required to comply with" 220 ILCS 5/16-115(5)(d).

Consistent with the statute, and to further demonstrate the viability of coal and advance environmental protection goals, the Agency will seek proposals for both Utilities for up to 250 MW of electricity generated by advanced clean coal technologies that capture and sequester carbon dioxide emissions. The Agency will accept proposals from existing clean coal facilities, clean coal facilities that are under development, and qualifying coal-fired power plants previously owned by Illinois utilities that have been converted or will be converted into clean coal facilities. If a proposal is accepted and approved by the Commission, the project sponsor and both Utilities will enter into long-term (20 years or greater) sourcing agreements.

The Agency will seek proposals from entities that demonstrate that they have made significant progress to meeting a commercial in-service date of December 31, 2017. The IPA and the Procurement Administrator will develop and apply benchmarks to evaluate any bid submission. In

addition, the following criteria will be applied to evaluate any candidate that seeks to submit a proposal.³

Staff recommends rejection of the above-quoted proposal for the reasons discussed, below.

First, while Section 75(d)(1) of the IPA Act provides that “procurement plans shall include electricity generated using clean coal,”⁴ and proclaims the State’s goal that “by January 1, 2025, 25% of the electricity used in the State shall be generated by cost-effective clean coal facilities,”⁵ in Staff’s opinion the Commission is not obligated to approve any purchases from clean coal facilities other than those associated with the “initial clean coal facility,” as defined in Section 75(d)(3).⁶ Furthermore, while Section 75(d)(2) of the IPA Act prohibits purchases of clean coal facility output beyond a level at which rates for eligible retail customers increase by more than certain prescribed percentages (similar to purchases of renewable energy resources), this does not mean that the Commission cannot set a more stringent standard (except in the case of the “initial clean coal facility”). Given the expense of generating electricity with clean coal technologies relative to that of natural gas technologies, it seems unlikely that a solicitation of proposals for 20-year contracts with a clean coal facility will be in the financial interest of Illinois consumers. For example, in its evaluation of Tenaska’s proposed Taylorville Energy Center (or “TEC,” which was heralded as relying on “clean-coal” technology), the Commission found:

³ Plan, p. 59.

⁴ (20 ILCS 3855/1-75(d)(1)).

⁵ Id.

⁶ (20 ILCS 3855/1-75(d)(3)).

The cost associated with electricity generated by the TEC is substantially higher than that which is associated with other types of generation facilities – as described more fully herein, the TEC's expected base case electricity cost of \$212.73 per MWh (or over 21 cents per kWh) would cost significantly more than wind (\$88.80 to \$121.97), nuclear (\$101.45 to \$128.03), traditional coal (\$141.08 to \$153.03), or combined cycle combustion turbine (\$154.05 to \$160.78) facilities.⁷

As a result of its high costs, the Commission report found that the utilities would be expected to pay a premium to the Taylorville plant above projected market prices of electricity. The Commission stated:

The estimated impact of the premium on a customer's bill, relying on Base Case results and estimated annual total electricity use in Illinois of 142.4 million MWh each year, is \$2.01/MWh, or about .201¢/kWh.

Such estimated impacts depended on certain assumptions that now appear less realistic. For instance, demand among eligible retail customers for IPA-procured ComEd and Ameren electricity is on the decline, as acknowledged in the Plan, itself.⁸ In addition, "Base Case" assumptions of construction costs may be too optimistic, as evidenced by cost overruns reported for other projects using coal gasification technologies, like Taylorville. It is reported that Duke Energy's Edwardsport project, which was originally estimated to cost \$1.985 billion, is now expected to cost over \$3 billion (more than a 50% increase).⁹

Second, although the Plan is unclear on this point, Staff is concerned that the IPA intends to charge the utilities (and hence ratepayers) for the expenses associated

⁷ Illinois Commerce Commission, "Report to the Illinois General Assembly: Analysis of the Taylorville Energy Center Facility," September 1, 2010, pp. 2. See also pages 23-29. (<http://www.icc.illinois.gov/downloads/public/1%20TEC%20Report.pdf>).

⁸ Plan, pp. 3, 9-10, 21, 38, 47,

⁹ "Duke seeks to pass cost overruns at Edwardsport plant on to customers," Rod Spaw, *Herald-Times* (Bloomington, Ind.), September 18, 2011. Distributed by *News and Tribune* on September 19, 2011 (<http://newsandtribune.com/clarkcounty/x94877848/Duke-Energy-seeks-to-pass-cost-overruns-to-customers/print>).

with its solicitation of proposals for 20-year contracts with a clean coal facility. Staff is concerned because such a solicitation could be extremely costly as well as unlikely to result in a contract beneficial for Illinois consumers.

Third, Staff is concerned that the IPA will be over-extending itself by engaging in another potentially complicated procurement process at the same time that it is proposing to conduct both workshops and two other new procurement processes for solar renewable energy credits (“SREC”) from owners and aggregators of distributed solar photo-voltaic resources, and at the same time it is being required by law to expand its activities into arranging contracts between the State’s gas utilities and both a “clean coal SNG brownfield facility”¹⁰ and a “clean coal SNG facility.”¹¹

For all the above reasons, Staff opposes the IPA’s proposal to solicit clean coal facility proposals, with the intent of requiring ComEd and Ameren to enter into long-term contracts with one or more suppliers. Staff recommends that the Clean Coal Energy proposal be deleted from the Plan.

C. Renewable Portfolio Standard

1. The IPA’s planned “conservative budget” proposal requires changes and clarifications

The IPA proposes to “[e]stablish a conservative Renewable Resources Budget for 20 years.” In general, Staff agrees with the IPA’s proposal. However, there are certain aspects of this proposal that Staff finds objectionable. Specifically, Staff believes it is unnecessary to specify a conservative budget (subject to change in the future) for the proximate plan year (in this case 2012-2013). Rather, Staff recommends

¹⁰ See Public Act 97-0096 of the 97th Illinois General Assembly.

¹¹ See Public Act 97-0239 of the 97th Illinois General Assembly.

continuing the established practice of computing a definitive budget for the proximate plan year. Indeed, the Plan includes just such a definitive budget in Tables AA and BB and DD and EE for AIC and ComEd, respectively. As such, Staff concludes that the IPA intends for its proposal to apply to the 19 plan years following the proximate plan year. Also, IPA proposes to “[a]pply the confidential future price curve generated by the IPA and submitted to the ICC to back out Long Term Power Purchase Agreements (LTPPA) cost obligations from the RRB to yield a Net Renewable Resources Budget (NRRB) for each of the future years.”¹² Staff concurs in the use of that future price curve (developed in 2010), but, as argued in the next section, Staff believes that price curve should be made public rather than kept confidential. Furthermore, the Plan should be made clear that similar procedures will be utilized in the future, as necessary, to back out other multi-year renewable contracts that may be executed, rather than continuing to back out only the December 2010 contracts.

- 2. The IPA proposal to invite renewable resource bids for periods between 1 and 20 years is too vague and open-ended, and thus should be rejected in favor of 1 year contracts for the proximate planning period**
 - a. The IPA proposal fails to explain how it would choose between bids of differing lengths**

The IPA proposes to invite bids for the provision of renewable energy resources for periods of between 1 and 20 years.¹³ The same proposal was included in the IPA’s Draft Plan, and Staff recommended that the IPA clarify whether it contemplated procuring contracts of varying lengths: (a) within separate procurement events; or (b) within a single procurement event. “Within separate procurement events” would mean

¹² Plan, p. 53.

¹³ *Ibid.*

that the IPA (with the Commission’s approval) would pre-select a discrete number of different time periods (e.g., 1 year, 5 years, and 20 years), and would hold separate procurement events (either simultaneously or not) for contracts of each of those time periods. In contrast, it appears that the IPA is proposing to hold a single procurement event in which bidders may offer contracts of any duration between 1 and 20 years. In Staff’s view, this latter alternative is considerably more complex in ways that the IPA has failed to acknowledge. In particular, the Plan fails to specify (either in principle or in practice) how procurement administrators will be instructed to choose between bids with different time periods. It is not a trivial matter, as the following hypothetical examples show. Suppose the following bids are received:

Table 1

	Forward Contract Bids for RECs of Various Tenures					
PY	Bid 1	Bid 2	Bid 3	Bid 4	Bid 5	Bid 6
2012	\$39.75	\$40.50	\$39.50	\$39.50	\$39.75	\$37.85
2013			\$39.50	\$39.50	\$39.75	\$37.85
2014			\$39.50	\$39.50	\$39.75	\$37.85
2015				\$39.50	\$39.75	\$37.85
2016				\$39.50	\$39.75	\$37.85
2017				\$39.50	\$39.75	\$37.85
2018						\$37.85
2019						\$37.85
2020						\$37.85
2021						\$37.85
2022						\$37.85
2023						\$37.85
2024						\$37.85
2025						\$37.85
2026						\$37.85
2027						\$37.85
2028						\$37.85
2029						\$37.85
2030						\$37.85
2031						\$37.85

With the information in Table 1, it is easy to choose between Bid 1 and Bid 2, and to choose between Bid 4 and Bid 5. However, how does one choose between Bids 1, 3, 4, and 6, which have different durations? In Staff’s view, it would depend on expectations of future prices of Renewable Energy Credits (“REC”). For instance, to compare Bid 1 to Bid 3, one would need to have some expectations about how much you might spend on RECs if you waited another year or two. For instance, suppose that the price of RECs is forecasted to be \$39.75 at the start of plan year 2013 and \$39.50 at the start of plan year 2014. Thus, comparing Bid 1 to Bid 3 **could** be done as follows:

Table 2

	Bid 1		Bid 3
PY	Sure Thing	Expected Spot Price of RECs	Sure Thing
2012	\$39.75		\$39.50
2013		\$39.75	\$39.50
2014		\$39.50	\$39.50
Average	\$39.67		\$39.50

Here (in Table 2), Bid 3 price (a certain \$39.50 for all three years) is less than the average of Bid 1 price for year 1 and the spot prices of RECs over the next two years. The choice appears easy, in this case, as well.

What about choosing between Bid 3 and Bid 4, which have exactly the same price, but for two different durations? Using the same approach used above, a comparison can be made as follows:

Table 3

	Bid 3		Bid 4
PY	Sure Thing	Expected Spot Price of RECs	Sure Thing
	\$39.50		\$39.50
	\$39.50		\$39.50
	\$39.50		\$39.50
		\$39.25	\$39.50
		\$39.00	\$39.50
		\$38.75	\$39.50
Average	\$39.25		\$39.50

However, such a comparison as shown in Table 3 hardly seems definitive for purposes of choosing between Bid 3 and Bid 4. Even though the average of the Bid 3 price (for the first three years) and expected spot prices (for the last three years) is less than the Bid 4 price, the latter is known for the entire period. Thus, there is a trade-off between lower expected cost and lower risk. The same trade-off could arise when comparing Bids 3 and 6 and Bids 4 to 6. Clearly, more information is needed to select the best bid, such as some indication of how much uncertainty there exists in the forecast of future REC prices. The same issue exists when comparing purchase power agreements of different durations (or even more complicated, when comparing REC-only contracts with contracts that bundle RECs with purchased power or other products).

Since the IPA Plan fails to clarify how winners would be selected among a pool of renewable energy products with varying durations, presumably that would be an element of the IPA’s proposal left entirely to the implementation phase of the plan (which is largely under the control of the IPA and its procurement administrators). In

Staff's view, that would grant an unacceptable level of autonomy to the IPA and its procurement administrators.

b. The IPA's plan to rank bids "according to Net Present Value (NPV)" does not resolve the issue of choosing between bids of differing lengths

Between the Draft Plan and the Plan, the IPA added the sentence emphasized below:

The proposed approach would facilitate offers from short term REC bidders seeking contracts for low price RECs who would be more likely to bid into the near years of the 20 year period. Longer term offers would be possible insofar as the costs of those bids coupled with existing LTPPAs do not over-obligate the RRB. ***Bids would be evaluated and ranked according to Net Present Value (NPV) with the IPA, the Procurement Administrators, ICC staff and the Procurement Monitor deriving an appropriate discount rate.***

(IPA Plan, filed September 28, 2011, p. 53, emphasis added)

Staff suspects that this sentence was added to the Plan in an effort by the IPA to explain how it would choose between bids for renewable energy contracts with differing lengths (i.e., lengths between 1 and 20 years). Unfortunately, whether that was the intent or not, the added sentence does not provide any assistance in regard to the fundamental issues of choosing between bids of differing lengths. In both its comments on the Draft Plan and in these Objections, Staff acknowledges that, for ease of exposition, Staff's description of the issue did not delve into the issue of discounting future cash flows, which is the basic idea behind NPV calculations. However, merely reducing bids for multiple and varying time periods to a common and single time period through NPV computations does not, in any way, address the underlying requirements

for the bid evaluator to develop expectations for **future** renewable price offers¹⁴ and to establish a way of translating policy-makers' preferences between minimizing expected cost and minimizing risk into an appropriate discount rate.

To put it more simply, the same issues that Staff identified regarding comparing bids for various terms would be present when evaluating and ranking those bids based on NPV.

c. Recommendation

For all the foregoing reasons, the Commission should reject, without prejudice, the IPA's proposal to invite bids for greater than one year during the 2012 procurement season, leaving the resolution of longer-term contract acquisition to future plans. To implement this recommendation, Staff proposes that the Plan be revised as follows:

On page 53

- Conduct procurements that yield carve-out consistent contracts for solar and wind
 - In 2012, invite bids for 1 year unbundled RECs
 - Before the next plan filing in fall 2012, develop a specific proposal for inviting bids for longer-term contracts
 - ~~Invite bids for periods of up to 20 years from renewable generators (allow single year as well as multiyear bids for resources)~~

The proposed approach would facilitate offers from short term REC bidders seeking contracts for low price RECs who would be more likely to bid into the near years of the 20 year period. Longer term offers would be possible insofar as the costs of those bids coupled with existing LTPPAs do not over-obligate the RRB. ~~Bids would be evaluated and ranked according to Net~~

¹⁴ For example, assuming a discount rate of 10%, which is chosen for this illustrative purpose only, the net present value of Bid 3 equals \$108.05 while the net present value of Bid 4 equals \$189.24. Given its shorter duration, the net present value of Bid 3 will not exceed that of Bid 4 unless the Bid 3 prices are equal to or greater than \$69.18. Thus, excluding expected prices from the net present value analysis would create a strong bias in favor of shorter-term bids. Even if the net present values were expressed on a per unit basis (known as "levelized costs"), excluding expected prices from the analysis would still bias the comparison. The bias would favor shorter-term contract bids when future prices are expected to rise and would favor longer-term contracts when future prices are expected to fall.

~~Present Value (NPV) with the IPA, the Procurement Administrators, ICC staff and the Procurement Monitor deriving an appropriate discount rate.~~

3. The IPA plan fails to explain how its procurements will “yield carve-out consistent contracts for solar and wind”

The Plan states that the IPA:

- Will “[c]onduct procurements that yield carve-out consistent contracts for solar and wind,”
- Will “[s]ort bids according to price and source (solar, wind, etc.),” and
- Will “[s]elect the lowest bid combination that yields at least the minimum carve out requirements when the [Long Term Power Purchase Agreements] volume[s] are added to the new REC volumes.”¹⁵

Staff objects that the IPA Plan does not provide sufficient detail about how the above-summarized process would work in practice. This is particularly true of the cryptic assertion that the IPA will “[c]onduct procurements that yield carve-out consistent contracts for solar and wind.” In this regard, Staff notes that in the 2010 procurement of the LTPPAs, the wind and solar carve-outs were implemented in the following manner (as described in “Appendix 5 – Evaluation Process” of the RFP issued by NERA):¹⁶

- a. Bids will be adjusted to make them comparable across different types of renewable energy. The adjustments will be made using a resource-specific factor developed by the Procurement Administrator in consultation with the Illinois Power Agency, the Procurement Monitor, and the Staff of the Illinois Commerce Commission.
- b. Adjusted Bids are stacked from lowest to highest until either the Target or the Budget is met. If the Budget is met first, the selection is complete. If the Target is met first:
 - o bids that are not yet selected are placed in the Rejected Pool (R Pool);
 - o the percentage of the wind target achieved is calculated;

¹⁵ Plan, p. 53.

¹⁶ Available from http://www.comed-energyrfp.com/2010-RFP/docs/lt/Appendix_5_LT_Evaluation_Process_8-NOV-2010%20final.pdf as of 9/9/2011.

- o the percentage of the PV target achieved to this point is calculated; and
 - o the evaluation proceeds to the next step.
- c. Wind resources in the R Pool are put in the R-W Pool and their adjusted bids are stacked from lowest to highest. PV resources in the R Pool are put in the R-PV Pool and their adjusted bids are stacked from lowest to highest. Replacements of non-wind and non-PV resources by wind or PV resources are made on the following basis. If the percentage achieved of the wind target is higher [lower] than the percentage of the PV target achieved to this point, then replace an other resource (non-wind and non-PV) with a PV resource [wind resource], starting with the other resource with the highest adjusted bid price and the PV resource [wind resource] with the lowest adjusted bid price, to the extent that such a replacement is possible without exceeding the budget and while still meeting the Target.
- d. Resources from Illinois and its Adjoining States in the R Pool are put in the ILA Pool and their adjusted bids are stacked from lowest to highest. Replacements of resources from Other States by resources in Illinois and its Adjoining States are made on the following basis. Replace a resource of a given type (wind, PV, or other) from an Other State by a resource of the same type in the ILA Pool, starting with the Other State resource with the highest adjusted bid price and the Illinois-Adjoining resource with the lowest adjusted bid price, to the extent that such a replacement is possible without exceeding the budget and while still meeting the Target.

With respect to the solar and wind carve-outs, Staff recommends that the Commission approve the above process from “Appendix 5 – Evaluation Process” of the RFP issued by NERA in 2010.

4. The IPA’s objective to procure solar RECs (“SRECs”) from owners and aggregators of distributed solar photo-voltaic resources is laudable, but the IPA’s proposed implementation process should be amended

Among the comments on the IPA’s Draft Plan were various pleas for the IPA to create a mechanism for purchasing solar RECs (“SRECs”) from relatively small-scale producers of electricity using photo-voltaic resources. Such producers might include anything from single-family homeowners with a few solar panels on their roofs, each

generating less than 5 kW of power, to retail chain stores capable of generating over 500 kW within a utility's distribution system. These would be examples of what, in the Commission's administrative rules, are called distributed generation facilities.¹⁷ While the IPA's competitive procurements for renewable energy resources, to date, have not barred participation by distributed generation facility owners, Staff acknowledges that the IPA's procurements may not be an effective way to acquire RECs and SRECS from these relatively small-scale producers. As the ELPC opined in its comments on the Draft Plan:

Distributed solar cannot functionally participate in an auction designed for utility scale systems. Bidding requirements are too complex and transaction costs are too high to justify participation for small projects.¹⁸

The IPA apparently was persuaded by the many distributed solar advocates' comments because, between the release of its Draft Plan and the filing of its Plan, the IPA added a proposal to procure solar SRECs from owners and aggregators of distributed solar photovoltaic resources. The Plan states:

The IPA shall design the procurement program for distributed SRECs between January - May 2012, announce the program in June 2012 and initiate the first procurement event by December 2012. The procurement program will be designed to enable the Utilities to sign long-term (at least 10-year) contracts for SRECs from distributed solar systems in Illinois at prices that are competitive with the average SREC clearing price from the procurement process described above. The IPA will consider the following broad program types:

(1) A fixed price, long-term, standard offer contract program in which initial contract prices are based on the auction clearing prices for SRECs from

¹⁷ 83 Ill. Adm. Code 466.30 ("Distributed generation facility' means the equipment used by an interconnection customer to generate or store electricity that operates in parallel with the electric distribution system. A distributed generation facility typically includes an electric generator, a prime mover, and the interconnection equipment required to safely interconnect with the electric distribution system or local electric power system")

¹⁸ ELPC Comments on the Illinois Power Agency's Draft 2012 Power Procurement Plan, p. 6.

the IPA's Spring 2012 auction, and contract price offers are adjusted over time to track the market;

(2) An auction for long-term SREC contracts in which participation is limited to aggregators of SRECs from multiple small and mid-size distributed solar systems in Illinois.¹⁹

The Plan also states that “the IPA will host a series of workshops between January - May 2012,” and “will invite input from the public, including policy experts and solar industry stakeholders to address major program design features and other issues.”

Given the recent introduction of a solar photovoltaic carve-out in the IPA Act, the relatively high cost of solar resources and SRECs, and the actual and potential growth of distributed solar resources, Staff supports the IPA's objective to procure SRECs from owners and aggregators of distributed solar photovoltaic resources. Furthermore, if a legal mechanism can be developed and cost-effectively implemented for distributed solar resources, Staff believes it may be a useful template for procuring non-solar RECs from owners of other distributed renewable resources (e.g., small-scale wind turbines). In this context, Staff defines a cost-effective mechanism as one that reduces the cost of satisfying the goals of Illinois' renewable portfolio standard or brings the IPA and the utilities closer to meeting those goals.

Unfortunately, the current IPA proposal is too underdeveloped at this point. It is clear that more work must be done to improve upon the IPA's two basic approaches. For this reason, Staff supports the IPA's planned workshop process for informing future IPA plans. In addition, Staff would support a relatively modest pilot program which could be introduced on a shorter time scale.

¹⁹ Plan, pp. 53-54.

The remainder of this section discusses certain aspects of the IPA's distributed solar plans that should be rejected by the Commission, and proposes certain changes.

- a. **The IPA's proposal to implement two new SREC procurement programs, which are only vaguely described in the Plan, after workshops but without any further Commission oversight, is too open-ended, and should be rejected**

As previously noted, the Plan expresses the IPA's intent (a) to design two new procurement programs for distributed SRECs between January - May 2012, (b) to announce the programs in June 2012, and (c) to initiate the first procurement event by December 2012. The Plan describes these two new programs in only three sentences, but seeks Commission approval to commit an unspecified quantity of utility and ratepayers funds to pay for the resulting purchases of SRECs. Staff recommends that the Commission withhold such approval until it is comfortable with whatever procurement programs the IPA devises. For its own part, Staff is far from comfortable with the second of the IPA's two programs, and Staff needs answers to several questions before it can make any recommendations on the other program. Hence, Staff recommends that the Commission reject the IPA proposal to *implement* its two SREC procurement programs. Nevertheless, Staff also recommends that the IPA be encouraged to hold workshops and take others steps to design a fully thought-out program for Commission review in a future plan proceeding.

- b. The IPA's plan to design and implement a separate "auction for long-term SREC contracts in which participation is limited to aggregators of SRECs from multiple small and mid-size distributed solar systems in Illinois" would entail unwarranted expense and should be rejected, without prejudice**

The second of the IPA's proposed SREC procurement programs is to implement a separate "auction for long-term SREC contracts in which participation is limited to aggregators of SRECs from multiple small and mid-size distributed solar systems in Illinois." Staff is not opposed to allowing aggregators of SRECs to participate in a procurement program. However, holding an "auction" or an RFP process in a manner consistent with the RFP process described in Section 16-111.5 of the PUA is an expensive affair. It is expensive regardless of how many bidders show up or how many SRECs are purchased through the RFP. It must be emphasized that the total SRECs to be purchased are a small fraction of the total RECs that need to be purchased, and that aggregators of small-scale solar are probably going to constitute a small fraction of that. Can we really expect that the most cost-effective way to include such aggregators is to hold a special RFP just for them? Has the IPA justified that? Has the IPA presented any rough estimates of what that would cost, and what it would cost per SREC? The answer to these three questions is No. Thus, if the Commission approves any distributed SREC procurement programs in this proceeding, Staff strongly recommends that it **not** be the IPA's proposed aggregator-only auction.

c. If the IPA proceeds with its proposed workshops, certain additional topics should be added to the IPA's agenda

As previously noted, the IPA Plan includes a proposal for workshops to design and announce the distributed SREC procurement program.²⁰ The Plan indicates that the workshop topics would include:

- Definitions for “small” and “mid-size” distributed solar systems eligible to participate in the procurement.
- The terms and conditions under which distributed SREC providers would verify SREC deliveries
- Administrative procedures that minimize transaction costs for participants and administrative burdens for the utilities and the IPA
- A process for assessing program results, including the energy and capacity values of the distributed solar energy developed as a result of the program, and the benefits to the Illinois distribution grid.
- A process for modifying the program over time.

Staff assumes that this list of topics was not meant to be exclusive. In any event, Staff would propose adding the following topics:

- **Credit and Security Requirements for SREC Suppliers**

As the IPA appears to recognize, there are characteristics unique to distributed SREC suppliers versus other REC suppliers. In light of those unique characteristics, the IPA's current overarching credit requirement provision for REC contracts may not be appropriate for distributed REC suppliers. With respect to REC contract credit requirements, in general, the IPA Plan states:

IPA will seek to establish common REC contract terms including (1) collateral requirements that equal 10% of remaining contract value; and (2) unsecured credit limits for creditworthy REC suppliers, unless an

²⁰ IPA Plan, p. 54.

alternative proposal is acceptable to the procurement administrators, the utilities, the IPA, Commission Staff and the procurement monitor.²¹

Balancing the risk between suppliers and utilities in a manner that minimizes cost to ratepayers is a critical aspect of designing a distributed SREC procurement program that benefits ratepayers. Therefore, Staff recommends adding “Credit and Security Requirements for SREC Suppliers” to the list of major program design features and other issues that the IPA Plan plans for its SREC workshops in 2012.

- **Whether eligibility will be limited to distributed solar PV facilities (a) within the buying utility’s service territory, (b) within Illinois, (c) within either Illinois or a state that adjoins Illinois, or (d) elsewhere**

The IPA Act states:

After June 1, 2011, cost-effective renewable energy resources located in Illinois and in states that adjoin Illinois may be counted towards compliance with the standards set forth in paragraph (1) of this subsection (c). If those cost-effective resources are not available in Illinois or in states that adjoin Illinois, they shall be purchased elsewhere and shall be counted towards compliance.²²

The above excerpt places limits on the extent to which the IPA may discriminate between renewable energy resources, on the basis of location. Even a program targeting distributed solar resources must be consistent with the law. It is not clear from the IPA’s proposal how the IPA intends to resolve this issue. Thus, the issue should be added to the IPA’s workshop agenda.

- **The portion of the REC spending limit that would be dedicated to acquiring SRECs from distributed solar resources**

²¹ IPA Plan, p. 1.

²² (20 ILCS 3855/1-75(c)(3))

An on-going issue with the IPA's various proposals for conducting multiple procurements for the same planning years (or for overlapping planning years) is how to allocate the available funds. The IPA seemingly attempted to tackle that issue in this year's plan, but only in relation to what the IPA characterizes as the "Primary Renewable Energy Resource Measures."²³ While the Plan is still short on details of how the IPA will allocate funds between procurements for the same and overlapping planning years, it is completely silent on the share to be allocated to its two new distributed solar programs. In Staff's view, the budget is a key component of a spending plan. Hence, even if all the *other* details were laid out, Staff would recommend against approval of a plan unless the allocation of available funds is specified and logically supported.

D. The IPA plan should provide for the release of certain information pertaining to the 2010 procurement of renewable energy resources via 20-year contracts

Staff recommends the Commission order the IPA to revise its Plan, so that the Plan includes certain information previously considered confidential by the Commission pertaining to the 2010 procurement of renewable energy resources via 20-year contracts. In its 2009 procurement plan for plan years beginning June 2010, the IPA proposed and the Commission approved the procurement of renewable energy resources via long-term contracts, where the winning bidders would supply AIC and ComEd with a "product" that bundled RECs and financial energy swaps, where the quantities of the bundled product would be tied to the output of specific electric generating facilities during the nominal period June 2012 through May 2033 (20 plan

²³ IPA Plan, p. 51, Table X.

years). (See Docket 09-0373, Order, December 28, 2009, pp. 39-120) A request for proposals (“RFP”) and related documents were issued in the fall of 2010, and bids to supply this product were submitted and evaluated in December 2010. The results of the RFP were approved by the Commission on December 15, 2010 and posted on the Commission’s web site. The posting included the names of the winning bidders and the following quantity and price summary:

	Total Quantity to be Supplied (MWH per Year)	Average Price* (\$/MWH)
AIC	600,000	\$50.44
ComEd	1,261,725	\$55.18

Each winning bid was either a wind or a solar photovoltaic (“PV”) resource physically located in the state of Illinois, Wisconsin, Iowa, Missouri, Kentucky, Indiana, or Michigan.

* The Average Price is for the initial delivery year (June 2012-May 2013). Under the contracts signed, the price escalates by 2% annually throughout the remaining 19 years.

The information release did not include the specific quantities and average winning prices of wind RECs and the specific quantities and prices of solar RECs to be purchased, for fear that such product-specific information could indirectly reveal the winning bid prices of certain individual bidders, in potential violation of Section 16-111.5(h) of the PUA.²⁴

²⁴ Section 16-111.5(h) states:

The names of the successful bidders and the load weighted average of the winning bid prices for each contract type and for each contract term shall be made available to the public at the time of Commission approval of a procurement event. The Commission, the procurement monitor, the procurement administrator, the Illinois Power Agency, and all participants in the procurement process **shall maintain the confidentiality of all other supplier and bidding information** in a manner consistent with all applicable laws, rules, regulations, and tariffs. **Confidential information, including the confidential reports submitted by the procurement administrator and procurement monitor pursuant to subsection (f) of this Section, shall not be made publicly available and shall not be discoverable by any party in any proceeding, absent a compelling demonstration of need,** nor shall those reports be

The information release also did not include the procurement administrators' breakdown of the prices into their energy swap components and their REC components. To perform that breakdown, consistent with the IPA's proposal and the Commission's Order, the procurement administrators had to construct a forward energy price curve extending through May 2033, using it as a proxy for the energy swap price component of the bundled product. The REC price component in any given year was computed as the difference between the winning bid price of the bundled product (escalated to that year) and the forward energy price for that year. The reason none of this information was released to the public in December 2010 is that in Docket 09-0373, the IPA proposed (and the Commission approved) maintaining as confidential the procurement administrators' forward energy price curve. The original rationale for maintaining confidentiality over the forward energy price curve was never articulated in Docket 09-0373 (nor is it articulated in the current Plan). Nevertheless, Staff did not oppose the IPA's proposal to keep the forward energy price curve confidential, since the information could conceivably have been construed by some bidders as being pertinent to the price benchmarks developed by the procurement administrators and employed to exclude bids above the benchmarks, or as being pertinent to Commission decisions to accept or reject bidding results. The possibility that bidders would attempt to draw such inferences, whether justified or not, and the possibility that this would influence bidding, with unknown consequences, was deemed by Staff to be a potential, albeit minor, concern. However, that concern is now moot until next spring's procurement events, at

admissible in any proceeding other than one for law enforcement purposes. (220 ILCS 5/16-111.5(h), emphasis added)

which point the forward price curve from December 2010 will be at least 14 months old, and quite stale.

Notwithstanding the above rationales for keeping confidential the product-specific (wind versus solar PV) price and quantity results and the procurement administrators' forward price curve, Staff believes this information should be released now.

The rationale for releasing the product-specific (wind versus solar PV) price and quantity results is that this information is pertinent to each of the next 20 annual IPA procurement plan proceedings. Interveners in procurement plan cases have a legitimate need for this information, which otherwise would be known only to ComEd, AIC, the IPA and the Commission. Without the product-specific quantity information, nobody, other than ComEd, AIC, the IPA and the Commission, will know the extent to which the wind and solar PV goals of the IPA Act are being satisfied. Without the product-specific price information, nobody, other than ComEd, AIC, the IPA and the Commission, will know the relative cost of wind and solar PV resources. While there is still a risk that such information will indirectly reveal to the public the winning bid prices of certain individual bidders, Staff believes this risk is outweighed by the need of intervenors and the public to know the extent to which the individual wind and solar PV goals of the IPA Act are being satisfied and at what cost. The Commission can and should find that there is a "compelling demonstration of need" to release the information, as authorized by Subsection 16-111.5(h) of the PUA.²⁵

The rationale for releasing the forward energy price curve developed by the procurement administrators for the 2010 long-term renewable RFP is that without this

²⁵ *Ibid.*

information, intervenors will have no idea how much of the total REC spending limit has already been reached and how much more can be spent during upcoming procurements. Furthermore, each year the Commission must post an alternative compliance payment (“ACP”) rate (for the State’s renewable portfolio standard applicable to alternative retail electric suppliers) based on the utilities’ expenditures on RECs. Hence, release of this ACP rate information will have the same effect as releasing the forward energy prices, one year at a time. Finally, starting with the 2012-2013 compliance period, and continuing for one additional compliance period, this ACP rate must exclude the impact of the solar PV requirement. Thus, not only will the forward energy prices be revealed, individual product prices will also be revealed, unless the method of computing the ACP during these two years is kept secret, as well. Since there is no statutory requirement to maintain confidentially over the forward energy price curve developed by the procurement administrators for the 2010 long-term renewable RFP, one need not cite Subsection 16-111.5(h). Nevertheless, the Commission can and should make a finding that there is a compelling need to release the information.

To summarize, for the above-stated reasons, Staff recommends that the Plan be amended to include the following information:

- The expected aggregate imputed cost of RECs acquired through the December 2010 procurement event, for each utility (ComEd and AIC); and
- The expected aggregate quantity of RECs acquired through that procurement event, for each utility and for each resource type (wind and solar PV); and

- The procurement administrators' energy market price forecast for the 20 years beginning June 2012, which in Docket 09-0373 the IPA proposed that the Commission keep confidential.
- E. The IPA plan fails to explicitly establish the maximum alternative compliance rate ("ACP rate") for the 2012-2013 plan period, and fails to address the statutory requirement for ACP rates during the 2012-2013 and 2013-2014 plan years to exclude any added cost of solar resources**

Section 16-115D(d)(1) of the PUA states, *inter alia*:

... For compliance years beginning prior to June 1, 2014, each alternative compliance payment rate shall be equal to the total amount of dollars that the utility contracted to spend on renewable resources, **excepting the additional incremental cost attributable to solar resources**, for the compliance period divided by the forecasted load of eligible retail customers, at the customers' meters, as previously established in the Commission approved procurement plan for that compliance year. ...²⁶

There are numerous ways that one might choose to compute "the total amount of dollars that the utility contracted to spend on renewable resources, **excepting the additional incremental cost attributable to solar resources**."²⁷ Staff proposes modifying the Plan to include a method. Staff sees several benefits to having this issue settled within this procurement plan proceeding for the following reasons. First, by statute, the first step in establishing alternative compliance payment ("ACP") rates is the annual procurement plan. Second, the utilities' renewable energy portfolios included no solar resources prior to the plan year beginning June 2012, and the "excepting" provision cited above expires June 2014. Hence, the approved method would be in effect only for the two plan years beginning June 2012 and June 2013.

²⁶ (220 ILCS 5/16-115D(d)(1)).

²⁷ *Id.*

Staff recommends the following method be adopted by the Commission. First, the total MWHs of RECs being purchased for the compliance period and the total dollars contracted to be spent on those RECs would be summed separately for solar photovoltaic RECs and all other RECs ("non-solar RECs"). The average price of the selected non-solar RECs would be computed by dividing the dollars to be spent on the selected non-solar RECs by the total number of non-solar RECs under contract. This average price (which effectively excludes any incremental cost attributable to solar resources) would be multiplied by the total number of RECs purchased (both solar photovoltaic and non-solar). To obtain the alternative compliance payment rate, this product would be divided by the forecasted load of eligible retail customers, at the customers' meters. The proposed methodology is hopefully clarified through the following hypothetical example.

	MWH	Dollars	Dollar per MWH of RECs	Dollars per MWH of Projected Sales
PY 2012-2013 REC Goals and Spending Constraint	2,597,398	\$56,559,464	\$21.775	
PY 2012-2013 Projected Sales and Spending Constraint	26,206,576	\$56,559,464		\$2.158
PY 2012-2013 Max ACP Rate				\$2.158
Solar PV RECs under contract:				
from Dec 2010 20-year contract RFP	28,000	\$4,200,000	\$150.000	
from spring 2012 RFP	0	\$0	n/a	
Total Solar PV RECs	28,000	\$4,200,000	\$150.000	
Non-Solar RECs under contract:				
from Dec 2010 20-year contract RFP	1,200,000	\$18,000,000	\$15.000	
from spring 2012 RFP	1,369,398	\$10,000,000	\$7.302	
Total Non-Solar RECs	2,569,398	\$28,000,000	\$10.897	
Grand Total	2,597,398	\$32,200,000	\$12.397	
Total Non-Solar RECs Dollars per MWH of RECs x Grand Total MWHs of RECs		\$28,305,130		
PY 2012-2013 Actual ACP Rate (Hypothetical)	26,206,576	\$28,305,130		\$1.080

F. Contingency planning

The plan needs to address a greater number of contingencies and should unambiguously specify how the IPA, utilities, and/or procurement administrators shall react to such contingencies. Staff recommends changes to other contingencies as well.

1. **The IPA's contingency plan for "portfolio rebalancing in the event of significant shifts in load" is too narrowly focused on "customer switching that is expected due to municipal aggregation programs"**

The Plan states:

The PUA requires that the IPA provide the criteria for portfolio rebalancing in the event of significant shifts in load. Over the term of this Plan, the most significant driver of load shifting levels is customer switching. Prior to the procurement event, Ameren will true-up its forecasted amount of customer switching that is expected due to municipal aggregation programs. Ameren will also survey the actual number and size of the municipalities that have at that time filed with the relevant election authority to hold, or have already passed referenda, approving "opt out" aggregation. Ameren will report the results to the IPA who will work with Ameren, the Commission staff and the procurement administrator and monitor to rebalance the portfolio commensurate with the change in forecasted customer switching due to municipal aggregation programs.²⁸

Basically the same language as above appears in the Plan for ComEd, as well.²⁹

In general, Staff believes this is an improvement over the language that was in last year's procurement plan. However, Staff is concerned that this contingency plan is too narrowly focused on "customer switching that is expected due to municipal aggregation programs." While it may be true that this is a significant driver of load changes, recently, it is certainly not the only driver of load changes. Other drivers would include customer switching to ARES (rather than municipal aggregation), macro-economic shifts, and significant energy price changes. The IPA provides no explanation for why it would intervene only in the special case of customer switching that is expected due to municipal aggregation programs.

In addition, certain aspects of the IPA's proposed contingency plan are still too vague, such as the provision for Ameren to revise certain data "[p]rior to the

²⁸ Plan, p. 38.

²⁹ Plan, p. 47.

procurement event.” If it is revised one day prior to the procurement event, it will be too late to incorporate into the procurement event. If it revised four months prior to the procurement event, it may miss three months of subsequent developments.

Finally, Staff supports the IPA’s commitment to “work with” Ameren, the Commission Staff and the procurement administrator and monitor to determine if the planned purchase quantities should be changed. This provides the flexibility that Staff believes is necessary. However, Staff recommends that the actual decision to change those quantities, if it is not practical to bring the matter before the Commission, should be dependent upon a consensus of those five parties.

Hence, Staff recommends the following modifications to page 38 of the Plan (and analogously for ComEd on page 47):

The PUA requires that the IPA provide the criteria for portfolio rebalancing in the event of significant shifts in load. Over the term of this Plan, the most significant driver of load shifting levels is customer switching. In large measure, the portfolio is automatically rebalanced on an annual basis, as shifts in load are incorporated into the utility-prepared forecasts used in the IPA’s plans. However, the IPA recognizes that between the time that each plan’s forecasts are prepared and the time that the relevant portion of the plan is implemented, the conditions underlying those forecasts can and do change. Thus, between March 1 and March 10, the IPA recommends that ~~Prior to the procurement event, Ameren will submit to the IPA and to Commission staff a revised base-case forecast of monthly on-peak and off-peak loads encompassing the first three years of the five-year planning horizon. Since a significant driver of load shifting is customer switching to alternative retail electric suppliers and, more recently, to municipal aggregation programs, the IPA recommends that Ameren pay particular attention to these factors. true-up its forecasted amount of customer switching that is expected due to municipal aggregation programs. It is also recommended that Ameren will also survey the actual number and size of the municipalities that have at that time filed with the relevant election authority to hold, or have already passed referenda, approving “opt out” aggregation. Ameren will report the results to the IPA who will work with~~ Based on the information provided by Ameren, the IPA will work with Ameren, the Commission staff and the procurement administrator and monitor to revise the volumes of energy

~~products that will be sought through the spring procurement events, but only if a consensus is reached. rebalance the portfolio commensurate with the change in forecasted customer switching due to municipal aggregation programs.~~

- 2. The IPA's contingency plan for "material instances of supplier default on renewable energy contracts" requires modifications**
 - a. The plan for when "the contract volume effected by the default represents *greater* than 5% of the annual RPS obligation" should be eliminated**

The Plan describes certain actions that will take place in the event that a Utility's counterparty to a renewable energy resources contract defaults and the default results in a reduction in the number of RECs retired on the utility's behalf for any given plan year. When the contract volume affected by the default represents *greater* than 5% of the annual RPS obligation, the Plan states that the IPA will solicit bids from all firms deemed qualified as REC suppliers in the most recent REC solicitation." It is unclear if the IPA intends to solicit these bids, by itself, or with the aid of a procurement administrator. It is also unclear if the IPA intends for the solicitation to be monitored by a Commission procurement monitor and for the bidding results to be approved by the Commission. If so, then this would add significantly to the cost of the solicitation and could easily render it a tremendous waste of resources.

For example, the total cost of the RECs being purchased by Ameren for the June 2011-May 2012 planning year is around \$878,800. If 5% of those contracts defaulted, the cost of replacing them might be only \$43,900. However, Staff contends that the cost of conducting an IPA procurement event would far exceed this amount.

- b. The plan for when “the contract volume effected by the default represents less than 5% of the annual RPS obligation” should be eliminated**

According to the Plan, if the contract volume affected by the default represents less than 5% of the annual RPS obligation:

The Utility will request price proposals from the other vendors supplying RECs in that compliance year for replacement RECs of the same vintage and specifications of those the defaulting vendor has failed to deliver. Terms in RECs contracts will allow for contract amendment to facilitate additional REC volume delivery under default circumstances. To accommodate replacement REC purchases, the IPA proposes to extend the allowable vintage ranges for complying RECs within the terms of the supply contracts negotiated in the 2012 procurement cycle.³⁰

One problem with the proposal is that it provides too little guidance to the utility and virtually no oversight. Therefore, it creates the potential for the utility to choose the winning replacement REC suppliers in a discriminatory manner. In Staff’s view, even the appearance of such impropriety should be avoided.

- c. Staff’s proposed contingency plan for material instances of supplier default on renewable energy contracts should be adopted**

To address the problems identified in the previous two sub-sections, Staff recommends the Plan be amended as follows (on page 57):

3.3.3.3 Material Instances of Supplier Default on Renewable Energy Contracts. The IPA proposes the following in the event that a Utility’s counterparty to a contract defaults and the default results in a reduction in the number of renewable energy credits (“RECs”) retired on the utility’s behalf for any given plan year (ending May 31):

With respect to any contract entered into by Ameren [ComEd] as a result of an IPA procurement process, if Ameren’s [ComEd’s] counterparty to the contract defaults, and such default results in a reduction in the number of renewable energy credits (“RECs”) retired on the utility’s behalf for any given plan year (ending May 31), the IPA shall add the shortfall of RECs to

³⁰ Plan, p. 57.

the quantity of RECs to purchase through RFPs issued for subsequent plan years. Any dollar amounts that were not spent due to the default, plus any additional collateral retained by Ameren [ComEd] due to the default, shall be added to the REC budgets for those subsequent plan years. If possible, the purchase of the replacement RECs shall be reflected in the subsequent procurement plan(s). However, even if not explicitly reflected in a procurement plan, the IPA may include in an RFP the purchase of replacement RECs associated with recent defaults, if such inclusion is deemed acceptable, unanimously by the procurement administrator, the procurement monitor, and Ameren [ComEd].

~~**If the contract volume effected by the default represents less than 5% of the annual RPS obligation.**~~ The Utility will request price proposals from the other vendors supplying RECs in that compliance year for replacement RECs of the same vintage and specifications of those the defaulting vendor has failed to deliver. Terms in RECs contracts will allow for contract amendment to facilitate additional REC volume delivery under default circumstances. To accommodate replacement REC purchases, the IPA proposes to extend the allowable vintage ranges for complying RECs within the terms of the supply contracts negotiated in the 2012 procurement cycle. In the event that replacement RECs are purchased by the Utility due to a default, the Utility will first use the collateral on hand from the defaulting supplier to satisfy costs associated with securing replacement RECs.

~~**If the contract volume effected by the default represents greater than 5% of the annual RPS obligation.**~~ The IPA will solicit bids from all firms deemed qualified as REC suppliers in the most recent REC solicitation. The solicitation will seek replacement RECs of the same vintage and specifications as those the defaulting vendor has failed to deliver. To accommodate replacement REC purchases, the IPA proposes to extend the allowable vintage ranges for complying RECs within the terms of the supply contracts negotiated in the 2012 procurement cycle. The Utility will first use the collateral on hand from the defaulting supplier to satisfy costs associated with securing replacement RECs.

The IPA does not interpret the statute as allowing the transfer of Renewable Resources Budget funds between compliance years.

IV. CONCLUSION

Staff respectfully requests that the Illinois Commerce Commission make note of Staff's objections to the Plan and approve Staff's recommendations in this docket. If the Commission ultimately accepts Staff's objections, the Commission should also direct the IPA to file a revised procurement plan as a compliance filing in accordance with 20 ILCS 3855/1-75(f).

Respectfully submitted,

/s/

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October 3, 2011

*Counsel for the Staff of the
Illinois Commerce Commission*

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

ILLINOIS POWER AGENCY

Petition for Approval of the 220 ILCS
5/16-111.5(d) Procurement Plan

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Docket No. 11-0660

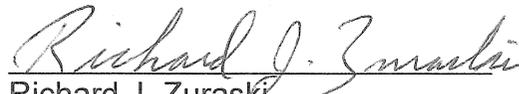
AFFIDAVIT OF RICHARD J. ZURASKI

State of Illinois)
)
County of Sangamon)

The undersigned, under oath, deposes and states as follows:

1. My name is Richard J. Zuraski. I am employed by the Illinois Commerce Commission as an Economist in the Commission's Energy Division – Policy Program.
2. I have read the Staff of the Illinois Commerce Commission's Objections to the Procurement Plan dated October 3, 2011.
3. I have personal knowledge of the facts and matters discussed in the Objections and, to the best of my knowledge, information and belief, the facts and non-legal opinions expressed in the Response are true and accurate and, if sworn as a witness, I could testify concerning them.

Further affiant sayeth not.


Richard J. Zuraski

Subscribed and sworn to before me

This 3rd day of October, 2011.



Notary Public

