

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

Illinois Power Agency)
) ICC Docket No. 13-0546
Petition for Approval of the 2014 IPA)
Procurement Plan Pursuant to Section 16-)
111.5(d)(4) of the Public Utilities Act)

**VERIFIED REPLY BRIEF ON EXCEPTIONS
ON BEHALF OF THE ILLINOIS POWER AGENCY**

The Illinois Power Agency (“IPA”), by and through its attorney, respectfully submits its Verified Reply Brief on Exceptions pursuant to Section 200.830 of the Illinois Commerce Commission’s (“Commission”) Rules (83 Ill. Admin Code. § 200.830) and the Chief Administrative Law Judge’s (“CALJ”) November 13, 2013 Ruling.

I.

INTRODUCTION

On November 21, 2013, the IPA filed its Brief on Exceptions, along with Staff, Ameren, ComEd, the Attorney General, CUB, NRDC, DCEO,¹ ICEA, RESA, Exelon, and the Renewables Suppliers. The IPA has reviewed the Briefs on Exceptions filed by the other parties, and continues to recommend that the Commission adopt the Replacement Language to the Proposed Order (“PO”) that the IPA attached to its Brief on Exceptions. However, the IPA wishes to take this opportunity to respond to certain arguments raised by the parties in their respective Briefs on Exceptions.

¹ DCEO timely served its Brief on Exceptions on November 21, 2013, but as of the date of this filing DCEO’s Brief on Exceptions has yet to appear on eDocket.

II.

DISCUSSION

A. Response to ICEA, RESA, and Exelon Regarding Full Requirements

As the IPA noted in its Brief on Exceptions, the PO correctly found that although the IPA had the authority to recommend a Full Requirements procurement, the Commission would not compel the IPA to do so at this time. ICEA, joined by RESA and Exelon, took exception to the PO's refusal to compel the IPA to procure a Full Requirements product at this time. (*See* ICEA BOE at *passim*; RESA BOE at 3 (supporting ICEA but offering no additional arguments); Exelon BOE at 2-3.) For the reasons set out in the IPA's previous pleadings and below, the Commission should preserve the finding from the PO.

ICEA and Exelon essentially argue that that the NorthBridge Report is un rebutted because no party (except a tentatively supportive Staff) analyzed the document, and therefore the NorthBridge Report's conclusions should be adopted by default. (*See* ICEA BOE at 9-11; Exelon BOE at 3.) ICEA and Exelon's premise is incorrect: the IPA has reviewed the NorthBridge Report and the IPA has consistently described its concerns with ordering a Full Requirements procurement at this time. The NorthBridge Report does not provide sufficient bases to convince the IPA to recommend that the Commission approve a Full Requirements procurement at this time.

As an initial matter, as far as the IPA could tell, the NorthBridge Report in ICEA's Objections (filed October 7, 2013) was unchanged since ICEA provided the report in timely filed Comments on the draft Procurement Plan for comment on September 16, 2013. In the Procurement Plan that the IPA filed on September 30, 2013, the IPA updated its discussion of Full Requirements in Sections 6.7, 6.7.1, 6.7.2, and 6.7.2.1 of the Procurement Plan filed on September 30 to respond to some of the criticisms from the NorthBridge Report—updates that

ICEA, RESA, and Exelon have failed to address. For example, the IPA responded to the criticism about its calculation of the expected return from the NorthBridge report with a fuller discussion of why the IPA chose to model a 10% annual rate of return. (*See* ICEA Objections Attachment A at 22 (NorthBridge criticism); *compare* Procurement Plan for Public Comment dated August 15, 2013² at 73 (explaining model) *with* Procurement Plan at 74 (adding additional information in model description in response to NorthBridge’s specific criticism).) The IPA pointed this out in its Reply:

The methodological questions raised by ICEA were first raised in Comments on the IPA’s Draft Plan released on August 15, 2013. The IPA subsequently revised its Plan to address those issues; for example, the IPA clarified and explained the assumptions used to estimate the expected return for suppliers. (See IPA Plan at 74.) However, ICEA did not appear to update either its critique or its consultant’s analysis to reflect the revised Procurement Plan filed with the Commission on September 30, 2013. Therefore, it is not clear to the IPA if Staff’s consideration of the issues raised by ICEA accounts for the IPA’s updated analysis responding to the questions ICEA raised in Comments. Regardless, the IPA views ICEA’s analysis as complimentary to the IPA’s analysis in that both attempt to model a set of complex transactions.

(IPA Reply at 2 n.2.) ICEA, RESA, and Exelon have not rebutted this contention. ICEA, RESA, and Exelon have also not rebutted the IPA’s argument that because the NorthBridge Report found there is a price premium for Full Requirements, the Commission faces a policy question rather than an analytic question. (*See* IPA Response at 4-5; IPA Reply at 3.) The IPA explicitly stated in its Response: “one critical point that ICEA, RESA, and ExGen did not dispute (including in ICEA’s alternative model) is the conclusion in the IPA’s analysis that there is a price premium in a full requirements energy product.” (IPA Response at 4.) Staff noted that the NorthBridge Report showed that Full Requirements led to a premium, stating: “The prices of FPFRR contracts entail a premium over those of the fixed-quantity ‘block’ contracts that are used

² The IPA’s Draft Procurement Plan for Public Comment is available at: <http://www2.illinois.gov/ipa/Documents/Draft-Procurement-Plan-20130815.pdf>.

in the block-and-spot approach,” and “Staff is in complete agreement with these findings.” (*See* Staff Response at 5.) ICEA and Exelon’s contention that the NorthBridge Report went unanalyzed and thus Full Requirements should be adopted by default is plainly incorrect and should be rejected out of hand.

Taking exception to a passage in the PO that suggests ICEA, RESA, and Exelon are not impartial on Full Requirements, ICEA suggests its members have a broader perspective than the IPA, the Attorney General, and CUB because ICEA’s members operate in multiple states. (*See* ICEA BOE at 7.) The IPA has staff with multi-state (and international) experience, and the Procurement Planning Consultant has extensive national and international experience. Whether or not the Commission retains the specific language that formed the basis for ICEA’s Exception (which is any event is not essential for the PO’s ultimate conclusion), ICEA’s contention about the IPA’s limited perspective is demonstrably incorrect.

ICEA argues that the PO is somehow infirm because it finds that Staff believes it had insufficient time to review the NorthBridge Report and that Staff “expressed concerns about the level of review” by other parties. (*See* ICEA BOE at 9-10.) The IPA does not take a position as to whether Staff had sufficient time or opportunity to review the NorthBridge Report. The IPA itself, however, did have sufficient time to review the NorthBridge Report, and modified the Procurement Plan in response to some of the criticisms. Significantly, the IPA demonstrated that the NorthBridge Report (like the IPA’s analysis) showed a premium for a Full Requirements procurement. As a result the IPA viewed the two analytical approaches as complementary, differing only in magnitude. Once that was established, the IPA did not believe that it was necessary to belabor the point or nitpick the NorthBridge Report. The difference between the IPA’s analysis (including the September 30, 2013 updates that the NorthBridge Report does not

address) and ICEA's analysis is the magnitude of the premium for Full Requirements, rather than the existence of a premium. As a result, the question shifts from an economic analysis question (the relative prices of full requirement and the IPA's proposed approach) to a policy question: is the premium worthwhile to the consumer?

The IPA has provided several arguments about why it doubts that the premium is worthwhile, including:

- The IPA has other and better risk management tools at its disposal, most significantly the updated March load forecast, the decrease in block size, hedging to 106% of average load, and the supplemental September procurement.³ The IPA uses these tools without imposing risk premiums and profit markups (*see* Procurement Plan at 93; IPA Reply at 4 (citing to Attorney General and CUB arguments));
- It is not clear that a fixed price full requirements product is appropriate for all bundled customers, even taking into account the benefits of price stability—especially when the retail market already provides many fixed price full requirements products at competitive prices (*see* Procurement Plan at 93;⁴ IPA Response at 4-5; IPA Reply at 3-4 (also summarizing Attorney General and CUB arguments); and
- Issues regarding the alleged lack of transparency in price information in the IPA's current approach can be addressed by providing better customer information, rather than embedding price premiums and profit markups into default service prices (*see* IPA Response at 5-6; IPA Reply at 4-5 (citing to Attorney General and CUB arguments).)

As the IPA has consistently argued, the question surrounding Full Requirements shifts from the existence of a premium to whether the benefits outweigh the costs. In its Response to Objections, the IPA summarized the issue as follows:

As noted above, all of these open issues and arguments coalesce around the question of whether the price premium of a fixed price full requirements product is worthwhile for all bundled customers considering the benefits of such a product and whether the default rate should compete head on with ARES offering similar products.

³ ICEA noted in its Objections that it “believes that the IPA's bifurcated procurement decision is a very positive and sound outcome for eligible retail customers and for the retail electric market, given potential market uncertainty and migration risk.” (ICEA Objections at 2-3.)

⁴ In fact, the Procurement Plan states: “The IPA is not aware of any recent assessments of the risk tolerance of retail customers; that is, their willingness to pay the utility for price insurance. Customers can easily switch to a competitive supplier and take fixed price service if they perceive value of mitigating price risk.” (Procurement Plan at 93.)

(IPA Reply at 5; *see also id.* at 3 (setting out Attorney General and CUB support for the IPA’s framing of the ultimate question).)

The IPA concluded that even the NorthBridge Report’s theoretical level of premiums did not justify the additional costs for Full Requirements, and both the AG and CUB appeared to agree. However, the Commission may decide that a certain level of premium provides benefits exceeding the costs. In balancing costs and benefits, the Commission will have to decide which estimation of expected costs for full requirements to use, and the IPA looks forward to participating in that debate. This is the question that the IPA has requested the Commission consider, and which the record answers in the negative. (*See, e.g.*, Procurement Plan at 93; IPA Response at 4-6; IPA Reply at 3-5.) As a result, the IPA continues to recommend against the Commission requiring a Full Requirements procurement at this time.

B. Response to RESA Regarding the Alternative Compliance Payment

RESA argues that the Commission should make changes to the way it believes that the IPA calculates the estimated alternative compliance payment (“ACP”). (*See* RESA BOE at 3-4.) RESA appears to have a misread the Public Utilities Act because the IPA does not have a role in setting the estimated ACP or the actual ACP. RESA is conceptually correct that “the ACP is based on the renewable procurements that the IPA manages on behalf of the utilities.” (RESA BOE at 3.) However, Staff—without any input from the IPA—develops the estimated and actual ACPs, and is solely responsible for any changes in ACP methodology during a compliance year. (*See* 220 ILCS 5/16-115D(d)(1).) As one of the stakeholders that has a statutory duty to monitor procurements, Staff is fully aware of all renewable resource procurements and constructs the ACP estimation calculations without any IPA input. (*See, e.g.*, 220 ILCS 5/16-111.5(f) (Commission receipt of procurement results).)

The IPA is sympathetic to RESA's travails with changes in the ACP estimation; however, even RESA's minimum recommendation is not consistent with Illinois law:

At a minimum, RESA requests that the ALJPO be modified to encourage the IPA to notify the Commission Staff promptly when there is a changed assumption in the calculation of the ACP and the Commission Staff to publish the revised estimated ACPs, resulting from that changed assumption as soon as possible.

(RESA BOE at 4.) This proposal is contrary to the structure set up by the Public Utilities Act because Staff unilaterally creates the estimated ACP and the final actual ACP, and (to the knowledge of current IPA personnel) the IPA does not formally or informally provide any input on ACP calculation methodology. (*See* 220 ILCS 5/16-115D(d)(1) (setting out the procedure by which "**The Commission** shall establish and post . . . maximum alternative compliance payment rates, expressed on a per kilowatt-hour basis, that will be applicable in the first compliance period following the plan approval. . . . By July 1 of each year, **the Commission** shall establish and post on its website the actual alternative compliance payment rates for the preceding compliance year" (emphasis added).) The IPA strongly urges the Commission to reject RESA's recommendations and thus avoid writing the IPA into the process of determining the ACP when the IPA has no such role under Illinois law.

C. Response to Renewables Suppliers Regarding Load Forecasts

The Renewables Suppliers take exception to the PO not modifying the methodology for Ameren and ComEd's load forecasts on the basis that the utilities do not adequately account for load migration. (*See* Renewables Suppliers BOE at 8-10.) The Commission should reject the Renewable Suppliers' argument. As the IPA contended in its Response to Objections, this docket is the appropriate venue to discuss methodological changes to load forecasts to best estimate the necessary IPA procurements. (*See* IPA Response at 9.) However, the IPA also argued in its Response that the discussion should be one of methodology, not of outcome—in

other words, the onus is on stakeholders to describe why the utilities' approaches are insufficient, and an alternative approach is better. (*See id.* at 10.) The Renewables Suppliers' Brief on Exceptions, much like their previous pleadings, identified a perceived utility forecast flaw (modeling of switching risk), but did not provide a methodological improvement or explain why their recommendation better captures switching risk. (*See* Renewables Suppliers BOE at 8-10.) Specifically, the Renewables Suppliers offer no reason why averaging the High and Low load forecasts—which are created independently of each other—somehow better models eligible retail customer switching. If in future dockets the Renewables Suppliers (or any other party) can identify a superior methodology to modeling switching risk, the Commission should consider it; until that point, the Commission should reject attempts to litigate the *result* of load forecast.

The Renewables Suppliers also take exception to the PO rejecting their request for a 7-14 day comment period for the March, 2014 load forecast prior to approval. (*See* Renewables Suppliers BOE at 10-12.) If the Renewables Suppliers believe that the Procurement Plan approval docket (where a draft for public comment with appendices is provided at least 44 days in advance) provides insufficient time to litigate methodologies, it is not clear why a subsequent 7-14 day comment window could provide a fuller opportunity. (*See* Renewables Suppliers Reply at 16-17 (averring that the Procurement Plan approval docket is too compressed to allow for litigation of load forecast methodologies).) Thus, the Commission should reject the Renewable Suppliers' proposed modification to the PO.

D. Responses to Other Issues Raised in Exceptions

1. Ameren – Energy Efficiency Determinations

In its Brief on Exceptions, Ameren takes exception to the PO not explicitly adopting the IPA's recommendations in Section 7.1.4.4 of the Procurement Plan. (*See* Ameren BOE at 1-2.) The IPA agrees with this Exception; in fact, the IPA recommended substantially similar language

in its Replacement Language which was intended to cover both the recommendation regarding Ameren in Section 7.1.4.4 of the Procurement Plan and also ComEd in Section 7.1.5.3. (*See* IPA Replacement Language at 148.) The IPA has no objection to Ameren’s proposed replacement language so long as it is modified to include a reference to Section 7.1.5.3. (*See* Ameren BOE at 2.) As a result, the IPA recommends the following modification to Ameren’s replacement language on page 146 of the PO, with the addition to Ameren’s proposed replacement language double underlined:

To the extent there are other recommendations by parties not specifically addressed in this conclusion, the Commission declines to accept them at this time and suggests the parties discuss them at the workshops addressed earlier in this conclusion, **except with respect to the consensus issues identified in Section 7.1.4.4 and Section 7.1.5.3 of the Plan, which were accepted by the IPA, were made part of the Plan, and are hereby expressly adopted by the Commission.**

2. Attorney General – DCEO as a Utility

One section of the Attorney General’s Brief on Exceptions suggested that the IPA recommended that the Commission treat DCEO as a utility for the purposes of Section 16-111.5B. (*See* Attorney General BOE at 5.) Earlier in the document, the Attorney General accurately stated the IPA’s position: although the IPA would follow a Commission Order to accept DCEO’s submittal pursuant to Section 16-111.5B, the IPA did not recommend that approach. (*See* Attorney General BOE at 4; IPA Response at 9-10; Procurement Plan at 93.) The IPA does fully support further inquiry into the barriers to DCEO bidding in utility-run RFPs, whether or not the Commission elects to hold a formal investigation.

3. Exelon – Process Improvements

Exelon took exception to the PO’s refusal to require the IPA to introduce certain process changes for procurements. (*See* Exelon BOE at 6-7.) The IPA is willing to entertain Exelon’s recommendations—some of which are not in the IPA’s control, such as the Procurement Monitor

providing documentation to the Commission or Commission publication of retail rates—and the potential consequences. (*See* Procurement Plan at 109-110 (citing Exelon’s recommendations without identifying Exelon).) However, as noted in the Procurement Plan, the IPA believes the proper approach is to work with stakeholders, the Procurement Administrator, Staff, and the Procurement Monitor, and agrees with the PO declining to “micromanage” the procurement process through this docket. (*See* PO at 97.)

4. Various Stakeholders – Competing and Duplicative Energy Efficiency Programs

Several parties, including the IPA, agreed with the conclusion in the PO explicitly approving the process for evaluating “duplicative” and “competing” energy efficiency programs, but recommended replacement language to provide greater clarity. (*See* IPA BOE at 5-7; IPA Replacement Language at 147-48; ComEd BOE at 3-4; NRDC BOE at 5-6; CUB BOE at 4-5.) The IPA continues to recommend its Replacement Language, but in the alternative has no objection to the summaries provided by the other parties.

5. Future Analysis of Risk Management Tools and Strategies

Although the IPA disagreed with the arguments presented by ICEA, RESA, and Exelon regarding full requirements, the IPA wishes to echo the PO in its appreciation for ICEA submitting the NorthBridge Report. (*See* PO at 93.) As with the other risk mitigation strategies investigated in the procurement planning process, the IPA will continue to evaluate alternative risk management tools and strategies, which may include Full Requirements, and looks forward to further stakeholder discussion and litigation of the issue.

III.

CONCLUSION

The IPA respectfully recommends that the Commission accept the Exceptions that the IPA detailed in its Brief on Exceptions, accept the IPA's limited proposed replacement language filed along with its Brief on Exceptions, and reject arguments from other parties consistent with this Reply Brief on Exceptions.

Dated: December 2, 2013

Respectfully submitted,

Illinois Power Agency

By: /s/ Michael R. Strong

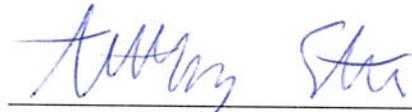
Michael R. Strong
Chief Legal Counsel
Illinois Power Agency
160 N. LaSalle St., Suite C-504
Chicago, Illinois 60601
312-814-4635
Michael.Strong@Illinois.gov

STATE OF ILLINOIS)
)
COUNTY OF COOK)

VERIFICATION

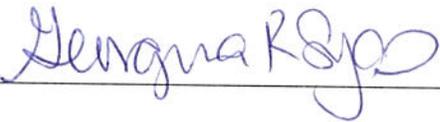
Anthony M. Star, being first duly sworn, on oath deposes and says that he is the Acting Director for the Illinois Power Agency, that the above Reply Brief on Exceptions on Behalf of the Illinois Power Agency has been prepared under his direction, he knows the contents thereof, and that the same is true to the best of his knowledge, information, and belief.





Anthony M. Star

Subscribed and sworn to me
This 2nd day of December, 2013



**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

Illinois Power Agency)	
)	ICC Docket No. 13-0546
Petition for Approval of the 2014 IPA)	
Procurement Plan Pursuant to Section 16-)	
111.5(d)(4) of the Public Utilities Act)	

NOTICE OF FILING

Please take notice that on December 2, 2013, the undersigned, an attorney, caused the Reply Brief on Exceptions on Behalf of the Illinois Power Agency to be filed via e-docket with the Chief Clerk of the Illinois Commerce Commission in a new proceeding:

December 2, 2013

/s/ Michael R. Strong
Michael R. Strong

CERTIFICATE OF SERVICE

I, Michael R. Strong, an attorney, certify that copies of the foregoing document(s) were served upon the parties on the Illinois Commerce Commission's service list as reflected on eDocket via electronic delivery from 160 N. LaSalle Street, Suite C-504, Chicago, Illinois 60601 on December 2, 2013.

/s/ Michael R. Strong
Michael R. Strong