

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

Illinois Commerce Commission)	
On its Own Motion)	No. 13-0546
)	
Petition of Approval of the 2014 IPA)	
Procurement Plan Pursuant to Section 16-)	
111.5(d)(4) of the Public Utilities Act)	

**THE ILLINOIS COMPETITIVE ENERGY ASSOCIATION’S REPLY BRIEF ON
EXCEPTIONS TO THE ILLINOIS POWER AGENCY’S 2014 PROCUREMENT PLAN
ORAL ARGUMENT REQUESTED**

Now comes the Illinois Competitive Energy Association (“ICEA”) and, pursuant to Section 16-111.5 of the Public Utilities Act (220 ILCS 5/16-111.5) (the “Act”), submits this Reply Brief on Exceptions To the Administrative Law Judge’s Proposed Order (“Proposed Order”) dated November 13, 2013 regarding the Illinois Power Agency’s (“IPA”) procurement plan (the “Plan”) for the generation supply to eligible retail customers of Commonwealth Edison Company (“ComEd”) and the Ameren Illinois Company (“Ameren”) for the period of June 2014 through May 2019. Specifically, ICEA will respond to the IPA’s Brief on Exceptions regarding the Proposed Order’s discussion of the use of fixed-price, full requirements (“Full Requirements”) products as part of the Plan. In addition, this Reply Brief on Exceptions will address recommendations in the Briefs on Exception (“BOEs”) of the Retail Energy Supply Association (“RESA”) and Exelon Generation (“ExGen”) regarding the Alternative Compliance Payment (“ACP”) rate, and the schedule regarding utility bundled retail rates.

I. THE IPA'S REPLACEMENT LANGUAGE REGARDING FULL REQUIREMENTS PRODUCTS SHOULD BE REJECTED, AND ICEA'S PROPOSAL TO INCLUDE FULL REQUIREMENTS PRODUCTS IN THE IPA PLAN SHOULD BE ADOPTED.

ICEA takes exception to the IPA's statement that the Proposed Order correctly found that a Full Requirements product should not be included in the Plan. (IPA BOE, p. 2) The IPA's claim that the NorthBridge analysis (which was presented by ICEA) of the relative merits of Full Requirements products is "complimentary" [sic] to the IPA's analysis (*Id.*), could not be further from the truth. At its core, the IPA's analysis cannot be relied upon. It is riddled with significant flaws that two parties (ICEA and Staff) have identified, but which the IPA has failed to address. (ICEA Objections, pp. 10-11; ICEA Objections Appendix A, pp. 3-5, 22-29; Staff Response, p. 6). For example, the IPA's analysis is based on an unsupported, untested, and arbitrary assumption about pricing of Full Requirements products. (ICEA Objections, p. 10; ICEA Objections Appendix A, pp. 4, 22-23). In addition, the IPA's analysis omits or underestimates various drivers of costs and risks that are directly borne by customers under the block-and-spot approach. As a result, in its analysis and comparison of the two approaches, the IPA underestimates the risks to customers under the block-and-spot approach. (ICEA Objections, pp. 10-11; ICEA Objections Appendix A, pp. 4-5, 23-28). The record describes numerous other flaws in the IPA's analysis that have been identified by ICEA and Staff, and that invalidate the IPA's conclusions. (ICEA Objections, p. 11; ICEA Objections Appendix A, pp. 5, 28-29). The IPA has failed to respond at all to these valid criticisms of its analysis.

In contrast, no party, including the IPA, has found any flaws in the NorthBridge analysis. Furthermore, NorthBridge's robust analysis uses actual market data from a region in which both supply approaches simultaneously had been implemented. The NorthBridge analysis indicates that Full Requirements product pricing is reasonable given the costs and risks that Full

Requirements product suppliers directly bear, to the benefit of customers. ICEA will not repeat all of the arguments regarding the faultiness of the IPA's conclusion and the overwhelming support for Full Requirements products as exhaustively described in the NorthBridge Report but, rather, would direct the ALJ and the Commission to ICEA's Brief on Exceptions, as well as its Objections, Response to Objections, and Reply To Responses To Objections.

The IPA seeks to place undue emphasis in the Proposed Order's discussion of Full Requirements products on what has been referred to as a "risk premium" for Full Requirements products. (IPA BOE, pp. 2-3). Although ICEA recognizes and readily admits that potential suppliers' bids for Full Requirements products would necessarily include a reflection of the risk that those suppliers are bearing, that cannot and should not be the end of the inquiry, nor should it be the only, or even first, question. More appropriately, the Commission must first ask: Is there a risk to customers associated with the current block-and-spot approach and, if so, what is that risk? The answer to those questions are an undeniable "yes", and "there are many."

It is untrue and academically disingenuous to impute that there is a cost to customers associated with the use of Full Requirements products, while not accounting for the risks to which customers are otherwise exposed under the block-and-spot approach. Block products involve fixed-cost commitments that do not vary with the load obligation. Under the block-and-spot approach, the unavoidable mismatch between the fixed quantities of fixed-price supply purchased and the uncertain load requirements results in significant and unnecessary financial risks for customers, especially in an environment like the one in Illinois, in which customer migration risks are substantial. (ICEA Objections Appendix A, p. 8). Furthermore, it is critical to recognize that customer switching is not the only driver of the costs and additional risks that customers bear under the block-and-spot approach. Unexpected weather patterns, changes in

customer usage patterns, plant outages or transmission line outages, fuel price shocks, unexpected economic growth levels, regulatory and legislative uncertainty, and unanticipated ancillary services costs also cause prices and loads to deviate from expected values, contributing to the types of customer-borne costs and risks under the block-and-spot approach. (ICEA Objections Appendix A, p. 9).

Costs and adverse financial risks for customers under the block-and-spot approach are incurred in several respects. First, evidence of the costs and adverse financial risks for customers under the block-and-spot approach can be found in the basic supply charges (e.g., the “Purchased Electricity Prices or “PEP”) that result from the block-and-spot approach (ICEA Objections Appendix A, pp. 2, 10-12), in that the utility must estimate the cost of anticipated spot purchases for that portion of its forecasted load that was not included in the IPA procurement blocks. (ComEd Response to Objections, p. 14). Evidence of the costs and adverse financial risks for customers under the block-and-spot approach can also be found in the reconciliation charges (e.g., the “Purchased Electricity Adjustment” or “PEA”), as the NorthBridge Report describes. (ICEA Objections Appendix A, pp. 2, 10, 12-14). One important driver of the costs and risks that are represented in the PEA with a block-and-spot approach is the fact that the amount of load that will be needed and the actual spot market costs associated with that load ultimately will be different than what has been forecasted and estimated, and the discrepancies will be reflected in the PEA. ComEd Response to Objections, p. 14, discusses this estimation. Deferred cost recovery of the PEA under the block-and-spot approach also has adverse effects for customers, as it makes it more difficult for customers to predict future bundled service rates and therefore to confidently make economic retail service decisions. (ICEA Objections Appendix A, pp. 2-3, 10, 14-16). Deferrals also create issues of cross-subsidization between customers because those

deferred amounts may or may not ultimately be paid by the same customers for whose benefit those charges were incurred, and the management of deferrals and reconciliations increases the utility's administrative costs which ultimately must be passed on to customers. (ICEA Objections Appendix A, pp. 2-3, 10, 14-16).

The Full Requirements product is, in essence, an insurance product, providing unique protections against changes in market conditions. As such, it is fundamentally different from a block-and-spot approach, the latter of which exposes customers to significant risks instead of assigning those risks to the wholesale product suppliers to assume, manage, and cover. The IPA's simplistic statement that a Full Requirements product contains a risk premium ignores the most important part of the analysis -- the benefits of Full Requirements products over the block-and-spot approach. The fact that one must pay a premium for insurance does not mean that insurance should not be purchased. Rather, an informed consumer looks at the risks, and the amount of coverage that one gains. Based on that type of analysis, as demonstrated in the NorthBridge Report, and the fact that Full Requirements products are themselves the single most widely used supply product for smaller customers of utilities in states with retail competition (ICEA Objections, p. 8; ICEA Response, p. 3), Full Requirements products should be included in the IPA Plan for a portion of the ComEd load. To the extent that these products are included, they will protect customers from the proven adverse risks of the block-and-spot approach, and more information will be gained about their pricing in the context of the Illinois electricity markets, for consideration in future IPA Plans.

However, instead of making a substantive comparison of the Full Requirements product approach to the block-and-spot approach, the IPA once again answers a different question, and in doing so provides an answer that is not only wrong, but one that is contrary to the law. The IPA

does not and cannot identify any flaws with the NorthBridge analysis, just as it failed to do throughout the proceeding. Instead, the IPA sidesteps the issue altogether after the flaws in its own analysis are identified, and resigns itself to the contention that the key determining factor in the decision to include Full Requirements products in the IPA Plan (for a small portion of the ComEd load) is not an evaluation of the benefits of including Full Requirements products versus any benefits of not including these products. Instead, the IPA suggests that, in this one situation for as yet unexplained reasons, Full Requirements products should be completely disregarded if that type of product happens to be offered by competitive retail suppliers. (IPA BOE, p. 2) The IPA goes so far as to suggest that the Proposed Order be modified to state:

However, as the IPA points out, the Report reaches a similar conclusion to the IPA's analysis in that there is a risk premium in the expected outcomes. The Commission agrees that the question is not whether a risk premium exists, but whether the premium outweighs the benefits of a full requirements approach in light that retail customers may choose a full requirements product from the market at competitive prices. (IPA BOE Replacement Language, p. 93.)

The IPA's position is concerning for several reasons. First, the purpose of the IPA is to provide the most appropriate supply mix for bundled service customers, and the IPA Act explicitly states that benefits of price stability must be considered when developing an electricity procurement plan. Given its legislative mandate, it is surprising that the IPA would find that "excessive perceived risk" (as discussed in its Responses To Objections at p. 5) is acceptable in its bundled service portfolio via the block-and-spot approach because customers have options to leave bundled service. As Staff noted, such a sentiment appears "diametrically opposed to the IPA's statutorily mandated objective to, '[d]evelop electricity procurement plans to ensure adequate, reliable, affordable, efficient, and environmentally sustainable electric service at the lowest total cost over time, taking into account any benefits of price stability.'" (Staff Reply To Responses To Objections, p. 5; 20 ILCS 3855/1-20(a)(1)).

Second, retail service offers exist in the market at the will of competitive retail suppliers, potentially changing in structure and price over time, while Full Requirements products in a utility's bundled service supply mix involve a guaranteed fixed price for load-following service (which customers may migrate to and from) throughout the term of the contract of the Full Requirements product, so the two are actually quite different. Moreover, as ICEA noted (and the IPA and other detractors of Full Requirements products ignored), Full Requirements products are themselves the single most widely used supply product for smaller customers of utilities in states with retail competition (ICEA Objections, p. 8; ICEA Response, p. 3); in other words, many states have chosen to rely on Full Requirements products to supply their default service customers even though competitive retail suppliers in those states also offer customers full requirements service at fixed prices. In addition, on a related note, the IPA's position ignores all of the other benefits of Full Requirements products in the bundled service supply mix, such as those related to price transparency, mitigation of cross-subsidization, etc., all of which benefit customers. The Commission should not be distracted by the IPA's attempts to move the discussion of Full Requirements products away from the evidentiary record, the entirety of which supports inclusion of Full Requirements products into the ComEd supply portfolio, as recommended by ICEA.

II. THE PLAN SCHEDULE SHOULD ALLOW FOR POSTING OF RETAIL RATES SUFFICIENTLY IN ADVANCE.

Both RESA and ExGen recommend that the IPA Plan schedule permit calculation of retail rates in such a way that they could be posted sufficiently in advance of their effective dates, and that the utilities actually post those rates. (RESA BOE, pp. 4-5; ExGen BOE, pp. 6-7). ICEA concurs with concerns regarding delays in the release of utility tariffs and charges, and the substantial confusion and competitive harm that can result in the retail market from such delays.

Therefore, ICEA recommends that the Proposed Order be revised to ensure that retail rates are posted sufficiently in advance of their effective dates to allow all customers, including hundreds of municipalities, a meaningful opportunity to explore all of their electric power and energy supply options.

III. CHANGES SHOULD BE MADE TO THE ALTERNATIVE COMPLIANCE PAYMENT PROCESS.

Both RESA and ExGen suggest changes regarding posting of the ACP. Although they make different recommendations, both are based on the similar notion of providing competitive suppliers with as much certainty as possible regarding the ACP. RESA appropriately notes that changes to the Estimated ACP in the middle of a compliance year affect the ability of a RES to accurately reflect its costs to comply with the Renewable Portfolio Standard. (RESA BOE, pp. 3-4) ICEA supports adoption of RESA’s change to the Proposed Order 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. (*Id.* at 4). Additionally, retail contracts may be for a one year term other than June-May, or contracts may be multi-year contracts. For the same reasons that it is important to have an accurate Estimated ACP in order to reasonably estimate the Actual ACP for the current compliance year – transparency and a forward basis on which to estimate costs to serve retail customers – it is important that ARES have all available information regarding the potential for all future years’ ACPs, as well. (Exelon BOE, pp. 8-9). ICEA therefore supports ExGen’s proposal to provide ARES with the Maximum and Estimated ACP rate for the current Plan or, at a minimum, to provide the components of the calculation on a continuing basis.

IV. CONCLUSION.

ICEA recognizes that the decision whether or not to include Full Requirements products in the IPA Plan is not simple, and that it requires sound evidence and analysis. Consequently, ICEA has prepared and presented substantial evidence and analysis in the instant proceeding to determine whether it can be reasonably concluded that the IPA Plan should include solicitations for Full Requirements products for a portion of the ComEd load. ICEA firmly believes that the substantial and unrefuted evidence in the record and its arguments contained within ICEA's Briefs on Exceptions (ICEA BOE, pp. 2, 8 and 12) are a sound and sufficient basis for the Commission to adopt ICEA's Full Requirements products proposal at this time. The NorthBridge Report, which forms the basis for ICEA's recommendations, with which no party has found any substantive flaw, finds that Full Requirements products can help protect customers from the significant adverse financial risks and rate instability associated with a portfolio based entirely on the block-and-spot approach, and that such a product can easily be integrated in a portfolio that already includes block energy products. Those ultimate conclusions remain valid, despite any criticisms of Full Requirements products. The Commission should therefore direct the IPA to modify the IPA Plan to incorporate the use of Full Requirements products into the ComEd portfolio, as ICEA has proposed.

However, should the Commission determine that further investigation of ICEA's Full Requirements proposal would be beneficial rather than adopting its proposal in the instant proceeding, then ICEA respectfully requests that the Commission find that Full Requirements products are authorized under the law and that the Commission further order, On Its Own Motion, a docketed proceeding to determine, among other things, whether the benefits of the inclusion of Full Requirements products are likely to outweigh the risk premiums contained within the Full Requirements products. Doing so is entirely appropriate in the context of the

Commission's authority to hold such a hearing on a proposed IPA Plan feature (See Section 16-111.5(j)(i)), and it would afford the Commission an additional opportunity to weigh and consider the Full Requirements approach in advance of the IPA's 2015 Plan submission.

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Respectfully submitted,

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