

**STATE OF ILLINOIS  
ILLINOIS COMMERCE COMMISSION**

<b>Illinois Power Agency</b>	)	
	)	<b>Docket No. 13-0546</b>
<b>Petition for Approval of Procurement Plan</b>	)	
	)	<b>Rehearing</b>

**INITIAL BRIEF ON REHEARING OF  
AMEREN ILLINOIS COMPANY d/b/a AMEREN ILLINOIS**

**I. Introduction**

The essential question before the Commission on rehearing is whether the evidence presented in this docket warrants reconsideration of the Commission's determination in the underlying proceeding as it pertains to curtailment provisions in long term purchase power agreements (LTPPAs). The Renewable Suppliers have requested that the Commission grant relief from the operation of LTPPA curtailment provisions in this docket, and have sought reconsideration of the Commission's conclusions in the underlying proceeding with respect to this issue. While the Company has yet to curtail LTPPAs, the possibility remains in future plan years and therefore the Company has an interest in the outcome of this rehearing.

As a threshold matter, the Company does not offer a position with respect to the general merits of offering additional payments to secure the certainty of long term development plans for renewable energy. However, as supported by the Direct Testimony on Rehearing of Mr. Richard McCartney, AIC believes that the December 20, 2013 Order (Order) issued in this proceeding should remain intact due to implications for customers and legal uncertainty associated with the procurement process. Nonetheless, to the extent that the Commission grants relief from the LTPPA

curtailment provisions, it should only give consideration to the alternative position of the Renewable Suppliers to make use of certain Alternative Compliance Payment (ACP) funds. Mr. McCartney testified that the alternative proposal does not directly impact eligible retail customers in the manner that the Renewable Suppliers' primary position implicates, which would require the purchase of energy that would otherwise be curtailed at a price higher than the current market. (Ameren Ex. 1.0 (RH); see also Renewable Suppliers Ex. 5.0R, p. 5).

The Commission made the following ruling in its underlying Order issued on December 20, 2013 (Order) regarding the Renewable Suppliers' primary position:

...Putting aside the question of whether the Commission possesses authority to impose such a change to the LTPPA contracts, in this instance the Commission is disinclined to do so. In the current situation, such a change would favor the RS and would, ultimately, impose the cost on ComEd and AIC eligible retail customers.

(Order, p. 180).

With respect to the alternative proposal, the Commission held as follows:

...While the Commission fully understands the RS incentives, it is not clear how or why shifting costs from the suppliers to the utilities' customers is fair or in the public interest. Should the RS provide the Commission with sufficient evidence to prove this proposal would not harm utility customers and would be in the public interest, the Commission may be inclined to revisit the issue. The Commission notes that pricing for curtailed RECs was previously addressed in Docket No. 09-0373 and finds there is not a sufficient basis for altering that decision based on the record in this proceeding.

(Order, 181).

Through the grant of rehearing, the Commission has afforded the Renewable Suppliers the opportunity to present new evidence in support of its claims, and allowed the other

parties to respond to that evidence. The record on rehearing now stands supplemented by thorough explanations of position, policy, and fact. Ultimately however, the fundamental issues remain the same and there is insufficient evidentiary support to justify a departure from the original ruling.

For the reasons explained by Ameren witness Richard McCartney in his rehearing testimony, the Commission's rationale in the original Order remains on solid foundation and should be maintained. A mandate for supplemental curtailment compensation above and beyond that required by contract remains an unnecessary measure. However, to the extent the Order is modified, the Renewable Suppliers' alternative proposal would present the least impact on customers prospectively, as there is no potential for the collection of incremental costs from customers as a result. As explained by Mr. McCartney, to the extent that some additional compensation is deemed appropriate, the source of funds should come from available ACP funds rather than through the purchase of energy using a settlement methodology not contemplated in the provisions of the LTPPAs. The Company's hourly priced customers have already provided the ACP funds, which are held in a Company liability account, whereas the outright purchase of energy that would otherwise be curtailed would cause additional incremental charges to eligible retail customers. (See Ameren Ex. 1.0 (RH), pp. 3-6).

In accordance with the authority and testimony discussed below, AIC believes the matter on rehearing is straight forward; the Commission should leave the Order issued in this docket unmodified or give consideration only to the alternative proposal of the Renewable Suppliers.

## **II. Procedural Background and Overview of Authority**

On February 7, 2014, the Commission issued a notice granting the Renewable Suppliers' Application for Rehearing and Reconsideration, filed on January 21, 2014. On rehearing, the Renewable Suppliers have submitted additional evidence in furtherance of claims regarding the curtailment of revenues pursuant to LTPPAs previously executed in accordance with procurement plans promulgated by the IPA pursuant to 20 ILCS 3855 1-75. (See Renewable Suppliers' Petition for Rehearing, p. 11). Specifically, the Renewable Suppliers seek relief from the interpretation of curtailment provisions previously executed as part of LTPPAs and requested rehearing with respect to the Commission's conclusion contained on p. 179-181 of its December 20, 2013 Order (Order) pertaining thereto. (*Id.*). Because, the LTPPAs have already been executed and approved by the Commission pursuant to 220 ILCS 16-111.5, the Renewable Suppliers are essentially asking for additional payments using alternative settlement provisions. In Docket No. 12-0544, the Commission specifically found that the curtailment of LTPPA's was "necessary and appropriate" in the event the Renewable Resource Budget (RRB) was exceeded. (Order dated December 19, 2012, p. 110). In the present docket, the Commission found, based upon the evidence, that no additional relief from curtailment was warranted as noted above, and the requested relief lacked evidentiary support or justification. (See Order, p. 180).

The Renewable Suppliers identify two sources of funds to provide for the supplemental payment. The Renewable Suppliers' primary proposal would be for the Commission to direct utilities to only curtail the purchase of renewable energy credits (RECs), but not curtail the energy. The energy would instead be settled using a methodology not contemplated by the LTPPAs. This settlement is intended to

compensate the Renewable Suppliers for its alleged lost revenues. Contrary to the claims of Renewable Suppliers that this proposal would not increase costs to eligible retail customers because the RRB is not exceeded, costs to eligible retail customers would increase because the energy portion of the LTPPAs is not included in the calculation of RRB. Therefore, eligible retail customers would become the sole source of funding associated with any energy settlement that compensates Renewable Suppliers for lost revenue. The alternative revenue source would be to purchase curtailed RECs at a price that compensates Renewable Suppliers for alleged lost revenues and where the source of funding would be Alternative Compliance Payments (ACP) collected from hourly priced customers as currently held by the utilities. (*Id.*). The alternative proposal also identified RERF as another possible source of funding on which the Company takes no position.

Section 20 ILCS 3855 1-75 provides for the incorporation of "cost effective" renewable resources in the IPA's procurement plans in order to meet established percentage goals that increase until they reach 25% by 2025. Section 220 ILCS 16-111.5 provides for Commission "review and approval" of annual procurement plans pursuant to detailed criteria that provide for transparent and competitive procurement practices,:

....The Commission shall approve the procurement plan, including expressly 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 any benefits of price stability.

Whether the requested relief of the Renewable Suppliers is actionable is a question of law that, to date, remains untested by a reviewing Court. Several portions

of the IPA Act and the Public Utilities Act are instructive. 220 ILCS 5/16-111.5 and 20 ILCS 3855 1-75 are the principle statutes and provide for comprehensive procurement processes. Several sections provide guidance that are instructive on the issues before the Commission on rehearing.

Section 220 ILCS 5/16-111.5(b) requires that any procured power be accomplished through a competitively bid process: "... Unless specified otherwise in this Section, in the procurement plan or in the implementing tariff, any procurement occurring in accordance with this plan shall be competitively bid through a request for proposals process...."

The section also establishes that the procurement process shall provide open and transparent bidding procedures, whereby standard form contracts are required and the selection of bidders is solely based on price:

....The procurement administrator, in consultation with the utilities, the Commission, and other interested parties and subject to Commission oversight, shall develop and provide standard contract forms for the supplier contracts that meet generally accepted industry practices. Standard credit terms and instruments that meet generally accepted industry practices shall be similarly developed. The procurement administrator shall make available to the Commission all written comments it receives on the contract forms, credit terms, or instruments. If the procurement administrator cannot reach agreement with the applicable electric utility as to the contract terms and conditions, the procurement administrator must notify the Commission of any disputed terms and the Commission shall resolve the dispute. *The terms of the contracts shall not be subject to negotiation by winning bidders, and the bidders must agree to the terms of the contract in advance so that winning bids are selected solely on the basis of price.* 220 ILCS 5/16-111.5 (emphasis added).

Additionally, 220 ILCS 5/16-111.5(e) also provides for the establishment of market price benchmarks as part of the procurement process. Section 20 ILCS 3855/1-75 (c) provides for "cost-effective renewable energy resources" to be included in the procurement plan, and further defines "cost-effective" to tie to certain cost increase limits and also be subject to benchmarks.

Together, the statutory provisions require the IPA to develop, and the Commission to approve, a comprehensive plan that utilizes standard procurement procedures and contracts to solicit competitive bids in order to keep costs as low as possible for consumers. The Plan also requires the incorporation of renewable energy but requires that such incorporation be cost effective. On rehearing, the Commission must determine if post execution alterations to the settlement provisions of LTPAs outside of a competitive bid process is permissible under the governing statutes, and whether the Commission may as a general matter approve a procurement plan that includes compensation to suppliers that has not been established through a competitively bid process.

### **III. Argument**

On behalf of AIC, Mr. McCartney presented testimony explaining that the Renewable Suppliers' first proposal will result in higher costs to eligible retail customers under a scenario where Renewable Suppliers would otherwise incur lost revenues associated with an energy curtailment. (Ameren Ex. 1.0 (RH), p. 4; see also ICC Staff Ex. 1.0 (Zuraski RH Direct), p. 6). Because the energy portion of the LTPAs is outside the calculation of the RRB, the primary proposal of the Renewable Suppliers would hold eligible retail customers responsible for the "shortfall of revenues" that the

suppliers allege are harming their interests. Further, the problem could become worse in the future, as Mr. McCartney explains the advent of municipal aggregation has resulted in the majority of customers switching away from utility bundled supply which leaves the cost responsibility for the LTTPAs with the eligible retail customers that remain. Assuming the costs of the LTTPAs remain higher than the current market, the higher costs incurred by eligible retail customers under the primary proposal could then lead to further switching and greater concentration of costs on an "...ever smaller pool of eligible retail customers." (Ameren Ex. 1.0 (RH), pp. 4-5). While Mr. McCartney believes such a scenario to be relatively remote, he notes that given the possibility of a substantial negative outcome, the Commission should give the potential problem due consideration. (*Id.*).

With respect to the Renewable Suppliers' primary position, Mr. McCartney also points out that the procurement process requires benchmarking on prices paid for energy and also the use of sealed bids for selection of contracts based on price. As noted above, the procurement plan is constrained by statutory requirements contained in 220 ILCS 5/16-111.5(e) that require standard contracts be used, which are not subject to negotiation by winning bidders. On behalf of the Illinois Power Agency, Mr. Star provided direct testimony emphasizing the importance of treating all bidders the same and procuring power based on price alone. (IPA Ex. 1.0 RH, p. 8). Further, the plan requires the establishment of benchmarks prior to approval by the Commission. From a legal standpoint, the Renewable Suppliers' primary proposal casts a questionable shadow given that the proposed modifications occur after the benchmarking process and after contract execution. However, as explained by Mr.

McCartney, to the extent the first proposal is deemed appropriate by the Commission, the ruling should be made with respect to this plan year only, so that future negative impacts on eligible retail customers may be avoided, and in addition, the Commission should approve a settlement methodology since none is contemplated under the executed LTTPAs. (*Id.* pp. 5-6).

Finally, with respect to the alternative proposal of the Renewable Suppliers, as explained by Mr. McCartney, the use of ACP related funds to purchase curtailed RECs could be a preferable option if the Commission desires to address the Renewable Suppliers' alleged shortfall of revenues. As Mr. McCartney notes the proposal would not result in higher costs for any customers since funds previously collected from the Company's hourly customers would be used at this time. (*Id.*).

Legal uncertainty remains with this alternative proposal as well, but due to the lack of impact on the costs to present customers, AIC believes this alternative proposal is preferable to the extent the Commission determines that the Renewable Suppliers' request is appropriate.

#### **IV. Conclusion**

For the reasons stated above, and based on the evidence submitted on rehearing, AIC respectfully requests that the Commission decline to alter its order on rehearing. To the extent the Commission determines to grant the relief requested by the Renewable Suppliers, AIC requests that the alternative proposal be granted with the modifications set forth in this brief.

Dated: April 25, 2014

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Eric Dearmont".

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**CERTIFICATE OF SERVICE**

I, Eric Dearmont, counsel for Ameren Illinois Company, hereby certify that a copy of the foregoing *Initial Brief on Rehearing* was filed on the Illinois Commerce Commission's e-Docket and was served electronically to all parties of record in Docket No. 12-0546 on this 25<sup>th</sup> day of April, 2014.

A handwritten signature in blue ink, appearing to read "Eric Dearmont", with a large, stylized flourish at the end.

Eric Dearmont