

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

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

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

I. Introduction

A review of the Initial Briefs filed on Rehearing reveals the questions presented on rehearing are clear. Those questions are of a legal and policy nature regarding the payment of additional funds to the Renewable Suppliers to insulate them from the implications of contractual curtailment. The Illinois Commerce Commission (“Commission”) must decide as a threshold matter whether granting the relief requested by the Petitioners runs afoul of the applicable statutory enabling legislation, and must also decide whether the additional facts and policy arguments on rehearing warrant revision to the Final Order issued in this docket. As noted in its Initial Brief and more thoroughly discussed below in Reply, Ameren Illinois Company d/b/a Ameren Illinois (“AIC” or “the Company”) believes the legality of the Renewable Suppliers’ proposal is at best legally uncertain. With respect to the primary proposal, there is substantial concern that the relief requested would violate the detailed procurement process provided for by Illinois law. See 220 ILCS 5/16-111.5. With respect to new facts and arguments raised on Rehearing, AIC does not believe the substance of the record has changed from the underlying proceeding so as to justify a modification to the Final

Order. To the extent the Commission finds in favor of the Renewable Suppliers, AIC continues to recommend the alternative proposal be accepted because it leaves previously executed contractual arrangements in place, while also avoiding incremental charges for eligible customers.

II. Reply to Renewable Suppliers' Primary Proposal

The Renewable Suppliers continue to claim that eligible retail customers will not be harmed under the primary proposal while at the same time claiming that curtailment of energy under the long term purchase power agreements (“LTPPAs”) results in lost revenues. (Renewable Suppliers, Init Br. pp. 8-20) This lost revenue means that the Renewable Suppliers are selling curtailed energy back to the market at a price lower than the price contained in the LTPPAs. In other words, the LTPAAs contain an energy price that is currently “in the money” from the perspective of the Renewable Suppliers and “out of the money” from the perspective of eligible retail customers. The Renewable Suppliers correctly state that prices could change in the future such that the energy price imbedded in LTPPAs becomes “in the money” from the perspective of eligible retail customers. However, logically speaking the Renewable Suppliers must not expect that to occur in the foreseeable future. *Otherwise, why would the Renewable Suppliers petition the Commission for relief of lost revenue associated with energy curtailment?*

The fact is that paying for the Renewable Suppliers lost revenues under the primary proposal does not come free and the eligible retail customers would be responsible for such costs. (Ameren Ex. 1.0 (RH), p. 4) The Renewable Suppliers nonetheless allege that the eligible retail customers are not harmed because the

renewable portfolio standard (“RPS”) budget would not be exceeded. The Renewable Suppliers fail to acknowledge that the RPS budget only includes the dollars associated with the renewable energy credit (“REC”) portion of the LTPPAs, whereas the dollars associated with the energy portion of the LTPPAs are not included in the RPS budget. The focus on the RPS budget issue therefore diverts attention from the *key* issue which is that the energy portion of the LTPPAs currently contains an “out of the money” hedge from the perspective of the eligible retail customers and the Renewable Suppliers logically expect this to continue for the foreseeable future. Therefore as AIC witness, Mr. Richard L. McCartney explained, if the Commission adopts the primary proposal, eligible retail customers would incur higher costs associated with modified LTPPAs when compared to a scenario of energy curtailment under the currently operating LTPPAs. (Id.) However, if the Commission nonetheless desires to adopt the primary proposal it should be for one plan year only and a settlement methodology should be approved in the order since none is contemplated under the LTPPAs. (Id. at p. 5)

III. Reply to Renewable Suppliers' Secondary Proposal

Regarding the Renewable Suppliers secondary proposal, existing funds associated with alternative compliance payment (“ACP”) and Renewable Energy Resource Fund (“RERF”) are proposed to be used. This proposal in effect asks the Commission to determine if it is appropriate to use ACP funds already collected from hourly-priced customers to offset Renewable Suppliers’ lost revenues associated with an energy curtailment under the LTPPAs. The secondary proposal also requests relief from RERF. However the Commission has already determined that decisions associated with RERF reside solely with the Illinois Power Agency (“IPA”).

Furthermore, the IPA has been clear in this rehearing that the proposal to use RERF in this manner is not acceptable. (IPA Init. Br. RH, p. 11-12)

Because the secondary proposal would use existing ACP funds, the eligible retail customers would not incur additional costs. For that matter, so long as payments are capped at the ACP balance at the beginning of any curtailment year, no customers would incur additional costs. However, please note that the Company does not endorse the use of ACP funds in this manner, but concludes it is a less invasive approach when compared to the primary proposal. As the IPA points out, legal questions still remain with respect to the alternative proposal. (See IPA Init. Br. RH, p. 11-12) Therefore, the Company continues to recommend that the Commission leave the Final Order issued in this docket unmodified. However, if the Commission desires to provide relief to the Renewable Suppliers as petitioned, the Company believes the secondary proposal to be preferable relative to the primary proposal.

IV. Reply to Other Parties

The IPA raises a critical point in the docket, one that does have serious ramifications potentially for the future of procurement events. (IPA Init. Br. RH, p. 5-6) As the IPA correctly notes the clear language of the Public Utilities Act (the "Act") prohibits the renegotiation of contractual terms by winning bidders, and further that the policy that underpins the Act's language could be seriously impacted by a proposal that essentially allows winning bidders to revisit agreed upon language after the bidding process has concluded. (Id.) Commonwealth Edison Company ("ComEd") also raises the same concern. (ComEd, Init. Br. RH, p. 4, fn 10) As noted in the Company's Initial Brief on Rehearing, AIC concurs that it is legally untenable to essentially redefine,

modify, or construe a procurement contract in light of the clear language of the applicable enabling legislation. (AIC Init. Br. RH, pp. 7-10).

From a policy perspective, is illogical to augment a standardized procurement agreement used in a competitive bidding process after the winning bidders are chosen, because it is quite possible the other parties would have bid lower prices had they known of the revised contractual provisions. Prospectively, it is problematic to send the message to future bidders that standard contracts may be changed post-bidding as some bidders may alter or hedge their bidding practices with the expectation of further revision to contractual provisions.

Additional arguments were raised by the other parties, but AIC does not believe these issues warrant response as part of this focused reply. However, silence as to any argument or claim should not be construed as endorsement or acquiescence.

V. Conclusion

AIC's position has not changed during the course of this proceeding, and for the reasons stated herein, the Company continues to recommend that the Commission decline to alter its Final Order issued in this proceeding.

The Commission should reject the primary proposal because it will increase the costs of eligible retail customers and because the proposal is on questionable legal ground. However, if the Commission desires to adopt the primary proposal it should be for one plan year only and a settlement methodology should be approved in the order since none is contemplated under the LTPPAs. However, if the Commission desires to provide relief to the Renewable Suppliers, the Company believes the secondary proposal to be more palatable relative to the primary proposal. Should the Commission

adopt the secondary proposal, the Company requests that a settlement methodology be identified in the order since none is contemplated under the LTPPAs.

Dated: May 2, 2014

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Matthew R. Tomc". The signature is fluid and cursive, with a long, sweeping underline that extends to the left.

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CERTIFICATE OF SERVICE

I, Matthew R. Tomc, counsel for Ameren Illinois Company, hereby certify that a copy of the foregoing *Reply 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 2nd day of May, 2014.



Matthew R. Tomc