

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

ILLINOIS POWER AGENCY	:	
	:	
Petition for Approval of the 2015 IPA	:	ICC Docket No. 14-0588
Procurement Plan pursuant to Section 16-	:	
111.5(d)(4) of the Public Utilities Act	:	

OBJECTIONS OF THE ENVIRONMENTAL LAW AND POLICY CENTER

In accordance with section 16-111.5(d)(2) of the Illinois Public Utilities Act (PUA), 220 ILCS 5/16-111.5(d)(2), the Environmental Law & Policy Center (ELPC) hereby files its “objections” to the Illinois Power Agency’s (IPA) 2015 Procurement Plan, which the IPA filed with the Illinois Commerce Commission (ICC) for consideration and approval on September 29, 2014. ELPC coordinated with other clean energy and environmental stakeholders in the development of these objections and our filing reflects these conversations.

The objective of ELPC’s comments is to help promote the most efficient use of limited IPA resources to meet the goals of the Illinois Renewable Energy Standard at 20 ILCS 3855/1-75(c) and the Illinois Power Agency Act’s requirement to procure “adequate, reliable, affordable, efficient, and environmentally sustainable electric service at the lowest cost over time, taking into account any benefits of price stability.” (20 ILCA 3855/1-5) In ELPC’s view, the best long-term way to meet these goals is for the IPA to structure a simple, transparent and long-term renewable energy procurement program to help support the development of a mature and competitive renewable energy industry in the state. Our comments should be read and interpreted with that long-term goal in mind.

**The Use of Renewable Resource Budget Funds to Procure One-Year Solar Renewable
Energy Credits (SRECs) is Imprudent**

The IPA has proposed to use funds remaining in the utilities' Renewable Resource Budgets (RRB) to procure one-year solar renewable energy credits (SRECs) from new or existing projects. (Sec. 8 at page 100) Procuring one-year SRECs is an imprudent use of funds and does not meet the IPA's requirement to "support the development of...renewable resources." (220 ILCS 3855/1-5(4)) ELPC understands the forecasting and budgeting challenge faced by the IPA in developing a long-term renewable resource procurement strategy in light of the shifting load forecasts due to customer switching to, and from, competitive suppliers. However, to the extent possible, we recommend a risk hedging strategy that does not rely primarily on procuring one-year SRECs. There is ample evidence from Illinois and elsewhere that new PV resources cannot be developed using one-year SREC contracts. Therefore, the IPA's plan to allocate the entire RRB to one-year SREC contracts will likely not result in new solar PV development in Illinois and, therefore, will not further the goals of the Illinois RPS.

In order to address the risks of contract curtailments due to fluctuations in the utilities' load forecasts, we recommend that the IPA explore alternative risk-hedging strategies that could lead to new renewable energy development. For example, the IPA should explore the possibility of using 5-year DG SREC contracts paid through an up-front rebate with appropriate claw-back provisions for non-performance. The IPA should also explore other methods for creating more budget stability, including the possibility of having ComEd and Ameren escrow the portion of this year's RRB necessary to cover future contractual payments, instead of relying on future year budgets. We understand this could lead to the procurement of fewer DG SRECs using the 2015-2016 funds, but the SRECs actually procured would be linked to the development of new

projects, which would further the state’s renewable energy goals and lead to longer-term price stability. To the extent possible, the IPA should strive to administer programs that will lead to the development of new renewable energy systems in Illinois, rather than just provide an additional income stream to projects that have already been built and financed. Doing so would yield a variety of benefits consistent with the goals of the IPA Act, including encouraging resource diversity, advancing price competition and price stability, promoting investment and development, and avoiding the need for new generation, transmission, and distribution infrastructure.¹ Failing to do so will preclude the growth of private investment in this sector, deprive the electric system of significant and measurable benefits, and inhibit the development of a diverse, mature and sustainable renewable energy industry in Illinois.

The Illinois Power Agency’s Proposed Process for Distributed Generation RECs is Overly Complicated and Will Limit Participation

The Illinois Power Agency has proposed using Alternative Compliance Payments from hourly customers to purchase Distributed Generation (DG) resources. (Sec. 8.3 at pages 104-110) The IPA must strive to procure, to the extent possible, at least half of the DG RECs from systems under 25 kW in size and half from systems above 25 kW in size. Contracts for these RECs must be at least 5 years in length and RECs can come from anywhere on the Illinois distribution system. While we agree with the use of hourly funds for the procurement of DG resources, we object to the complicated nature of the process and the lack of recognition of the differences between large and small systems. Particularly, we object to the following items:

¹ 20 ILCS 3855/1-5.

1. The IPA proposes to set benchmarks and judge project bids in two separate categories: systems under 25 kW and systems over 25 kW. (Sec. 8.3.2.2 at pages 107-108) While we agree that the IPA has the statutory requirement to specifically consider the under 25 kW systems separately, nothing precludes the IPA from also creating separate categories within the above 25 kW group. There are marked differences in both the costs and the benefits between a 40 kW system and a 2 MW system, for example, and under the current proposal they would be forced to compete head-to-head. This would likely result in very large 1-2 MW systems dominating the above 25 kW bid group and very few mid-size commercial systems in the market. We already know of real world situations where customers are planning to reduce the capacity of planned systems to 25 kW or below because they fear they won't be able to compete in the 25 kW to 2 MW category. This would not be an economically efficient or desirable outcome of the IPA's procurement process. The IPA Act emphasizes the importance of a "diverse electricity supply portfolio" in helping to meet the Agency's goals. (20 ILCS 3855/1-5(5)) The IPA should include a sub-category for systems 25 kW to 200 kW in order to promote a more diverse and mature renewable energy marketplace in Illinois.

2. The IPA has set a minimum bid requirement of 1 MW in capacity (Sec. 8.3.2 at pages 106-108) apparently to satisfy the statutory language directing the Agency to "solicit the use of third-party organizations to aggregate distributed renewable energy into groups of no less than one megawatt in installed capacity." 20 ILCS 3855/1-75(c)(1) This statutory provision requiring "aggregation" into 1 MW blocks was originally written in the law to relieve administrative burdens on the contracting utilities, but as applied by the IPA in its

Plan it will create the unintended consequence of excluding participants from the market, which will ultimately limit cost effective bids. Specifically, the IPA's proposed minimum bid requirement will limit bids from projects from local developers that don't have 1 MW of capacity under their purview, which will tend to limit competition and increase overall costs. The IPA and the Commission should not interpret this legislation rigidly to require formal "aggregation" before bids are submitted to the Agency. Instead, the Agency could interpret this language to simply award contracts in no less than one MW blocks. This would serve the purposes of relieving the burden on contracting parties, but would not impose unnecessary burdens on bidders in advance of the procurement. It is a basic rule of statutory construction that agencies should seek to interpret ambiguous statutory directives to further the apparent intent of the legislature. In this case, there is no apparent statutory intent to require aggregation in advance of the procurement in a manner that would frustrate customer acquisition, limit the pool of market participants, and increase overall costs for the procurement. Instead the Agency should interpret the law and develop its plan to further the legislative goals of procuring "adequate, reliable, affordable, efficient, and environmentally sustainable electric service *at the lowest cost over time.*" Eliminating the requirement of minimum bids and replacing it with a process to award contracts in blocks of 1 MW capacity would promote the legislative goal of administrative efficiency but will also promote the Agency's goal of procuring resources at the "lowest cost over time" by expanding the pool of eligible bids.

3. The IPA requires a \$10/REC credit deposit for bidders. (Sec 8.3.2.4 at page 109) Coupled with the Agency's proposed 1 MW minimum bid requirement, this ultimately means that

project developers will be required to come up with a deposit of approximately \$50,000 per bid. ELPC has heard from stakeholders that a \$50,000 bid deposit may be prohibitive for smaller participants in the market and may have the unintended consequence of limiting bids from local developers. Limiting bids from these participants could have the unintended consequence of again limiting supply, reducing competition, and potentially increasing prices. We suggest further discussion and comment regarding the appropriate bid deposit requirement in order to appropriately limit speculative bidding while also promoting maximum participation from the market.

In addition to the Objections discussed above, ELPC respectfully requests that the Final Commission Order and approved Plan clarify the following items:

1. The Illinois Power Agency has suggested that they will not allow speculative bidding when procuring DG RECs, meaning that projects will have to be identified in the bid. (Sec. 8.3.2.2 at pages 107-108). The Plan includes several examples of the types of evidence bidders may be able to use to show projects aren't speculative, but it does not definitely identify the level of evidence that will be required. (Sec. 8.3.2.2 at page 108) The IPA should either definitively say which of these pieces of documentation will be accepted as proof, or delineate the process for determining the appropriate documentation.
2. The Illinois Power Agency suggested that DG projects need only start providing RECs sometime during the 2015-2016 procurement year. (Sec. 8.3.2.2 at page 108) If systems do not start providing RECs during that timeframe, the IPA suggests that the "bidder's contract volume will be reduced accordingly by the amount allocated to that system or

the contract will be cancelled.” (Sec 8.3.2.2 at page 108). We believe the IPA intended that contracts would be “cancelled” only if there is only one project in the bid and it fails to deliver. In all other situations, we believe it would be appropriate that the contract amount would only be reduced, but not cancelled. The plan, however, does not clearly indicate this intent and seems to suggest that the choice of reducing or canceling a contract is at the discretion of the IPA. This should be clarified.

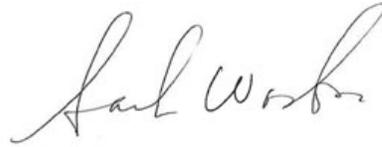
3. The IPA suggests that winning projects need only start to supply RECs sometime during the 2015-2016 procurement year to qualify, and that contracts will be 5 years in length. Bidders will be asked to provide in their bids the annual and 5 year total REC amounts for each project. (Sec. 8.3.2.2 at page 108) What is unclear is whether the 5 years is measured from the beginning of the 2015 procurement year or when the system starts to produce RECs. It is clear that systems will only be paid for their RECs when they become operational and are registered with PJM-GATS or MRETS. However, it is unclear whether the contract term will last beyond the 2019 procurement year if systems begin delivery of RECs late in the 2015 procurement year. The Plan should clarify this issue one way or the other. If payment will not be made past the 2019 procurement year, the IPA should clarify that non-operational systems at the time of bid will have lower first year (PY 2015-2016) REC bids than in other years.

CONCLUSION

ELPC requests that the IPA’s Final Procurement Plan be modified and clarified consistent with these objections.

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Respectfully submitted,



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