

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

Illinois Power Agency

Docket No. 14-0588

**Petition for Approval of Procurement
Plan.**

**VERIFIED REPLY OF AMEREN ILLINOIS COMPANY
TO RESPONSES TO OBJECTIONS
TO THE ILLINOIS POWER AGENCY'S PROPOSED PROCUREMENT PLAN**

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Ameren Illinois Company (“Ameren Illinois”) hereby submits to the Illinois Commerce Commission (“Commission”) its Reply to the Responses to Objections (“Reply”) to the Illinois Power Agency’s (“IPA”) Proposed Procurement Plan (“Plan”).¹

I. CAPACITY (IPA)

The IPA clarifies that while the procurement of Ameren Illinois capacity for 2016/2017 is planned, the IPA is seeking only Commission pre-approval for a 2017/2018 procurement should conditions warrant and the IPA, Staff of the Illinois Commerce Commission (“Staff”) and the Procurement Monitor reach consensus in 2015. The IPA offers to adopt an alternative proposal where Ameren Illinois and the Procurement Administrator are added to the list of parties that will determine whether a 2017/2018 capacity procurement is warranted in 2015. (IPA Response at 30-32.)

Ameren Illinois appreciates the willingness of the IPA to adopt the alternative proposal, but continues to support Ameren Illinois’ primary proposal that the IPA procure 25% of capacity for 2017/2018 without the need for consensus (based on the belief that benchmarks already provide the desired contingency). The IPA has yet to credibly dismiss Ameren Illinois’ recommendation that the better play is to procure 25% of capacity for 2017/2018 without the need for any consensus. If the Commission disagrees, consistent with the alternative proposal, Ameren Illinois and the Procurement Administrator should be added to the list of parties who will decide whether to have a 2017/2018 procurement.

II. SREC PROCUREMENT FOR ELIGIBLE RETAIL CUSTOMERS (IPA, ELPC AND ISEA)

The IPA continues to advocate a one-year Solar Renewable Energy Credit (“SREC”) procurement which is contrary to the position of Ameren Illinois, that a procurement is

¹ As noted throughout this docket, Ameren Illinois’ silence on an issue should not be construed as agreement with any other party’s position on that issue.

unnecessary because the total Renewable Energy Credit (“REC”) target has been exceeded with existing contracts and therefore an additional and unnecessary procurement for the SREC subtarget would increase costs to eligible retail customers. Ameren Illinois’ Objection stated that the IPA previously recommended against a subtarget procurement in the 2013 Procurement Plan (Docket No. 12-0544). (Ameren Illinois Objection at 5-6.) However, the IPA disagrees by stating the current Plan is different because of perceived changes in switching certainty between Docket 12-0544 and the current Plan. The IPA also states that it is confident the Renewable Resources Budget (“RRB”) is sufficient to support a one-year SREC procurement for 2015/2016. Finally, the IPA states it is a requirement of the statute to procure REC subtargets regardless of whether the total REC target has been exceeded. (IPA Response at 35-36.)

The Environmental Law and Policy Center (“ELPC”) echoes much of the sentiment put forth by the IPA. ELPC further states that RRB has “always” been used by the IPA to determine whether subtargets should be pursued. (ELPC Response at 5.)

Illinois Solar Energy Association (“ISEA”) also reiterates many of the issues discussed by the IPA and ELPC. However, ISEA states that the proposed one-year SREC procurement should not impact costs to “retail customers” because the RRB represents funds previously collected by Ameren Illinois. (ISEA Response at 3-4.)

Ameren Illinois continues to support its position that a one-year SREC procurement is not necessary given that existing contracts cause the total REC target to be exceeded. Contrary to the statements of ELPC, the IPA has not always used the RRB pertaining to eligible retail customers as the deciding factor regarding a procurement of subtarget quantities. For example, Docket No. 12-0544 recognized that the total REC target had been exceeded and even though RRB dollars remained, no procurement of subtarget quantities was pursued.

In addition, ISEA is incorrect in its assertion that a one-year SREC procurement would not increase costs to eligible retail customers. ISEA has confused the renewable funds Ameren Illinois previously collected from customers taking real time pricing supply as compared to the forward looking RRB, which pertains to eligible retail customers.

To explain further, customers taking supply under real time pricing are required to pay for renewables based on the Alternative Compliance Payment (“ACP”) rate. This rate is calculated by Staff based on IPA procurements associated with eligible retail customers. Ameren Illinois has collected approximately \$5.5 million as of May 31, 2014 from real time pricing customers and holds these funds in an account pending future REC procurements by the IPA (note the Plan proposes previously collected ACP funds be used for a 2015 DG REC procurement discussed later in this Reply). Regarding the REC requirements for eligible retail customers, the statute dictates the methodology by which yearly REC quantities (subdivided into a total REC target and subtargets for wind, solar and DG RECs) and the yearly RRB are calculated. To determine the remaining balance under the RRB, the REC dollars associated with existing eligible retail contracts are netted against the RRB with the result representing the remaining RRB for each year of the planning horizon. The process is similar for the total REC target; the quantity of existing eligible retail contracts is netted against the total REC target with the result being the remaining total REC target for each year of the planning horizon (this same calculation also occurs for yearly subtargets). For 2015, the total REC target and the wind REC subtarget have been exceeded, whereas the solar PV and DG REC subtargets have a balance. The RRB shows a balance of approximately \$3.8 million. This balance has not been previously collected by Ameren Illinois and would only be charged to eligible retail customers if the IPA pursued a procurement of one-year SRECs as proposed for 2015/2016 (or an alternate subtarget

procurement in 2015/2016 like that proposed by ELPC and ISEA and discussed later in the Reply). More specifically, only after contracts were executed and RECs were retired consistent with contract terms would Ameren Illinois pay suppliers and then subsequently recover costs from eligible retail customers. The conclusion is that an additional procurement of one-year SRECs (or any RECs for that matter) by the IPA for 2015/2016 would result in additional costs to eligible retail customers.

Regarding the statutory argument put forth by those opposed to the position that a one-year SREC procurement should not be pursued, Ameren Illinois disagrees that subtargets represent clear requirements when the total REC target has been exceeded. Furthermore, Ameren Illinois contends that the current circumstances in this Plan are similar to those seen in Docket 12-0544. As Commonwealth Edison (“ComEd”) correctly states, “in Docket No. 12-0544, the IPA characterized these subtargets as aspirational goals, a determination in which the Commission concurred.” (ComEd Response at 10; Docket 12-0554, Final Order at 53, 109-110.) Ameren Illinois believes the position of those advocating a one-year SREC procurement is akin to spending money just because it is available. Further, since the statute does not provide a clear requirement that subtargets be procured under the current circumstances, Ameren Illinois believes the benefit should accrue to customers in the form of cost savings.

Curiously, the IPA, ELPC and ISEA all argue that subtargets are statutory requirements, however collectively they have offered two different proposals which satisfy only one of the two subtarget requirements, which only serves to place in doubt the validity of their claims. First, the IPA proposes a one-year SREC procurement for eligible retail customers with no procurement for DG RECs. The rationale for not pursuing a DG REC procurement is that changing load requirements could result in a future RRB being exceeded which would lead to

curtailment of the existing Long Term Purchase Power Agreements (“LTPPAs”) from 2010. (IPA Plan at 100.) Second, ELPC and ISEA propose a five-year DG REC procurement for eligible retail customers with no procurement for one-year SRECs. The rationale for not pursuing a one-year SREC procurement is that it does not represent a good use of the RRB and a better use of RRB should be for DG RECs which they believe would entice new construction, especially in Illinois. (ELPC Objection at 2-3 and ISEA Objection at 3-4.) While both proposals are based on a perception of risks and rewards, the point is that they do not meet the same statutory criteria used by IPA, ELPC and ISEA when objecting to the proposal of Ameren Illinois.

Regarding the IPA’s implication that switching has become more certain between now and a couple of years ago, Ameren Illinois believes that considerable switching uncertainty remains. This is evidenced in the differences between the base low and high forecast scenarios for the Renewable Portfolio Standard (“RPS”). Contrary to the assertion by the IPA that uncertainty is applicable only to the mid-term and beyond, uncertainty applies to the short-term as well. As an example, the low RPS forecast scenario has a 2015/2016 RRB of \$8.7 million and existing contracts are worth \$9.2 million. In other words, the low RPS forecast scenario suggests deviations in future switching when compared to the base RPS forecast could cause the RRB to be exceeded in 2015/2016 through existing contracts and without consideration for incremental contracts associated with the proposed one-year SREC procurement (or any other incremental REC procurement). To be clear, Ameren Illinois is not suggesting that the low RPS forecast scenario should be used in determining IPA procurement quantities. On the contrary, the statute is clear that the base RPS forecast should be used for procurement purposes and this forecast should be forward looking based on the best information available at the time of forecast

development. But the point is that uncertainty surrounding switching is one of the considerations as to whether subtargets should be pursued. Furthermore, to the extent that a one-year SREC procurement is implemented and switching is higher than the base forecast, remaining eligible retail customers would bear a larger share of the incremental cost of the proposed one-year SREC procurement.

In summary, the total REC target for eligible retail customers has been exceeded with existing contracts. Although SREC and DG REC subtargets remain, the statute does not require the IPA to pursue a one-year SREC procurement. The IPA and Commission reached this same conclusion in Docket No. 12-0544 and this prior decision is instructive to the current scenario. Further, if the IPA were to pursue a one-year SREC procurement for 2015/2016, costs to eligible retail customer would increase and the impact to remaining eligible retail customers could be magnified if switching deviates from the base forecast. The totality of these issues causes Ameren Illinois to reach a conclusion that a one-year SREC procurement should not be pursued.

III. NEW VS. EXISTING RECS (ELPC AND ISEA)

ELPC and ISEA responded to a brief statement in the Ameren Illinois Objection that the proposed one-year SREC procurement (which Ameren Illinois opposes pursuant to Section 2) was unlikely to create new construction within Illinois. (ELPC Response at 6 and ISEA Response at 4.)

To be clear, Ameren Illinois is not advocating any procurement design that favors new versus existing RECs. On the contrary, several parties have correctly identified the statutory basis that makes clear such a procurement design should not be pursued. Staff Response at 4-5, IPA Response at 37, and ComEd Response at 12. Ameren Illinois agrees with such sentiments. The intent of the aforementioned brief comment was to point out to the extent new construction is one of the considerations pertaining to procurement; a one-year SREC procurement is unlikely

to be successful. The intent of Ameren Illinois is not to advocate a procurement design that favors new RECs over existing RECs or vice versa.

IV. ALTERNATIVE TO ONE-YEAR SREC PROCUREMENT (ELPC AND ISEA)

As an alternative to a one-year SREC procurement for eligible retail customers, ELPC and ISEA advocated in their Objections that the remaining RRB should be used for a DG REC procurement of new facilities with contract terms of five years. If such a procurement was not possible in 2015/2016, ELPC and ISEA advocate carrying forward any remaining RRB for use in future years and/or using up front incentives with claw back provisions which provide protection against non-delivery. (ELPC Objection at 3-4 and ISEA Objection at 2-4.)

In addition to Ameren Illinois, several parties responded in opposition to the alternative proposal. (Staff Response at 4-8, ComEd Response at 9-12, IPA Response at 37.) The primary reasons for opposition included future switching uncertainty which could result in five year contracts exceeding the future RRB and a lack of statutory compliance associated with the proposal. Ameren Illinois agrees with the responses of the aforementioned parties and recommends the Commission reject the proposal.

To be clear, Ameren Illinois opposes the procurement of 2015/2016 SRECs for eligible retail customers described in Section 2. Further, Ameren Illinois opposes the alternative proposal described in this section associated with new DG RECs. Ameren Illinois recommends no procurement of RECs for eligible retail customers in the Plan and associated with the five year planning horizon.

V. DISTRIBUTED GENERATION REC PROCUREMENT USING ACP FUNDS (IPA)

The IPA disagrees with the Ameren Illinois' recommendation that Alternative Compliance Payment ("ACP") funds previously collected by Ameren Illinois from real time

pricing customers be pooled with IPA funds under the Renewable Energy Resource Fund (“RERF”) for use in a bundled IPA procurement, which would then result in the IPA being the sole contractual counterparty with suppliers. The IPA suggests a better solution may be a legislative change. (IPA Response at 45.)

Ameren Illinois understands that its proposal could be viewed as a novel interpretation of the Public Utilities Act (the “PUA”) with which the Commission would need to concur if it approves Ameren Illinois’ proposal going forward. However, the interpretation comports with the plain language of the PUA and Ameren Illinois cannot identify any party that would be harmed by pursuing this novel approach. On the contrary, the proposal appears to help all parties through a simplification of administration, while also creating a cleaner line of sight with potential suppliers. Further, the statutory requirements could be addressed via the implementation process where such matters fall under the authority of the IPA and Commission.

The PUA’s requirements could be satisfied by language in the Request for Proposals, which specifies the procurement is intended to address both the DG REC requirements under RERF and Ameren Illinois collected ACP funds. More importantly, the IPA contracts could have a mechanism by which RECs are retired in a manner that demonstrates statutory compliance for both RERF and funds collected through Ameren Illinois ACP. Another example is that the IPA could periodically make public the quantity of retired RECS. Regardless of the mechanism used, the administrative and operational benefits of combining the funds are significant and the fact that no party is harmed further advocates for implementation of the proposal.

Ameren Illinois recognizes the arguments of others that claim to be grounds for rejection of the proposal. For example, ELPC states in reference to ACP funds that the statute is clear “the

Agency shall increase its spending on the purchase of renewable energy resources to be procured by the electric utility for the next plan year.” 20 ILCS 3855/I-75(c)(5). ELPC argues that this citation makes clear the intent is for the utility to be the contracting entity with the renewable resources provider. (ELPC Response at 7.) Contrary to ELPC claims, this citation does not provide clear intent because it states the IPA is to increase its spending. Furthermore, the citation says “...renewable energy resources to be procured by the electric utility...” but since the electric utility is prohibited from leading such a procurement, the true meaning of the citation is that the IPA will procure renewable energy resources on behalf of the electric utility. Taking both phrases of the citation in the context described above, the intention appears to be that the IPA should use ACP funds collected by the electric utility to increase its spending on renewable energy resources and then procure on behalf of the electric utility. In addition, Section 1-56 of the IPA Act pertaining to RERF is also instructive when it states that “the Agency shall procure renewable energy resources at least once a year in conjunction with a procurement event for electric utilities to comply with Section 1-75 of the IPA Act and shall, whenever possible, enter into long-term contracts on an annual basis for a portion of the incremental requirement for the given procurement year.” A key phrase in this citation is that the IPA is to procure using RERF in conjunction with the electric utility ACP requirements under Section 1-75. A review of Merriam-Webster on-line dictionary, shows that conjoin means “to join together.” See <http://www.merriam-webster.com/dictionary/conjoin>. In addition, the implication of this citation is that the Agency is to enter into contracts under the combined procurement and where no mention is made of the electric utilities entering into such contracts. In summary, a thorough review of the pertinent sections of the Act associated with RERF and ACP provides further

rationale for adoption of the Ameren Illinois proposal that the funds should be pooled in a single IPA procurement and where the IPA is the sole contractual counterparty with suppliers.

In summary, Ameren Illinois' proposal has merit in that it simplifies administration and operations while also providing a clearer and less confusing procurement for the IPA and potential suppliers. The renewable funds under the jurisdiction of the IPA (RERF) are significantly more when compared to those currently held by Ameren Illinois awaiting an IPA procurement (in excess of \$128 million RERF vs. about \$5.5 million ACP). Combining ACP funds into a single IPA procurement saves all parties time and cost and Ameren Illinois is aware of no party that would be harmed. Further, a thorough review of the statute arguably indicates that our proposal appears to be consistent with the intent of the statute. To the extent that any statutory concerns remain, they can be resolved through mechanisms addressed in the IPA's contract or through the periodic release of public information from the IPA that demonstrates compliance. These implementation issues fall under the authority of the IPA and Commission. Ameren Illinois therefore reiterates its recommendation that the ACP funds be comingled with RERF for purposes of the Supplemental PV Procurement and where the IPA is the sole contractual counterparty with suppliers.

VI. FULL REQUIREMENTS (IPA)

IPA states that "ICEA recommends conducting the pilot only for ComEd. While the IPA again believes any partial implementation of full requirements is not justified, the pilot may be incomplete if it does not include default service of Ameren Illinois. The differences between the PJM and MISO markets may be significant and if this type of pilot were to be conducted, it would be a lost opportunity not to include Ameren Illinois customers." (IPA Response at 10.)

Ameren Illinois is very concerned about this new development—and it should be rejected. The possibility of Ameren Illinois being included in a full requirements pilot has never

been discussed in this proceeding, the draft Plan, in the IPA workshop held over the summer or any previous discussions with other interested parties. The Illinois Competitive Energy Association (“ICEA”) has made it clear that its proposed pilot pertains only to ComEd. (ICEA Response at 1.) The Retail Energy Supply Association (“RESA”) and Exelon Generation (“ExGen”) have advocated the same position. However, the IPA now asserts that Ameren Illinois eligible retail customers should be considered as a potential participant in any pilot program. The IPA provides no rationale other than a vague statement about potential “lost opportunities.” (IPA Response at 10.)

Ameren Illinois has remained silent on this matter within this proceeding since proposals have never mentioned the possibility of Ameren Illinois eligible retail customers being included. But now that the IPA has proposed the possibility, Ameren Illinois is compelled to address concerns.

While Ameren Illinois takes no position at this time regarding the IPA analysis associated with price premiums or prior analysis associated with other interested parties, Ameren Illinois supports the IPA recommendation to omit full requirements and load following products from this Plan as it pertains specifically to Ameren Illinois load.

The primary concern of Ameren Illinois is that considerable lead time would be required to more fully define the product so that it meets all MISO operational and tariff requirements and also to ensure that contractual and administrative responsibilities are clear. IPA appears to recognize this as well when it reiterates its opinion that no full requirements pilot be included in the Plan, but to the extent the Commission desires to include a full requirements pilot, it should not be included until at least 2016/2017. (IPA Response at 9.) Ameren Illinois strongly agrees that 2016/2017 is the earliest such a pilot could be implemented, but to the extent the

Commission desires to include Ameren Illinois in a pilot for 2016/2017, such a decision is better suited for a future Plan as opposed to this Plan.

Ameren Illinois will not provide an exhaustive list of implementation concerns at this time. But to provide a sample of the issues that would need to be addressed, full requirements products specific to Ameren Illinois load could involve registration changes at MISO, system upgrades for Ameren Illinois' Meter Data Management Agent ("MDMA"), changes in forecasting protocols and how this information is shared with potential suppliers and submitted to MISO for each operating day, determination of scheduling protocols with MISO and with suppliers, development of separate settlement and invoice provisions, consideration of how to address Auction Revenue Rights ("ARRs") and many other issues. Depending on work requirements, it is possible Ameren Illinois could see increased systems costs and additional staff needed to accommodate incremental responsibilities associated with contract administration, settlements, forecasting, invoice preparation and check out. All of this would be done for a very small portion of Ameren Illinois load. For example, Ameren Illinois eligible retail load currently comprises only about 17% of delivery service load and the pilot proposes a 25% allocation to full requirements products. In other words, any pilot proposal which would incorporate Ameren Illinois eligible retail customers would account for approximately 4% of Ameren Illinois delivery service load.

In addition, prior experience with full requirements associated with the 2006 Supplier Forward Contracts ("SFCs" or "Auction Contracts") strongly suggests that numerous contractual and implementation issues would need to be addressed over a considerable time and through multiple workshops and other forms of communication between interested parties. These

numerous issues have not been fully vetted and therefore any proposal simply could not be implemented in 2015/2016.

In summary, Ameren Illinois strongly opposes being included in a 2015/2016 full requirements pilot. This decision is not driven by whether or not price premiums to eligible retail customers are justified or not. Ameren Illinois takes no position on this matter at this time. Instead, the operational requirements with MISO are uncertain and would take considerable time and effort to understand them let alone make changes which would allow pilot implementation. Without such consideration a pilot could lead to violation of mandated MISO tariff and business practices in addition to settlement inaccuracies. In addition, the impact to Ameren Illinois administration and operations could be significant and assessment of this impact would take time; the pilot will certainly be unsuccessful. Finally, any investigation of these aforementioned issues would be predicated on the full requirements product being fully defined. That has yet to be done. The Commission should therefore reject any proposal that Ameren Illinois implement a full requirements pilot in 2015/2016.

VII. LETTERS OF CREDIT (IPA)

Subject to Commission approval, the IPA and Ameren Illinois share the same opinion that the two parties will enter into a side agreement in 2015/2016. Funds from the pre-bid letter of credit will be available to the IPA to meet any shortcoming in supplier fees only to the extent that funds are not required by Ameren Illinois (on behalf of customers) under a scenario where suppliers fail to execute contracts after Commission approval of IPA procurement results. (IPA Response at 46.)

VIII. TECHNICAL CORRECTIONS (IPA)

Ameren Illinois appreciates the additional explanations provided by the IPA and has no further comment at this time. IPA Response at 46-47.

For clarity and at the request of certain parties, Ameren Illinois would also like to make clear that the amounts set forth in the budgets identified in Table 7-2 of the Plan (found on page 79) reflect the total budgets for both the gas and electric portions of the proposed behavioral modification programs. The gas portion for both programs, which represents the budget approved for Ameren Illinois' Section 8-104 gas portfolio, equals \$2,244,375. Accordingly Ameren Illinois seeks approval of only the electric portion of either of these budgets, or \$2,311,065 for Home Energy Reports or \$2,244,375 for Behavioral Energy Efficiency.

IX. APPLICABLE ACP FUNDS AVAILABLE FOR DG REC PROCUREMENT (COMED)

Ameren Illinois agrees with ComEd that page 3 of the Plan should more specifically identify the dollars available for a DG REC procurement as of a specified date. (ComEd Response at 14.) Ameren Illinois supports the language as provided by ComEd in its Response and where the only edit pertaining to us would be that available funds for Ameren Illinois are \$5,556,580 as of May 31, 2014 (note that unlike ComEd, no past curtailment of LTPPAs has occurred for Ameren Illinois).

X. ENERGY EFFICIENCY AS A SUPPLY RESOURCE ("EEAASR") (AG; COMED; COMVERGE; CUB; ELPC; IPA AND STAFF)

IPA has asked the Commission to approve, for the first time ever,² a procurement of energy efficiency as a supply resource, otherwise known as EEAASR. IPA makes two proposals for EEAASR procurement: (1) a primary proposal, which would include a separate procurement event that would follow the traditional supply procurement process under Section 16-111.5; and (2) an alternative proposal, which would include EEAASR procurement as part of the RFP process conducted by the utilities pursuant to Section 16-111.5B. However, as more fully

² As explained by ComEd and Ameren Illinois in their respective filings, the IPA previously requested to include EEAASR in its 2011 Plan, but the Commission denied the request. (See ICC Docket No. 10-0563, Final Order (Dec. 21, 2010) at 43.)

explained in Ameren Illinois' Objections and Response to Objections (as well as in ComEd's and Staff's filings), energy efficiency as a supply resource is not a product that the IPA can procure and, in any event, both proposals should be rejected because no party has provided any evidence or analysis that spending the time and resources trying to address the legal and factual deficiencies with EEAASR procurement will lead to any additional benefits to customers.³ While CUB, ELPC, AG, IPA, and Comverge have all weighed in supporting EEAASR procurement, each relies on various opinions as to why EEAASR procurement "should" be adopted as a policy matter (even though the AG acknowledges that there are significant issues that still need resolving). But opinions are not evidence, and these parties gloss over the critical, threshold question of whether EEAASR "can" be approved under the law or "can" even be implemented in practice. When the Commission considers the operative law and relevant facts, it becomes clear that EEAASR procurement should not be included in the Plan in any form.

A. The Primary Proposal

ComEd, Staff, and Ameren Illinois have each objected to the inclusion of the EEAASR primary proposal on both legal and factual grounds. The Responses of CUB, ELPC, AG, and IPA arguing in favor of the primary proposal have provided the Commission with nothing to overrule those objections.

1. Standard Wholesale Product

EEAASR procurement is not authorized under Section 16-111.5, as "neither the PUA nor the IPA Act refers to a supply product called 'energy efficiency as a supply resource.'" (Staff Objections at 4.) The Commission recognized as much when rejecting the IPA's last attempt at

³ (See e.g., Ameren Illinois' Objections at 8-14; Responses at 4-1; ComEd Objections 3-21; Staff Objections at 3-7.) Further, as explained below, Ameren Illinois may be open to exploring future proposals for targeting the existing RFP process to procure cost-effective peak energy savings, provided that it would not result in energy efficiency being procured not procured as a supply resource.

EEAASR procurement in the 2011 Plan. *See* ICC Docket No. 10-0563, Final Order (Dec. 21, 2010) at 43.

IPA argues that it has addressed the Commission's concerns by specifying quantity and term of the energy efficiency to be procured (IPA Response at 18) and by explicitly stating that existing Section 8-103 programs would be presumed ineligible for participation for procurement. But IPA's self-imposed limitations (summarily identified through its comments, but without any change to the Plan language itself) are not enough. The Commission specifically found that, “[e]ven if the quantity and term were specified, it is difficult to see how EEA[AS]R can be considered ‘a standard wholesale product’ as required by 16-111.5(b)(3)(iv) of the PUA.” *See* ICC Docket No. 10-0563, Final Order (Dec. 21, 2010) at 43 (emphasis added).

The IPA further argues in favor of EEAASR procurement by stating energy efficiency is being procured “in a number of venues...[and with] the rollout of ‘smart meters’ across ComEd and Ameren [Illinois’] service territory, the IPA believes the market for demand-side products will continue to grow and evolve.” (IPA Response at 19.) These arguments are similar to CUB's unsupported belief that “energy efficiency can easily be measured through advanced metering infrastructure.” (CUB Response at 3.) Both IPA and CUB would like the Commission to agree with their beliefs and then find that EEAASR fits within the definition of a “standard wholesale product.” But procurement under Section 16-111.5 cannot be approved on a mere belief that a product falls under the purview of the PUA or; approval must be done based on evidence, analysis and only if “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.” 220 ILCS 5/16-111.5(d)(4).

Finally, IPA asserts that nothing in Section 5/16-111.5 or Section 5/16-111.5B precludes procurement of EEAASR, and so the Commission is unrestrained from approving it. The plain language of the PUA belies IPA's position. Section 5/16-111.5B makes clear what products can be procured and a supply product called "energy efficiency as a supply resource" is not among them. (Staff Objections at 4 (citing Section 5/16-111.5(b)(3)(ii) and (iv)).) The Commission already acknowledged this fact when it rejected EEAASR the last time it was proposed in 2010.⁴ Moreover, Section 5/16-111.5B, which is tellingly titled "provisions relating to energy efficiency procurement" does not authorize energy efficiency as a supply resource. Instead, Section 16-111.5B sets forth requirements for energy efficiency procurement that the utilities (consistent with Section 8-103), IPA and the Commission must follow when approving the Plan under Section 16-111.5. For example, Sections 5/16-111.5B(4)-(5) state:

(4) The Illinois Power Agency shall include in the procurement plan prepared pursuant to paragraph (2) of subsection (d) of Section 16-111.5 of this Act **energy efficiency programs and measures it determines are cost-effective** and the associated annual energy savings goal included in the annual solicitation process and assessment submitted pursuant to paragraph (3) of this subsection (a).

(5) Pursuant to paragraph (4) of subsection (d) of Section 16-111.5 of this Act, the Commission shall also approve the energy efficiency programs and measures included in the procurement plan, including the annual energy savings goal, **if the Commission determines they fully capture the potential for all achievable cost-effective savings, to the extent practicable, and otherwise satisfy the requirements of Section 8-103 of this Act.**

In the event the Commission approves the procurement of additional energy efficiency, it shall reduce the amount of power to be procured under the procurement plan to reflect the additional

⁴ The IPA asserts that the Commission has "since stated that such express authorization is not required for a product to be considered a 'standard wholesale product under Section 111.5(b)(3)(iv)" citing the December 18, 2013 Final Order in Docket No. 13-0546. However, a review of that Final Order shows that the Commission was not resolving whether energy efficiency – something that by definition does not include the "wholesale" of power – constituted a "standard wholesale product. See ICC Docket No. 13-0546, Final Order (Dec. 18, 2013) at 94.) Accordingly, IPA's cited support does not advance its theory.

energy efficiency and shall direct the utility to undertake the procurement of such energy efficiency, which shall not be subject to the requirements of subsection (e) of Section 16-111.5 of this Act. The utility shall consider input from the Agency and interested stakeholders on the procurement and administration process.

(emphasis added.)⁵

Thus, the IPA, the Commission and the utilities are each limited by these provisions of the PUA when it comes to the “procurement of energy efficiency.” And the plain language of the Sections set forth above and the provisions of Section 5/16-111.5B do not allow procurement of EEAASR.

CUB’s, ELPC’s and AG’s policy-based arguments for finding that EEAASR meets the definition of “standard wholesale product” equally fail. CUB effectively ignores Illinois law and looks to the PJM and MISO capacity markets, which provide for energy efficiency. (CUB Response at 4-5.) But Illinois law does not take its definition of “standard wholesale product” from PJM, or MISO and as noted above, the PUA precludes EEAASR procurement. The AG raises certain questions regarding procurement of “negawatts” but then acknowledges that those questions preclude approval of EEAASR procurement in this docket because there are “very significant and potentially difficult issues to resolve, and mechanisms to be created, to make the IPA electricity procurement of ‘negawatts’ efficient and effective.” (AG Response at 10.) And not a single party has provided the Commission with any specific evidence or analysis that would allow a conclusion that EEAASR procurement, should it be deemed a “standard wholesale product,” would discover cost-effective resources not previously available under traditional energy efficiency frameworks. There has been no showing as to why stakeholders, including utilities, should undertake the additional time and expense of developing, planning and

⁵ The IPA states that Section 111.5B makes “no reference” to Section 16-111.5(b) or the procurement of standard wholesale products, but this too is not accurate. Section 111.5B (5) expressly references and incorporates the Commission’s approval of the “procurement plan,” which necessarily would include standard wholesale products and also indicates the Commission should reduce the amount of power procured by way of the standard wholesale products by the amount of energy efficiency approved.

implementing a new procurement event, nearly all of which would be passed on to consumers without any showing of additional benefits to them by doing so.

For these legal and policy reasons, the Commission should not find EEAASR fits the definition of “standard wholesale product” and should not approve EEAASR procurement.

2. Eligible Retail Customers

Ameren Illinois also objected to the inclusion of the primary proposal for EEAASR procurement because it runs afoul of various statutory limitations concerning customer classes.

Under the PUA, Section 16-111.5B procurement may only be procured from “eligible retail customers.” Because an EEAASR procurement event cannot take place under Section 16-111.5, as discussed above, the IPA’s intent to procure from a wider base would run afoul of the PUA’s requirements. No party has adequately addressed this concern. The AG, for example, acknowledges that there is no statutory authority for an EEAASR procurement from any Illinois electricity customer, rather than from only “eligible retail customers,” but argues for one anyway on policy grounds, claiming that “under a broader 21st century view of [demand side resources], that permits distributed generation and traditional supply to compete on an equal footing outside of the Section 111.5B procurement mechanism,” “where a resource is sited should not matter, so long as the negawatts are somehow made available to the electric system.” (AG Response at 11.) Yet, the AG then concedes that there is not a “mechanism to overcome [the legal restrictions of the PUA and]...the IPA proposal is not yet fully fleshed out and articulated in sufficient detail to know exactly how it might intend EEAASR to work.” (AG Response at 12.) Thus, even the AG appears to agree that the Commission should not approve the IPA’s primary proposal in this docket. As it remains unclear from whom the EEAASR would be procured, the Commission could remove EEAASR from the Plan on this basis, as well.

3. Practical Concerns

As Ameren Illinois previously stated, the Plan does not resolve the many complicated and technical issues that would result from impact of the proposed EEAASR procurement on the other energy efficiency being offered to customers in accordance with the requirements of Sections 5/16-111.5B and Section 5/8-103. For example,

Having energy efficiency be both a demand side management resource and supply resource would require yet another planning, implementation and verification framework subject to the rules of supply, which could potentially include stricter credit requirements, non-delivery penalties, near-immediate verification of peak period savings and the use of “gross” savings instead of “net” savings. Additionally, the Plan provides no detailed analysis as to how the EEAASR procurement would impact the planning, savings, cost-effectiveness and implementation of the currently offered energy efficiency programs, each of which is important given the requirements (including savings requirements) imposed on the utilities under Sections 5/8-103 and 5/16-111.5B.

(AIC Objections at 12.) These stated concerns have been largely left unrebutted. Yet they have sweeping implications for a range of Ameren Illinois’ planning and contracting responsibilities on the supply side (e.g., what “rules” apply), as well as implementation considerations of existing energy efficiency programs in light of the unknown impact that any EEAASR procurement would have on achieved savings (e.g., customers may only choose to participate in either the EEAASR procurement or the Section 8-103 programs). Also left out of the policy rhetoric in favor of approval is any discussion of how EEAASR would overlap with existing programs (even if the programs are different) in terms and how they would be timely procured, implemented, evaluated, measured or verified in any meaningful way. Nor has a single party provided the Commission, in the face of the litany of legal and factual concerns, any counter-analysis that could overcome these concerns and provide a basis for approval. Indeed, even in the rush to get the

concept approved, both IPA and CUB acknowledge the significant issues that require resolution before a procurement event can even take place. (IPA Plan, Section 7.1.4 at 71; CUB Objections at 5-6.) In essence, the parties supporting EEAASR ask the Commission to approve EEAASR procurement *now* and leave it to the parties to figure out how it works *later*. That is neither allowed under the PUA (which requires consideration of factors *before* approval, *see* Section 16-111.5(d)(4)) nor a workable approach in practice, particularly because it is doubtful that some of these issues *can* be resolved sufficiently to allow for EEAASR procurement, contracting, implementation, evaluation, measurement or verification to take place. The Commission should reject the EEAASR proposal for all of these reasons too.

B. The Alternative Proposal

CUB, ELPC, AG, IPA, and Comverge each support the IPA's alternative proposal in the event that the primary proposal is not adopted. Their rationale for doing so largely mirrors the support for the primary proposal, which fails for the same reasons stated above. Staff, however, proposes its own alternative (addressed below) that basically would tweak the existing Section 16-111.5B RFP process, but would still leave many questions unanswered. ComEd agrees with Ameren Illinois that no EEAASR procurement should be approved in the Plan, but is open to spring workshops to discuss the various concerns raised in this docket. For the reasons stated above, Ameren Illinois continues to oppose the inclusion of the alternative EEAASR procurement proposal, but notes that it would participate in any Commission-ordered workshops on the exploration of alternative proposals for future dockets. At this time, however, Ameren Illinois does not believe those workshops should be ordered as there has been no showing by any

party justifying the need to spend the considerable time and resources it will take to address the many, significant outstanding issues with EEAASR procurement.⁶

Notably, Staff, and now the IPA, has expressed support for modifying the Section 16-111.5B RFP process to specifically seek out targeted energy efficiency programs that could identify and demonstrate reductions during peak periods. (Staff Objections at 7; IPA Response at 21-23.) Responding to the concerns stated by Ameren Illinois and others (Ameren Illinois Objections at 13–14), IPA appears to have changed its alternative proposal so that no additional, separate RFP process would be needed; no “additional” financial incentives should be employed; that the rules governing incremental energy efficiency under Section 16-111.5B would apply to the alternative proposal; and the summer “super-peak” blocks identified in its proposal would be the peaks to be pursued. (IPA Response at 21–23.) The IPA’s current position appears to be similar to what Staff suggested, in that it essentially requires only an advertisement in the utilities’ RFPs that they (1) will pay close attention to when third party vendors’ programs are expected to produce energy savings; (2) will take into account intra-day and intra-year differences in expected energy prices when valuing program-induced energy savings; and (3) will take into account the relative reliability with which programs produce energy savings during specific time periods. (Staff Objection at 7.)

If Ameren Illinois’ understanding is correct, then both Staff’s and the IPA’s “alternative proposal” no longer proposes the procurement of energy efficiency *as a supply resource* at all. Instead, the IPA’s alternative would merely promote the targeting of certain peak period energy

⁶ Additionally, the Commission should not approve the concept of EEAASR or order any procurement in this Plan, as suggested by Staff and the AG, and then order the utilities to try and resolve all the outstanding issues prior to the procurement. Ameren Illinois agrees with ComEd that, should the Commission choose to order workshops on this issue, they should be to explore the many issues with an eye towards resolving them for future Plans, not this one.

savings through traditional energy efficiency channels pursuant to Section 16-111.5B.7 On that understanding (and with a clear rejection of EEAASR procurement), Ameren Illinois would be open to exploring the idea of modifying its RFPs for future Plans to target certain peak period savings, either through the Stakeholder Advisory Group or in connection with a workshop process. Any resolved issues could be then be a part of a future proposal by IPA in a future Plan.

1. Incremental Energy Efficiency (“Ee”) (Comed; Elpc; Ipa; Nrdc And Staff)

Natural Resources Defense Council (“NRDC”) and the Environmental Law and Policy Center (“ELPC”) have attacked Ameren Illinois’ inputs into the TRC test, as well as the way in which Ameren Illinois conducted the RFP bid review process. Neither criticism has any merit.

C. TRC Test

The TRC test is a statutorily prescribed mathematic formula that relies heavily on subjective inputs which can change depending on when and how they are calculated. But, importantly, the PUA places the responsibility of conducting analyses, including calculating the TRC test on two parties: the utilities in their submission to IPA, and IPA itself, when preparing its Plan. 220 ILCS 5/16-111.5B(a). Here, both Ameren Illinois and IPA complied with the PUA and conducted their own respective analyses to determine whether a potential program was “cost effective” or not. That parties disagree with the outcome of these independent analyses does not provide an adequate basis to go back, stack the deck in favor of cost-effectiveness, and recalculate TRC so that the “close calls” that did not pass now do.

Yet, now NRDC and ELPC seek to do just that by artificially inflating the “benefits” to include such things as “demand reduction induced price effects” (“DRIPE”), overly inflated

⁷ ELPC and CUB suggest that the IPA directly issue an RFP and procure energy efficiency under Section 16-111.5B. However, such a scenario is not allowed by the Act and would be inconsistent with prior Commission Orders, which provides for the utilities to conduct the RFP and ultimately be the contracting party. See 220 ILCS 5/16-111.5B(a); see also Docket No. 13-0546, Final Order (Dec. 18, 2013) at 148-149.)

“non-energy benefits,”⁸ and marginal line losses. (NRDC Response at 5-8.) These changes, if ordered, would ensure, no doubt, that the “close calls” made by the IPA would become “cost effective” on re-review. But these changes would be inappropriate to order at this time. For example, Ameren Illinois agrees with ComEd’s and Staff’s positions on excluding DRIPE from the TRC analysis because it is not accurately characterized as a societal benefit or a societal cost. Moreover, to the extent there are questions surrounding the TRC analysis, it would be more appropriate and productive for the resolution of these questions (including the topics of non-energy benefits and the use of average line losses v. marginal line losses) to be had at the SAG or during a workshop process where all interested parties can have the time and opportunity to participate, including those utilities and other parties not participating in this docket.

NRDC and ELPC also accuse Ameren Illinois of including “an inflated administrative adder.” NRDC Response at 9. These accusations have no merit. What NRDC characterizes as “inflated,” includes the costs of necessary and important functions like education, marketing, evaluation, measurement and verification, which is also noted by Staff as important cost categories to consider. (Staff Response at 19-20.) Moreover, Ameren Illinois has explained to parties, like NRDC, that certain adders were applied to the costs of running the proposed programs to account for those actions needed to promote the success of the programs. Those adders comprised: Portfolio Administration 5.0%; Evaluation, Measurement & Verification 3.5%; Education 2.5%, and Marketing 2.5%, with the total rounded to 14%. These approximate percentages have been used for years, including in ICC Docket No. 10-0568 (Plan 2 approval); ICC Docket No. 13-0498 (Plan 3 approval docket); ICC Docket No. 12-0544 (2013 IPA Procurement Plan approval); and ICC Docket No. 13-0546 (2014 IPA Procurement Plan

⁸ Ameren Illinois already includes a non-energy benefits adder in its TRC calculation, but NRDC would like to see it increased. (NRDC Response at 8.)

approval). They have been applied consistently, and no party, including NRDC, has ever complained until now.

Moreover, Ameren Illinois uses consistent cost categories and adders for the Section 8-103 and Section 16-111.5B programs. Unlike Section 8-103, which looks to the portfolio level TRC value for planning purposes, for Section 16-111.5B each program is required to pass the TRC test. As a result, costs were moved from the portfolio level when analyzing the Section 8-103 Plan, to the program level for the proposed IPA programs. Also, many of the proposed incremental energy efficiency programs could be characterized as “new,” which means they will likely have significant overhead costs as the program gets up and running. These costs could include working on trade ally networks, developing marketing materials, coordination with other programs, and development and implementation of quality control/quality assurance programs. And for incremental or expanded programs, Ameren Illinois believes that administration costs would stay the same or go up as the first participants in the program are/were the “early adopters,” which take the least amount of education and marketing to gain as participants. These estimated costs categories and considerations are not made up as NRDC seems to suggest, but based on Ameren Illinois’ years of experience working in its service territory delivering energy efficiency to its customers.

NRDC’s other criticisms of costs are overstated, suspect and should be disregarded. For example, for NRDC to suggest to the Commission that Ameren Illinois’ costs to administer, educate, market and evaluate its energy efficiency programs for costs “closer to \$0” suggests a fundamental misunderstanding of what it takes to run and maintain successful energy efficiency programs. NRDC’s suggestion that Ameren Illinois has not considered the incremental costs of running new and expanded programs is flat wrong, as explained above. For NRDC to make

accusations “on information and belief” (when NRDC was a party to the docket) that Ameren Illinois did not apply an administrative adder in its TRC analysis when it submitted its compliance filing in Docket No. 13-0498 undermines NRDC’s credibility. And it is unfortunate that NRDC and ELPC appear to scoff at allowing all interested parties, including those who are not in this docket, the opportunity to address and resolve TRC related issues at the SAG or workshops, with NRDC going so far as to pre-determine them as “unproductive.” (NRDC Response at 6.) If NRDC and ELPC seek to force the Commission’s hand on this issue, then fair consideration of the facts, as explained above, warrants a finding that Ameren Illinois’ administrative costs need no revisiting or revising in this docket as TRC related questions and concerns should be addressed first at the SAG or in workshops.

D. RFP Bid Review Process

Finally, ELPC and NRDC continue to push for an expanded role for interested parties during the RFP bid review process by casting Ameren Illinois as untimely and unwilling to engage. These accusations are also false. Ameren Illinois has a longstanding history of working with stakeholders, including ELPC and NRDC, to get their input on important issues and incorporate their suggestions when appropriate. That approach continued during the RFP bid review process for the Plan. As more fully explained in Ameren Illinois’ Response, Ameren Illinois had stakeholders review the RFP before it went out and sought stakeholder feedback on the programs it was considering for inclusion in its submission to the IPA. (Ameren Illinois Response at 7-9.)

While the whole process was delayed and a bit more streamlined because of the overlap between the Plan 3 approval docket and the RFP bid process for this docket (certain issues relating to the transfer of programs were not resolved until March 2014), at no time did Ameren Illinois ever try to preclude stakeholder review or input. Rather, Ameren Illinois tried to provide

as much time as it could, given the circumstances, while still complying with the requirements of the PUA. The timing issues that arose due to the Plan 3 approval docket will not be present this upcoming year, and Ameren Illinois agrees with Staff that stakeholder input is an important part of the RFP process. However, Ameren Illinois also agrees with Staff that no decision making authority can or should be transferred to the stakeholders and that the Commission should make clear that, ultimately, it is the utilities that have the responsibility to compile and provide the IPA with the submission called for by the PUA. (Staff Objections at 14-15 (noting, among other things, that “Staff also agrees with the IPA that such independent reviewers should have no decision-making authority”).) Accordingly, the Commission need not enter any express order directing a certain kind of engagement or a prescribed methodology for reviewing bids. Ameren Illinois will continue to work with stakeholders (providing more time for review and input, as circumstances allow) to ensure their valued input gets received and, when appropriate, incorporated.

WHEREFORE, Ameren Illinois respectfully requests that the Commission give consideration to the Company’s positions on the issues expressed herein, as well as in Ameren Illinois’ previous filings, and enter a Final Order consistent with Ameren Illinois’ recommendations, as well as such other relief the Commission deems just and equitable.

Dated: October 31, 2014

Respectfully submitted,

The Ameren Illinois Company

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VERIFICATION

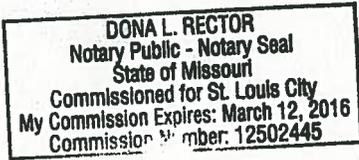
I Richard L. McCartney, certify that: (i) I have read the attached Reply to Responses to Objections; (ii) I am familiar with the facts stated therein; and (iii) the facts stated therein are true and correct to the best of my knowledge, information and belief.

Richard L. McCartney
Director, Power Supply Acquisition

SUBSCRIBED and SWORN to before me this 30 day of October, 2014.

Dona L. Rector

Notary Public



My commission expires: 03/12/2016

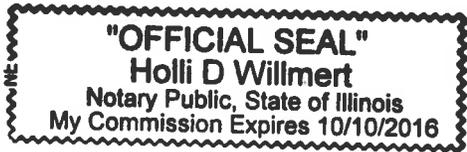
VERIFICATION

I Keith E. Goerss, certify that: (i) I have read the attached Responses to Objections; (ii) I am familiar with the facts stated therein; and (iii) the facts stated therein are true and correct to the best of my knowledge, information and belief.

Keith E Goerss
Sr. Manager Energy Efficiency

SUBSCRIBED and SWORN to before me this 30 day of October, 2014.

Holli D Willmert
Notary Public



My commission expires: 10/10/16

CERTIFICATE OF SERVICE

I, Mark W. DeMonte, an attorney, certify that a copy of the foregoing Verified Reply to Responses to Objections was filed on the Illinois Commerce Commission's e-docket and was served electronically to all parties of record in this docket on this 31st day of October, 2014.

/s/ Mark W. DeMonte _____

Mark W. DeMonte

Attorney for Ameren Illinois Company