

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

Illinois Power Agency)	
)	
)	Docket No. 14-0588
)	
Petition for Approval of Procurement)	
Plan)	

BRIEF ON EXCEPTIONS
OF AMEREN ILLINOIS COMPANY

INTRODUCTION

Ameren Illinois Company d/b/a Ameren Illinois (“Ameren Illinois” or “Ameren”) respectfully submits its Brief on Exceptions with regard to the Administrative Law Judge’s Proposed Order (“ALJPO”) issued in this proceeding on November 13, 2014.

EXCEPTIONS AND PROPOSED SUBSTITUTE LANGUAGE

I. Exception 1: ALJPO Renewable Resources Sections D1 and D8 Contain Misplaced Ameren Illinois and IPA Comments Regarding Pre-Bid Letters of Credit (pages 218 and 271). Ameren Illinois Proposes New Section I for Comments Pertaining to Pre-Bid Letters of Credit and a Commission Order.

ALJPO makes references to Ameren Illinois and IPA's comments pertaining to the pre-bid letter of credit. These references are misplaced within this section and should be stricken in their entirety and for the sake of clarity incorporated into a separate section since pre-bid letter of credit issues apply to *all* procurement events associated with energy, capacity and renewable resources. For simplicity sake, Ameren Illinois would suggest this new section be identified as Section I at the end of the ALJPO. This section would highlight 1) that Ameren Illinois and the IPA reached agreement within the docket regarding how to proceed with pre-bid letters of credit for 2015/2016, 2) that no objections were entered by any parties and 3) the Commission approves their understanding.

Proposed language changes:

A. Strike language on page 218 pertaining to pre-bid letter of credit.

~~Ameren claims the pre-bid letter of credit held by it is used primarily to protect customers from a scenario where winning suppliers do not execute contracts and this in turn results in higher supply costs. The IPA has also identified that it has risk under a~~

~~scenario where winning suppliers do not pay for fees associated with procurement events. The IPA has therefore proposed that Ameren and the IPA have a side agreement whereby under certain circumstances Ameren could draw on funds associated with the pre-bid letter of credit and reimburse the IPA for unpaid supplier fees. (Ameren Objections at 7-8)~~

~~Ameren believes the solution that provides the best credit protection for both Ameren and the IPA is for Ameren and the IPA to hold separate pre-bid letters of credit from suppliers. Ameren says it recognizes that doing so may create additional administrative burden and cost to the IPA and suppliers. Therefore, Ameren does not oppose the IPA proposal; however it desires to make the Commission aware that the pre-bid letter of credit has limited funds available for drawing. Ameren says this is especially pertinent to a scenario where the Commission approves a procurement and winning suppliers fail to execute contracts and fail to pay supplier fees. Ameren believes that the side agreement should state that funds are available to the IPA only to the extent that they are not required by Ameren. (Ameren Objections at 8)~~

B. Strike language on page 271 pertaining to pre-bid letter of credit.

~~Ameren does not oppose the IPA's proposal to include a condition in the pre-bid letter of credit by which the utility could withdraw funds in the event that a supplier fails to pay the supplier fee. Neither does Ameren oppose entering into a side agreement with the IPA which would state that funds are available to the IPA only to the extent that they are not required by Ameren. The IPA agrees that this arrangement is not a perfect credit hedge for the IPA in the event that the Commission approves a procurement and the winning supplier fails to execute contracts and fails to pay the supplier fee. The IPA~~

~~believes, however, that this arrangement does reduce administrative burden and cost for the suppliers and to some less degree for the IPA, and continues to support adoption of its proposal. (IPA Response at 46)~~

C. Insert New Section I - Pre-Bid Letters of Credit

Ameren claims the pre-bid letter of credit held by it is used primarily to protect customers from a scenario where winning suppliers do not execute contracts and this in turn results in higher supply costs. The IPA has also identified that it has risk under a scenario where winning suppliers do not pay for fees associated with procurement events. The IPA has therefore proposed that Ameren and the IPA have a side agreement whereby under certain circumstances Ameren could draw on funds associated with the pre-bid letter of credit and reimburse the IPA for unpaid supplier fees. (Ameren Objections at 7-8)

Ameren believes the solution that provides the best credit protection for both Ameren and the IPA is for Ameren and the IPA to hold separate pre-bid letters of credit from suppliers. Ameren says it recognizes that doing so may create additional administrative burden and cost to the IPA and suppliers. Therefore, Ameren does not oppose the IPA proposal; however it desires to make the Commission aware that the pre-bid letter of credit has limited funds available for drawing. Ameren says this is especially pertinent to a scenario where the Commission approves a procurement and winning suppliers fail to execute contracts and fail to pay supplier fees. Ameren believes that the side agreement should state that funds are available to the IPA only to the extent that they are not required by Ameren. (Ameren Objections at 8)

Ameren does not oppose the IPA's proposal to include a condition in the pre-bid letter of credit by which the utility could withdraw funds in the event that a supplier fails to pay the supplier fee. Neither does Ameren oppose entering into a side agreement with the IPA which would state that funds are available to the IPA only to the extent that they are not required by Ameren. The IPA agrees that this arrangement is not a perfect credit hedge for the IPA in the event that the Commission approves a procurement and the winning supplier fails to execute contracts and fails to pay the supplier fee. The IPA believes, however, that this arrangement does reduce administrative burden and cost for the suppliers and to some less degree for the IPA, and continues to support adoption of its proposal. (IPA Response at 46).

Based on the above, the Commission approves and finds in favor of the Ameren Illinois and IPA compromise. Ameren Illinois and the IPA have reached agreement regarding how to proceed with pre-bid letters of credit for 2015/2016. The two parties have agreed to enter into an agreement in 2015/2016 whereby funds from the pre-bid letter of credit will be available to the IPA to meet a shortcoming in supplier fees, but only to the extent that funds are not required by Ameren Illinois under a scenario where suppliers fail to execute contracts after Commission approval of an IPA procurement.

II. Exception 2: ALJPO Renewable Resources Section D9 Contains Misrepresentation of Ameren Illinois Position Regarding Proposed One Year SREC Procurement (page 274) and the Proposed Order Reaches Incorrect Conclusion. Ameren Illinois Proposes Revised Language and Changes Proposed Order.

The ALJPO states that “the Commission will first turn to the IPA’s proposal for a one-year SREC procurement which is opposed by ELPC, ISEA, and to a lesser degree by Ameren. Among other things, they argue that a one-year SREC procurement will do

little to encourage the development of new solar facilities in Illinois. They also suggest it is inconsistent with the IPA's other procurement activities." (ALJPO at 274.) This simple statement does not properly characterize the objections raised by Ameren Illinois and incorrectly lumps Ameren Illinois objections in with those of ELPC and ISEA. See Ameren Illinois Objections at 216-225 of the ALJPO.

More importantly, Ameren Illinois believes its position, which is endorsed by Commonwealth Edison Company (ComEd) (See ALJPO at 226), is consistent with the statute and therefore the Commission should reject any procurement of RECs for eligible retail customers in 2015/2016. In the end customers will pay more for RECs than the amounts required under Section 1-75 (c) of the IPA Act. As a general matter in terms of statutory construction, statutes are required to be read so that they are in harmony with each other. What has not been explained in the ALJPO, is why declining to pursue one-year SRECs, which clearly requires customers to pay more than they are obligated, is an affront to the IPA's role. That is, if one-year SRECs were not pursued, in what way would the IPA be in violation of the IPA Act?

However, if the Commission is convinced that a procurement is required under the statute, the Commission should not endorse longer term contracts as proposed by ISEA and ELPC and it should instead implement the IPA's proposal for a one-year SREC procurement. Future switching uncertainty is very real and it can lead to stranded costs. There is no urgency for the Commission to act expeditiously on this proposal from ISEA and ELPC.

Proposed language changes to the ALJPO at 274:

"The Commission will first turn to the IPA's proposal for a one-year SREC procurement which is opposed by ELPCS, ISEA, ~~and to a lesser extent by Ameren and ComEd.~~

Among other things, ~~they~~ ELPCS and ISEA argue that a one-year SREC procurement will do little to encourage the development of new solar facilities in Illinois and the IPA should instead pursue a longer term DG REC procurement. They also suggest it is inconsistent with the IPA's other procurement activities.

Ameren and ComEd argue that the one-year SREC procurement is not necessary because the total REC target has already been exceeded with existing REC contracts, and the one-year SREC procurement will unnecessarily increase costs to eligible retail customers. Although SREC and DG REC sub-targets remain, the statute does not require the IPA to pursue a one-year SREC procurement. Notably the IPA and Commission reached this same conclusion in Docket No. 12-0544. No valid explanation is given for any departure.

In addition, while the IPA argues that sub-targets are required, the IPA proposal only satisfies one of two sub-target requirements which contradict the IPA's own argument. It must therefore follow that these sub-targets are not required by law unless the IPA devises some position where it can be found to be half way in compliance with the law. This further reinforces no procurement of one-year SRECs for eligible retail customers in 2015/2016. Ameren and ComEd also recommend rejection of the longer term DG REC procurement proposed by ELPC and ISEA such that no procurement of RECs would occur for eligible retail customers in 2015/2016.

As the IPA correctly points out, it has competing statutory obligations to encourage the development of new solar facilities while assuring that it does so at a reasonable cost. Staff also correctly notes that there are many ways in which government encourages the development of solar facilities. The Commission's primary concern with the ELPCS and ISEA proposal is the lack of stability in the funding source for this particular procurement and therefore the ELPC and ISEA proposal to replace the one-year SREC procurement with a longer term DG REC procurement is rejected. In addition, Ameren and ComEd make persuasive arguments that the IPA should not pursue any REC procurement for eligible retail customers in 2015/2016 and therefore the IPA proposal for a one-year SREC procurement is also rejected. ~~The Commission concludes that the IPA's proposal for a one-year SREC procurement is clearly supported by the record and should be approved.~~

III. Exception 3: ALJPO Renewable Resources Section D9 Reaches Incorrect Conclusion Regarding ACP Funds Associated with DG REC Procurement (page 277). Ameren Illinois Proposes Revised Language and Changes to the Proposed Order.

The ALJPO states that "Ameren recommends that the Commission order Ameren to transfer hourly ACP funds to the IPA, with the IPA acting as the contractual counterparty to the DG procurement. Both Staff and the IPA believe that such a transfer is not legal, and the IPA believes a better solution may lie in legislation to realign and streamline the statutory scheme. It appears to the Commission that Staff has correctly interpreted the statutes in that Section 1-56 of the IPA Act governs renewable energy resource purchases by the IPA, while Section 1-75c of the IPA Act and Section 16-111.5 of the PUA govern renewable energy resources purchases by the

utilities. The Commission concludes that the Ameren proposal cannot be adopted.” (ALJPO at 277.)

In its Reply, Ameren Illinois provided a detailed review of the statute and concluded that its proposal to combine ACP funds into a RERF procurement by the IPA is within the parameters set forth in the statute. While Staff and IPA disagree, neither has provided a detailed explanation of the rationale for such a conclusion other than broad statements that the proposal is not consistent with the statute. ComEd agrees with Ameren Illinois by stating they “do not fully understand Staff’s and the IPA’s legal concerns with the transfer.” (ComEd Reply at 16.) Ameren Illinois also indicated that any concern about statutory requirements could be satisfied in the implementation phase of the procurement through a contractual mechanism between Ameren Illinois and the IPA, which would include a more systematic distribution of ACP funds as opposed to the lump sum transfer of ACP funds. (Ameren Illinois Objection at 7.) ComEd echoed this same sentiment, but expanded on the concept by providing a detailed alternative proposal whereby “ComEd and Ameren could simply contract to purchase RECs from the IPA up to the amount available in hourly ACP funds collected from June 1, 2013 through May 31, 2014; the single price paid under this contract would reflect the total that the IPA would pay to suppliers under its contracts with them. This approach would still require the utilities to enter into contracts to purchase RECs for their customers (thus alleviating concerns about the statutory language), and would also address AIC’s and ComEd’s concerns regarding the contract terms with DG suppliers – the utilities’ contracts with the IPA would be for the single average price for the number of RECs delivered.” ComEd Reply at 16-17.

Ameren Illinois reiterates its position that its primary proposal is in accord with the statute and no party has demonstrated otherwise, and if the Commission agrees, transferring ACP funds to the IPA as part of its RERF procurement would dramatically streamline the process and positively impact all interested parties.

While Ameren Illinois does not believe its primary proposal has been fully vetted, we support an alternative proposal that meets the statutory requirement via the implementation phase and more specifically through a contractual mechanism between Ameren Illinois and the IPA. ComEd, as noted, offered a more detailed alternative proposal which achieves the same objective as our primary proposal, while also appearing to satisfy those parties that remain concerned about statutory compliance. (ALJPO at 231.) Therefore, the Commission should pre-approve the ComEd proposal subject to a more detailed review in 2015 by the IPA, Ameren Illinois, ComEd, Staff, Procurement Administrator and Procurement Monitor and the consensus of these same parties.

Proposed language changes at ALJPO at 277:

Ameren recommends that the Commission order Ameren to transfer hourly ACP funds to the IPA, with the IPA acting as the contractual counterparty to the DG procurement and that any concern with statutory compliance could be addressed in the implementation phase through a contractual mechanism. Both Staff and the IPA believe such a transfer of funds is not legal, and the IPA believes a better solution may lie in legislation to realign and streamline this statutory scheme. ComEd is supportive of the Ameren proposal and does not fully understand the resistance by Staff and IPA. However, ComEd has submitted a more detailed alternative proposal whereby ComEd

and Ameren could simply contract to purchase RECs from the IPA up to the amount available in hourly ACP funds collected from June 1, 2013 through May 31, 2014; the single price paid under this contract would reflect the total amount the IPA would pay to suppliers under its contracts with them. This approach would still require the utilities to enter into contracts to purchase RECs for their customers (thus alleviating concerns about the statutory language), and would also address Ameren and ComEd's concerns regarding the contract terms with DG suppliers – the utilities' contracts with the IPA would be for the single average price for the number of RECs delivered.

While it appears to the Commission that Staff has correctly interpreted the statutes in that Section 1-56 of the IPA Act governs renewable energy resource purchases by the IPA and, while Section 1-75(c) of the IPA Act and Section 16-111.5 of the PUA govern renewable energy resource purchases by the utilities, the language does not prohibit other means by which to ensure statutory compliance during the implementation phase of IPA procurements. The Commission concludes that Ameren's proposal cannot be adopted. The Ameren proposal therefore has considerable appeal to the Commission and we agree with Ameren and ComEd that any remaining statutory compliance can be addressed through a contractual mechanism under the jurisdiction of the Commission and the IPA. While the Commission concludes that Ameren's primary proposal cannot be adopted at this time, the Commission pre-approves the alternative proposal subject to a more detailed review in 2015 by the IPA, Ameren Illinois, ComEd, Staff, Procurement Administrator and Procurement Monitor and consensus of these same parties.

CONCLUSION

WHEREFORE, for the foregoing reasons, Ameren Illinois respectfully requests that its suggested modifications to the ALJPO, as reflected above, be adopted.

DATED: November 21, 2014

AMEREN ILLINOIS COMPANY
d/b/a Ameren Illinois



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CERTIFICATE OF SERVICE

I, Edward C. Fitzhenry, counsel for Ameren Illinois Company, hereby certify that a copy of the foregoing *Brief on Exceptions* was filed on the Illinois Commerce Commission's e-Docket and was served to all parties of record in Docket 14-0588 on this 21st day of November, 2014.

A handwritten signature in blue ink that reads "Edward C. Fitzhenry". The signature is written in a cursive style with a large, stylized initial "E".

Edward C. Fitzhenry