STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

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

REPLY BRIEF ON EXCEPTIONS OF AMEREN ILLINOIS COMPANY

December 1, 2014

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I. INTRODUCTION

Ameren Illinois Company d/b/a Ameren Illinois ("Ameren Illinois" or "AIC") respectfully submits its Reply Brief on Exceptions in response to certain Briefs on Exceptions filed with the Commission on November 21, 2014.

II. REPLY TO EXCEPTIONS

A. Exception 1 — The Sargas proposal for a spring clean coal procurement should be rejected (Sargas BOE at 2).

The ALJPO is correct in its assessment that even if the proposed Sargas facility qualified as a clean coal facility under Illinois law, there is essentially no discussion of how the IPA or the Commission would develop or evaluate a sourcing agreement with such a clean coal facility. (ALJPO at 310). This deficiency has not been remedied in the Sargas Brief on Exceptions. But a more decided threshold issue is whether the facility proposed by Sargas qualifies as a clean coal facility under Illinois law. No credible or convincing argument has been put forth.

Further, Sargas indicates that ample room remains under the rate cap associated with the Clean Coal Portfolio Standard. However as Ameren Illinois demonstrated and which has yet to be refuted, the estimated costs associated with the already executed FutureGen sourcing agreement utilize the majority of the rate cap dollars. While the Commission has the ability to approve actual FutureGen costs above current estimated costs which would reduce further the amount of funds remaining under the rate cap, to the extent that FutureGen approved actual costs exceed the rate cap, costs under the sourcing agreement would be reduced so as to comply with the rate cap. The point is, the actual costs under the FutureGen sourcing agreement remain uncertain and adding an additional clean coal procurement facility cost at this time would add additional risk and the potential for stranded costs. For all of these reasons, Ameren Illinois

supports the conclusion reached in the ALJPO that Sargas should not be included in the Plan and therefore the proposed ALJPO modifications by Sargas should be rejected.

B. Exception 2 — Ameren Illinois continues to support its proposed ALJPO modifications pertaining to the rejection of the one-year SREC procurement or in the alterative the proposed modifications of ComEd (Ameren Illinois BOE at 7; ComEd BOE at 2).

The one-year SREC procurement proposed by the IPA should be rejected for the reasons put forth by Ameren Illinois and ComEd in this proceeding. The RPS requirements for the 2015–16 Plan years have been met. Nothing more is required. Moreover, the one year SREC is not a mandatory requirement on the part of the IPA; it is a discretionary choice at best. Why would the Commission insist upon imposing unnecessary costs on the utilities' customers? Ameren Illinois's proposed modifications to the ALJPO as provided on Page 7 of its Brief on Exceptions justify its position:

> *The Commission will first turn to the IPA's proposal for a one-year SREC procurement which is opposed by ELPC, ISEA, Ameren and ComEd.*
>
> *Among other things, ELPC 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.*
>
> *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 subtargets 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 subtargets are required, the IPA proposal only satisfies one of two subtarget requirements which contradict the IPA's own argument. It must therefore follow that these subtargets 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 ELPC 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.*

Ameren Illinois would also support the proposed modifications put forth in ComEd's Brief on Exceptions, on Page 2, with the exception of minor edits as provided below:

> *The Commission will first turn to the IPA's proposal for a one-year SREC procurement which is opposed by ELPC, ISEA, ComEd and Ameren for different reasons. ComEd and Ameren contend that the SREC procurement is unnecessary and will result in utility customers paying for more RECs than the amount targeted by Section 1-75(c) of the IPA Act. In addition, ~~Ameren,~~ ELPC and ISEA 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.*
>
> *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 many ways in which government encourages the development of solar facilities. The Commission's primary concern with the ELPC and ISEA proposal is the lack of stability in the funding source for this particular procurement <u>and it is therefore rejected</u>. The Commission <u>also</u> ~~ultimately~~ concludes~~, however~~, that the IPA's proposal for a one-year SREC procurement is unnecessary and will result in utility customers paying for more RECs than the amount targeted by Section 1-75(c) of the IPA Act because, as the overall RPS target has been achieved, there is no legal requirement to meet RPS subtargets.*

C. Exception 3 — Ameren Illinois supports either its proposed ALJPO modifications pertaining to the alternative proposal for ACP funds or the proposed modifications of ComEd (Ameren Illinois BOE at 10–11 and ComEd BOE at 5–6).

Based on the reasons put forth by Ameren Illinois and ComEd in this proceeding, the IPA should be directed to have a combined procurement of RECs using RERF and ACP funds and the IPA shall be sole counterparty with winning suppliers. Each utility would have an agreement

with the IPA to use ACP funds to reimburse the IPA for expenses incurred under its supplier contracts. This more practical solution avoids any of the alleged illegalities associated with use of the subject funds. In the end, Ameren Illinois supports either its proposed ALJPO modifications or those modifications proposed by ComEd as provided below.

Ameren Illinois proposed modifications to the ALJPO are repeated, and again aid in explaining why Ameren Illinois' position should be accepted:

> *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 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.*

ComEd's proposed modifications to the ALJPO, for the convenience of the parties:

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 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, however, has proposed that the utilities execute a simple contract with the IPA to purchase RECs from the IPA up to the amount available in the hourly ACP funds collected from June 1, 2013 through May 31, 2014; the single price paid under this contract will reflect the total that the IPA will pay to suppliers under its contracts with them. This approach will still require the utilities to enter into contracts to purchase RECs for their customers, thus will be consistent with Section 1-75(c) of the IPA Act and Section 16-111.5 of the PUA, and will also address Ameren's and ComEd's concerns regarding the contract terms with DG suppliers – the utilities' contracts with the IPA will be for a single average price for the number of RECs delivered. This approach also will reduce procurement costs, allow prospective sellers the convenience of working with a single counterparty – the IPA, and ultimately benefit customers. The Commission concludes that ComEd's proposal should be adopted.

D. Exception 4 — Energy Efficiency as a Supply Resource ("EEAASR")

1. Primary Proposal

The ALJPO correctly rejects the IPA's "primary proposal" for a procurement of Energy Efficiency as a Supply Resource pursuant to Section 16-111.5 of the Public Utilities Act. The Administrative Law Judge found that the Public Utilities Act forbids it: "any energy efficiency programs to be undertaken by the IPA must be pursuant [to] *Section 16-111.5B* of the PUA." (ALJPO at 152 (emphasis added)). The limitation, as Ameren Illinois, ComEd, and Staff have pointed out, is that the Act only authorizes the IPA to procure "demand response products" and "standard wholesale products." It is by now well-settled in Illinois that energy efficiency is neither of those things. *See* ICC Docket No. 10-0563, Final Order (Dec. 21, 2010) at 43 ("Even 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").

On exceptions, the IPA and CUB/EDF continue to argue that EEAASR does, in fact, qualify as a "standard wholesale product," despite decisions by the Commission in Docket No.

10-0563 and by the Chief Administrative Law Judge in this docket to the contrary. Their arguments provide nothing new and remain unpersuasive. For example, CUB/EDF acknowledges that Section 16-111.5(b)(3)(iv) limits the IPA to procuring energy and capacity products, but argues that energy efficiency should be included because "[n]owhere in th[e] section does the legislature indicate any preference for the *generation technology* from which these products would be sourced." (CUB/EDF BOE, 11/21/2014, *corrected* 11/24/2014, at 2 (emphasis added)). But EEAASR is not "generation technology" as energy efficiency is not the result of generation; CUB/EDF has provided no basis to find otherwise.

CUB/EDF also continue to argue that EEAASR must be a capacity product because it participates in the PJM and MISO capacity markets, but still has not explained why it believes EE's participation in capacity *markets* means it is a capacity *product*. It is not, and its role in those markets proves as much. Energy efficiency products participate in capacity markets because they reduce the capacity which must be purchased to meet energy needs, not because they add capacity to meet those needs. EEAASR, thus, is not and should not be considered a "capacity" product under Section 16-111.5.

The IPA's position is even less tenable in both substance and timing. The IPA appears to assert that the meaning of the statutory term "standard wholesale product" changes over time, despite no statutory basis to support its arguments. (IPA BOE, 11/21/2014, at 4). The language of the PUA, however, controls the analysis and nowhere does Section 16-111.5 allow for the procurement of EEAASR. (*See, e.g.*, Staff Verified Objections at 3–4). The Commission previously and the Chief ALJ in this docket have correctly determined that Section 16-111.5, as enacted by the Illinois legislature, does not provide for the procurement of EEAASR.

Consistent with the foregoing, the Commission should not modify the ALJPO's conclusions rejecting the IPA's primary EEAASR proposal in its entirety, as well as the finding that Section 16-111.5 does not authorize the procurement of EEAASR. Ameren Illinois does, however, join ComEd in requesting the minor clarification noted in ComEd's Exception 4. (ComEd BOE, 11/21/2014, at 8–9).

2. Alternative Proposal

The ALJPO also did not approve the IPA's "alternative proposal," instead ordering workshops on the many outstanding issues and directing Ameren Illinois and ComEd "to the extent practical" to include in their respective IPA submissions for next year "energy efficiency programs consistent with the IPA's goals." (ALJPO at 153). In so doing, the ALJPO found that the alternative proposal could not be implemented in this year's procurement plan and reserved judgment on the proposal until after the workshops, perhaps in next year's IPA Plan docket. (ALJPO at 153).

The IPA has now proposed an exception that would substantially alter the meaning of the ALJPO concerning the alternative proposal. The IPA seeks to add language stating that the "proposal is hereby adopted to inform the development and evaluation of the RFPs for programs submitted for consideration in the IPA's 2016 Procurement Plan." (IPA BOE, 11/21/2014, at 7). The addition is inconsistent with the present language of the ALJPO, which directs the parties to commence workshops for the purpose of, among other things, deciding "whether an additional RFP for energy efficiency programs will [even] be necessary" *before* the Commission decides whether to adopt the IPA's alternative proposal. (ALJPO at 153). The Commission should not adopt this change suggested by the IPA, as it would result in the Commission endorsing a proposal without any concrete resolution of the many material issues that have been raised by the parties in this docket (and identified in the ALJPO itself, including "whether the IL-TRM should

govern these types of programs, and how such programs should be evaluated," *see* ALJPO at 153).

For the reasons stated above, the exceptions requested by the IPA and CUB/EDF should be rejected.[1]

E. Exception 5 — Incremental Energy Efficiency

Throughout this proceeding, the primary issues in dispute, with respect to the procurement of incremental energy efficiency pursuant to Section 16-111.5B, have been: (1) the appropriate TRC test methodology and the impact of any adjustment to that methodology on "near-miss" programs in Ameren Illinois's service territory; (2) Ameren Illinois' duplicative/competing determination regarding the Home Energy Reports and Behavioral Energy Efficiency ("BEE") programs; and (3) whether or to what extent the Commission should expressly direct the utilities to engage stakeholders in the bid review process. The ALJPO resolved each of these issues in a manner that should not be disturbed, and the arguments put forth by NRDC and, in part, by Staff should not persuade the Commission otherwise.

1. NRDC

NRDC continues to pursue the inclusion of marginal line losses, demand reduction-induced price effect ("DRIPE"), and non-energy benefits ("NEB") when Illinois utilities perform the TRC test to evaluate energy efficiency programs, despite opposition by the utilities, Staff, and the IPA, and despite the fact that the Commission "has considered at least some of NRDC's recommendations in previous procurement proceedings and declined to adopt them." (ALJPO at 214). It has also advocated for a reduction of Ameren Illinois's administrative adder and for the

[1] Staff also offers an exception to the ALJPO that would reference Section 5/8-103(i)-(j). (Staff BOE at 3–4). This exception does not appear necessary given the context of the ALJPO's resolution of the issues involving the IPA Procurement Plan offered pursuant to Section 5/16-111.5 and Section 5/16-111.5B and not any plan offered pursuant to Section 8-103.

inclusion of three "near-miss" programs in the Section 16-111.5B procurement for Ameren Illinois's service territory. (NRDC BOE, 11/21/2014, at 1–4).

NRDC's contentions are all rehashings of its prior arguments and meritless for the reasons explained in Ameren Illinois' prior filings (as well as other parties, like Staff and ComEd). (*See*, *e.g.*, AIC Verified Reply to Responses to Objections, 10/31/2014, at 23–26; Staff Verified Response to Objections, 10/21/2014, at 18–25; ComEd Verified Reply to Responses to Objections, 10/31/2014, at 10–13). But one point deserves repeated emphasis. Throughout this proceeding, Ameren Illinois has maintained that an IPA Procurement Plan docket is not the right venue for addressing NRDC's concerns because it progresses on a compressed schedule and because not all interested parties have the time or opportunity to participate. (AIC Verified Reply to Responses to Objections, 10/31/2014, at 24). The Chief ALJ agreed, and the ALJPO "refers the three issues raised by NRDC to be addressed at workshops conducted by the SAG," or, in the alternative, by Staff. (ALJPO at 214). The ALJPO encourages the parties to enter that workshop process with open minds, but reaffirms that "procurement proceedings are not the ideal forum for considering complex economic issues and the Commission urges the parties to make serious efforts to reach consensus on at least some of these issues." (ALJPO at 214).

NRDC has flatly ignored the ALJPO's practical admonishments and continues to insist that the Commission modify the TRC test to suit its preferences in this expedited docket, despite the fact that NRDC must acknowledge that doing so would exclude several interested parties. (NRDC BOE, 11/21/2014, at 1–4). To modify the ALJPO in the manner suggested by NRDC, however, would be plainly inappropriate, and the Commission should affirm the ALJPO's rejection of NRDC's exceptions. To go back and start from square one on the work done by the parties to date would needlessly increase costs and delay implementation. NRDC has made no

showing justifying such a result. NRDC's attempt to co-opt this procurement plan docket to obtain a compulsory "re-do" of the bid review process, in which *only* NRDC's unilateral objectives are served and all "near miss" programs get included, is inappropriate and violates the spirit of the statute, which calls for a timely and orderly development, submission, review and approval of the IPA Plan. *See* 220 ILCS 5/16-111.5B(a).

Ameren Illinois hopes that NRDC comes to the workshop process with a good faith eye towards finding common ground to resolve the many complicated and important issues that have been identified in this docket. For the reasons set forth above and in prior submissions in this docket by Staff and ComEd, the Commission should decline to include any of NRDC's exceptions to the ALJPO.

2. Staff

Staff's BOE positions with respect to Incremental Energy Efficiency issues are more nuanced. Staff filed exceptions concerning the TRC test, Ameren Illinois' duplicative/competing determinations and the question of collaboration with stakeholders, and each exception has numerous subparts. Ameren Illinois addresses those subparts, in turn, below.

(a) TRC Test

First, Staff agrees with Ameren Illinois and the ALJPO that the TRC methodology should not be resolved in this docket and should be instead addressed through the workshop process. (Staff BOE, 11/21/2014, at 4–5). Staff now advocates, however, for an explicit Commission directive that certain TRC issues be made the subject of a separate docketed proceeding once the workshop process draws to a close, so that the TRC methodologies can be specified in Attachment B to the Technical Reference Manual. First, Staff's request for a separate docketed proceeding (proposed for the first time in its Reply comments) was not raised in a timely fashion such that interested parties could respond to the proposal. (*Contrast* Staff's

Response at 17 (agreeing with a workshop approach) with Staff's Reply at 30–32 (proposing for the first time an "alternative" approach).) Courts universally refuse to consider arguments raised for the first time in a reply brief because to do otherwise would deprive the opposing party of a chance to contest the matter. *See, e.g., Judge v. Quinn*, 612 F.3d 537, 542 (7th Cir. 2010) (discussing an "argument that the plaintiffs raised for the first time in their reply brief," and holding that "[t]he district court was under no obligation to entertain this late submission, nor should we"); *Hallmon v. Sch. Dist. 89*, 911 F. Supp. 2d 690, 707 (N.D. Ill. 2012) (holding that "[b]ecause [d]efendants' initial brief did not advance this argument, the argument is forfeited"); *People v. Wilson*, 2011 Ill. App. Unpub. LEXIS 1453 at *27 (Ill. App. June 21, 2011) ("Raising an argument for the first time in a reply brief is improper and thus the argument is waived") (citing *People v. Prante*, 147 Ill. App. 3d 1039, 1064 (1986)). Second, even if the argument were properly preserved, the ALJPO correctly identifies the path forward—first allow the workshop process to proceed and conclude and then determine whether or not a separate proceeding is necessary "if the parties are unable to make progress in the workshop forum." (ALJPO at 214). Ameren Illinois remains committed to the workshop process and believes the forum would work well to address the many outstanding issues, like utility differences and appropriate cost/benefit analyses. The Commission should not affirmatively order a separate docketed proceeding at this time when there is a chance that issues can be collaboratively resolved through workshops.

Second, despite agreeing with ALJPO that the TRC methodology issue generally should be sent to workshops, Staff also asks the Commission for "guidance" in regards to calculating NEBs. (Staff BOE, 11/21/2014 at 8). Ameren Illinois disagrees that "guidance" in this docket would be helpful to the workshop process. It would only shift the focus of the debate and leaves

too much room to interpretation of what the Commission's "guidance" means on the issue. For example, Staff is concerned that Ameren Illinois' default NEBs adder does not represent a "quantifiable societal benefit," but its solution is to ask the Commission to "direct the utilities to include in the TRC calculations only societal benefits that have been quantified through a defensible study." (Staff BOE, 11/21/2014 at 8–9). Such vague guidance begs the question of what constitutes a "defensible study" and shifts the debate to this issue instead of the NEBs themselves. The Commissions should not provide any formal "guidance" on the issues in the present docket as doing so will not help their resolution in the workshop context. Instead, the Commission should allow the interested parties (which include parties not appearing in this docket) the opportunity to frame, address and discuss the issues in the first instance.

Third, Staff also asks the Commission to correct the ALJPO's assertion that Staff wants Ameren Illinois's admin costs to be close to zero, (Staff BOE, 11/21/2014, at 10; ALJPO at 214–15), and asks the Commission to explicitly reject DRIPE as a potential TRC test input because it is inconsistent with Illinois law. (Staff BOE, 11/21/2014, at 4–7). Ameren Illinois agrees with both of these proposals, to the extent the Commission chooses to address them at all.

Fourth, Staff further seeks to slip in a requirement that the utilities begin "tracking" administrative costs at the program level for IPA programs to ensure a realistic estimate thereof in future Section 16-111.5B TRC screenings. (Staff BOE, 11/21/2014, at 10). Again, Staff's proposal was first raised in *its Reply Brief*, giving no party the opportunity to respond or develop a record on it. (*See* Staff Reply to Responses to Objections, 10/31/2014, at 22). For this reason alone, the Commission should not change the ALJPO's rejection of the proposal. *Judge*, 612 F.3d at 542; *Hallmon*, 911 F. Supp. 2d at 707; *Wilson*, 2011 Ill. App. Unpub. LEXIS 1453 at *27. Moreover, Staff's undeveloped recommendation could lead to the unintended consequence

of *increasing* costs for the IPA programs (as the utilities try to comply with a vague directive to "track" administrative costs), which could also lead to an increase in administrative costs for the other energy efficiency programs offered by utilities as well. The ALJPO correctly directed these issues to be within the scope of the workshops, and the Commission should not disturb this conclusion.

Fifth, Staff also notes that no discussion is included in the ALJPO regarding Ameren Illinois's three "near-miss" programs. (Staff BOE, 11/21/2014, at 11). Staff believes such a discussion should have been included, and that the programs should have been explicitly rejected. While Ameren Illinois agrees with the substance of Staff's position, Ameren Illinois understands the ALJPO's silence on the issue, in light of its rejection of NRDC's TRC test arguments, to mean that those programs will remain excluded from this year's procurement plan.

Sixth, Staff further argues that the ALJPO should include a discussion and finding concerning Staff's recommendation to include "TRC net benefits" in future procurement plan filings with respect to competing programs. (Staff, 11/21/2014, at 12–13). Staff appears to agree with AG's earlier-stated position that "economic theory is unambiguous" and "[t]he larger the net benefits the better, even if the benefit-cost ratio is lower." (Staff BOE, 11/21/2014, at 12). The Chief ALJ was correct to omit any such discussion and the Commission should decline to do so as well. Such an observation, when made by the Commission, could unfairly be used to "rank" programs in a way that would be misleading and, as explained by ComEd, does not include all relevant "costs." (ComEd Responses to Objections, 10/21/2014, at 4–5 (noting that "*TRC costs do not include customer incentive costs*" (emphasis in original)). Moreover, both Staff and AG have argued that net benefits should drive future decisions, without regard for the increased costs to ratepayers (which is the only way a program could have a "larger

net benefits" but a "lower benefit-cost ratio"). But neither has explained why prioritizing larger and more costly programs, regardless of their benefit-cost ratio, would be more conducive to the goals of the PUA and IPA Acts than the status quo. For these reasons, the Commission should decline to adopt Staff's proposed exceptions regarding TRC net benefits.

Finally, Staff seeks a Commission directive concerning the "rigor with which the TRC analysis should be conducted for third party program bids." (Staff BOE, 11/21/2014, at 14–15). But Staff has not identified a problem in need of solving. There is no dispute that parties should review the third party program bids with rigor; having the Commission issue needless directives, particularly ones that would contain the verbiage proposed by Staff, would only causes parties to scrutinize what is being ordered and increase the administrative costs needed to ensure compliance. Staff's exception on this issue should not be adopted.

(b) Collaboration

Staff asks the Commission to (a) direct the utilities to include within bid review documents details concerning the rationale for the duplicative/competing determinations as well as the facts supporting them and (b) direct the utilities to include in their confidentiality agreements with stakeholders a clause allowing stakeholders to present confidential information to the Commission on a confidential basis. (Staff BOE, 11/21/2014, at 15). Ameren Illinois does not object to substance of Staff's suggestions, but questions the need for explicit Commission directives on them. Ameren Illinois already provides information to the IPA regarding its rationale for the duplicative/competing determinations as part of its submission. And as to suggestion (b), the parties already have the tools available to them through the respective regulations to share confidential information with the IPA or the Commission. *See*, *e.g.*, 83 Ill. Admin. Code 200.430 ("Protective Orders"); 2 Ill. Admin. Code 3700.430

("Confidential Information"). There is no confidentiality problem here requiring a solution, nor is there a need for the Commission to get involved with drafting non-disclosure agreements for SAG members. Staff's exception on this issue, too, should not be adopted.

(c) Duplicative/Competing

Staff nominally "accepts" the Administrative Law Judge's decision to approve only one behavioral program from among Home Energy Reports and Behavioral Energy Efficiency. But Staff then goes on to list six separate exceptions to that decision. (Staff BOE, 11/21/2014, at 17–20). Staff asks (a) that the Commission clarify that the two programs are competing and not duplicative; (b) that the Commission direct the IPA and the utilities to coordinate with duplicative program vendors in advance of future procurement plan filings to disaggregate program components so as to allow direct comparisons; (c) that the Commission clarify that nothing in the order should be read to limit Ameren's flexibility under Section 8-104; (d) that the Commission find that past evaluation results of third party vendor programs would be helpful to present in the plan; (e) that the Commission find that considering whether a vendor is well-established is a reasonable factor to consider; and (f) that the Commission select Behavioral Energy Efficiency for implementation, based on a list of eight reasons provided at Staff. (Staff BOE, 11/21/2014, at 19–20).

Ameren Illinois takes no position on the bulk of Staff's exceptions. But Ameren Illinois does not agree with Staff's request that the Commission "clarify" that the programs are competing and not duplicative. In fact, the programs *are* duplicative, as the IPA has explained at length, because they, among other things, serve the same customers and have duplicative attributes. (*See* IPA Response to Objections, 10/21/2014, at 28–29). As to Staff's eight justifications for selecting Behavioral Energy Efficiency over Home Energy Reports, again, without taking a position on them all, Ameren Illinois addresses only two: Staff's incorrect

implication that the Home Energy Reports program has "historically … produced significant negative net benefits" and Staff's suggestion that the Commission approve the behavioral modification program at levels higher than what is reflected in the IPA's Plan.

First, in support of choosing Behavioral Energy Efficiency, Staff incorrectly implies that "[h]istorically, the Home Energy Reports program produced significant negative net benefits in Illinois." (Staff BOE, 11/21/2014 at 19). Staff has previously limited its "negative net benefits" statement with regards to the Home Energy Reports program to just Program Year 3, when the program was in its first year of operation as a limited pilot program with only 50,000 participants. (Staff Comments and Objections, 10/6/2014, at 18). But Home Energy Reports has produced positive net benefits after Program Year 3, as explained to Staff in Ameren Illinois' responses to Staff's Data Requests in this docket.[2] Accordingly, Staff's misstatement in support of the Behavioral Energy Efficiency program should be disregarded.

Second, Staff's seventh point in support of choosing Behavioral Energy Efficiency suggests that the Commission should adopt Behavioral Energy Efficiency at the "level proposed by the vendor." (Staff BOE, 11/21/2014, at 20). For the reasons put forth by Ameren Illinois in its previous filings, Ameren Illinois believes whichever program is adopted should be limited to adoption at budget levels that are commensurate with the gas budget that was approved by the Commission in ICC Docket No. 13-0498. (AIC Response to Objections, 10/21/2014, at 9–10). Staff's belated attempt to increase the funding was not accepted by the Chief ALJ and Ameren Illinois would urge the Commission to not disturb that conclusion. To do otherwise would

[2] The savings achieved by the Home Energy Report program are also reflected in the independent evaluator reports filed with the Commission in compliance with the Commission's Final Order in ICC Docket No 10-0568. Ameren Illinois's PY4 evaluator's report for Home Energy Reports was docketed in No. 10-0568 on September 4, 2013, as Part 2 of (PART 1), *see* http://www.icc.illinois.gov/docket/files.aspx?no=10-0568&docId=202543. Ameren Illinois's PY5 evaluator's report for Home Energy Reports was docketed in No. 10-0568 on October 22, 2014, as Part 2 of (PART 1), *see* http://www.icc.illinois.gov/docket/files.aspx?no=10-0568&docId=220507.

unnecessarily require Ameren Illinois to adjust implementation and funding under Section 8-104 (for the gas portion) and Section 16-111.5B (for the electric portion).

Beyond these points, Ameren Illinois takes no position with regard to the Home Energy Reports and Behavioral Energy Efficiency except to emphasize that only one program should be selected and that the Commission should clearly identify which program has been approved for inclusion so that Ameren Illinois can timely move forward with the contracting process and ensure implementation in the upcoming program year.

III. CONCLUSION

In conclusion, Ameren Illinois appreciates the work of the Chief ALJ in preparing the ALJPO, but respectfully requests that it be revised as set forth in the exceptions above and in Ameren Illinois' previous Brief on Exceptions.

DATED: December 1, 2014

Respectfully submitted,

AMEREN ILLINOIS COMPANY

By: *_/s/ Mark W. DeMonte__*
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CERTIFICATE OF SERVICE

I, Mark W. DeMonte, an attorney, state that I served a copy of the foregoing Reply Brief on Exceptions to the service list maintained on the Illinois Commerce Commission's e-Docket system for Docket No. 14-0588 via electronic delivery on December 1, 2014.

Dated: December 1, 2014 _/s/ Mark W. DeMonte_