STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

ILLINOIS POWER AGENCY **Petition for Approval of the 2015 IPA Procurement Plan pursuant to Section 16-111.5(d)(4) of the Public Utilities Act**	**:** **:** **:** **:** **:** **:**	**Docket No. 15-0541**

STAFF OF THE ILLINOIS COMMERCE COMMISSION RESPONSE TO OBJECTIONS TO THE ILLINOIS POWER AGENCY'S 2016 PROCUREMENT PLAN

JOHN C. FEELEY
JAMES V. OLIVERO
Office of General Counsel
Illinois Commerce Commission
160 North LaSalle Street, Suite C-800
Chicago, IL 60601
Phone: (312) 793-2877
Fax: (312) 793-1556
jfeeley@icc.illinois.gov
jolivero@icc.illinois.gov

Counsel for the Staff of the Illinois Commerce Commission

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Pursuant to the October 6, 2015 Notice of Schedule and Notice of Administrative Law Judges Ruling, the Staff of the Illinois Commerce Commission ("Staff"), by and through its counsel, respectfully submits this Response to Objections to the Illinois Power Agency's ("IPA") 2016 Procurement Plan ("Plan," or "IPA Plan"). Staff also submits the Affidavit of James Zolnierek in support of facts and non-legal matters contained herein.

I. BACKGROUND

On September 28, 2015, the IPA filed its Plan for the five year procurement planning period from June 2016 through May 2021 with the Illinois Commerce Commission ("Commission") thereby initiating this docket.

On or about October 5, 2015 pursuant to Section 16-111.5(d)(3) of the Public Utilities Act ("PUA"), Staff and the following five parties served on each other and filed Responses and/or Objections to the Plan:

Ameren Illinois Company ("Ameren Illinois," "Ameren," or "AIC"),

Commonwealth Edison Company ("ComEd"),
Environmental Law and Policy Center ("ELPC"),
Mid American Energy Company ("MEC" or "MidAmerican") and
Renewables Suppliers[1]

On October 6, 2015, the Chief Administrative Law Judge of the Commission provided notice that, "pursuant to Section 16-111.5(d)(3) of the Public Utilities Act, no hearing in the above-referenced matter is determined to be necessary." (October 6, 2015, Notice of Chief Administrative Law Judge's Ruling.) A Notice of Schedule and Notice of Administrative Law Judges Ruling provides for the filing of: Responses to Objections ("Response") and Replies to Responses, due October 20, 2015 and October 30, 2015, respectively. (October 6, 2015, Notice of Schedule and Notice of Administrative Law Judges Ruling.)

Staff's Response to certain objections of Ameren, ComEd, MidAmerican and the Renewables Suppliers are set forth below.[2]

II. ARGUMENT

A. The Action Plan [Section 1.4]

Response to Renewables Suppliers

[1] The Renewables Suppliers are comprised of: Invenergy LLC and its affiliated project companies Grand Ridge Energy IV LLC and Invenergy Illinois Solar; and Next Energy Resources, LLC and its subsidiary project company FPL Energy Illinois Wind, LLC. (Renewables Suppliers Objections, 1.)

[2] Consistent with the Administrative Law Judges October 6, 2015 Ruling, the section headings and sections of the IPA Plan at issue are indicated in bold and brackets [ ] below, respectively.

Recommendations Concerning the Spring Load Forecast Updates

Renewables Suppliers state:

> In light of the significant margin between the electric utilities' load forecasts for the 2016-2017 Delivery Year and the levels of load at which LTPPA curtailments would be necessary, the Commission should direct that Action Plan item no. 7 in the IPA Plan be changed to provide that no LTPPA curtailments will be required for the 2016-2017 Delivery Year. In other words, the Commission does not need to wait for (or even provide for) March 2016 load forecast updates, but rather can decide based on the utilities' current load forecasts provided in the IPA Plan that no LTPPA curtailments are necessary in the 2016-2017 Delivery Year.

(Renewables Suppliers Objections, 2-3.)

Staff disagrees with Renewables Suppliers' recommendation to alter Action Plan item no. 7. The Commission faces a legislative mandate to protect ratepayers against rate increases due to renewable resource procurement in excess of those increases permitted by statute. That mandate is not diminished during the 2016-2017 plan year by the admittedly lower probability that Long-Term Power Purchase Agreements (LTPPA) curtailments will be necessary to bring about that protection. As the Commission has witnessed in previous years, circumstances can change rapidly and dramatically in the dynamic arena of retail electric choice. A significant shift among consumers away from utility supply and toward alternative retail electric suppliers (ARES) supply would leave the remaining utility customers vulnerable to impermissible rate increases. If the General Assembly wanted to protect renewable suppliers (rather than ratepayers) against the impact of such load shifts, it would have included such protections in the governing statutes. Instead, the General Assembly chose to protect utility customers. Thus, the Renewables Supplier's proposed change to Action Plan item no. 7 should be rejected.

Renewables Suppliers' alternative recommendations should also be rejected. Renewables Suppliers first alternative is:

> First, Action Plan item no. 7 should be changed to provide that if an electric utility's March 2016 load forecast update indicates a need for LTPPA curtailments, then the Renewables Suppliers, other LTPPA suppliers, and other interested stakeholders, will be allowed to review the load forecast updates and submit comments to the Commission, and the Commission will then make a final determination as to the need for LTPPA curtailments.

(Renewables Suppliers Objections, 3.)

Renewables Suppliers second alternative is:

> Second, either alternatively to or in addition to modification 1 above, Action Plan item no. 2 in the IPA Plan should be modified to provide that if an electric utility's March 2016 load forecast update indicates the need for curtailment of its LTPPAs, the consensus of the utility, the IPA, Commission Staff, the Procurement Monitor and the impacted LTPPA suppliers should be required to adopt the load forecast.

(Renewables Suppliers Objections, 4.)

Staff addresses both alternatives together, noting at the outset that the Commission has addressed the issue of load updates before.[3] Indeed, a Commission-approved process for addressing forecast updates has been in place since 2009; and the Commission rejected a similar change to the process proposed by Renewables Suppliers in 2013.[4] As the Commission then noted:

[3] IPA Petition for Approval of 2009 Plan, Order Docket No. 08-0519, January 7, 2009, 58-60; IPA Petition for Approval of 2010 Plan, Order Docket No. 09-0373, December 28, 2009, 165-67; IPA Petition for Approval of 2014 Plan, Order Docket No. 13-0546, 196-99.

[4] IPA Petition for Approval of 2014 Plan, Order Docket No. 13-0546, 196-99. The Renewables Suppliers in Docket No. 13-0546 consisted of the Renewables Suppliers in this pending case plus: Algonquin Power Co. and its subsidiary project company GSG 6.LLC; EDP Renewables North America LLC and its subsidiary project companies Blackstone Wind Farm, LLC, Meadow Lake Wind Farm, LLC, Meadow Lake Wind Farm II, LLC, Meadow Lake Wind Farm III LLC and Meadow Lake Wind Farm IV LLC. (Renewables Suppliers' Petition to Intervene, October 1, 2013.)

> The Commission also observes that the IPA is an independent state agency created specifically to develop the Procurement Plan as well as to implement the approved Plan. While the Staff, Procurement Administrator, and Procurement Monitor participate in and oversee the IPA's activities, the IPA has responsibility for many of the procurement activities. Despite the concerns expressed by the [Renewables Suppliers], the Commission is comfortable the process it has previously used has been and will continue to be effective and successful.
>
> As in previous procurement proceedings, between the IPA, Staff, and ComEd/AIC (as well as the Procurement Administrator and Monitor, should they be retained), the Commission believes that technical issues related to load forecasting will be objectively vetted and appropriately addressed. The Commission rejects the RS' proposals.

(IPA Petition for Approval of 2014 Plan, ICC Order Docket No. 13-0546, 198-199 (December 18, 2013).)

The IPA's current plan appropriately incorporates the same process that was approved by the Commission in the dockets cited above. This process allows the IPA to take into account updated load forecasts and their impact on renewable curtailments. Historically, this process has worked well, and there is no reason to believe it should not continue to work well in the future.

Finally, Staff notes that, by the time the utilities submit their March updates, the Commission will have already approved the load forecasting methodologies. The purpose of the March updates is merely to update the inputs to the forecasts to reflect only any changes that may occur over the period since the forecast was presented in this docket in July. Issues about the forecast on which there can be debate, as well as the vast majority of the result, will have already been submitted, reviewed, litigated, and approved in this formal docket. Thus, by the time the Commission enters its final order, Renewables Suppliers (and any other interested party) will have had ample opportunity

to fully vet the forecast methodologies. Consistent with past years, the purpose of the March updates is highly limited and focused and must proceed expeditiously.

B. Prior Year's Consensus Items [Section 7.1.3]

Response to Ameren[5]

Ameren objects to the inclusion in the IPA Plan of 2013 consensus items and their application to the current IPA Plan cycle. (Ameren Objections, 3.) Ameren argues that some of the 2013 consensus items are contradictory to 2014 consensus items. (Id.) Ameren further argues that the 2013 consensus items are stale. (Id.) The Commission should not, as Ameren recommends, strike the 2013 consensus items and should instead accept the IPA's proposal to apply the 2013 consensus items in the current IPA Plan cycle.

In its Draft Plan, the IPA requested the Commission reaffirm its past approval of the consensus items from prior years' workshops. (Draft Plan, 88.) In response to this proposal in the Draft Plan, Staff recommended that the IPA be more explicit about what it is requesting the Commission approve in order to minimize potential for misinterpreting what language is recommended for adoption. (Staff Comments, 3-4.) Staff proposed a specific list of consensus items from prior years' workshops for inclusion in the IPA Plan that, among other things, specifically removed 2013 consensus items that were contradictory to 2014 consensus items. (Id. 4, 14-20.) While Ameren generally asserts that some of the 2013 consensus items that remain included in the IPA Plan are

[5] The respective party's objections being responded to are indicated in bold.

contradictory to 2014 consensus items, Ameren does not explicitly identify any such alleged contradictions. To Staff's knowledge, no such contradictions exist.

The Commission should also reject Ameren's argument that 2013 consensus items are stale and should not apply with respect to the current IPA Plan cycle. Staff disagrees. For example, two of the 2013 consensus items included in the IPA Plan state: "[f]unds approved pursuant to Section 16-111.5B could not be spent on EE programs that were not approved in the procurement plan docket" and "Sections 8-103 and 16-111.5B EE budgets would be kept separate." (IPA Plan, 89.) It is Staff's belief that there continues to be consensus on these items. There is no reason to reject them simply because parties reached consensus on these issues in 2013. To do otherwise, would require parties to revisit every consensus issue every year, a costly and time consuming approach to addressing IPA Plans. As with its reference to contradictory consensus items across years, Ameren fails to identify specific consensus items included in the IPA Plan that are stale and should no longer apply. Staff is aware of none.

While the Commission should not reject all 2013 consensus items, Staff agrees with Ameren's statement that "[t]here are significant changes and discussions occurring between parties with respect to future development, planning, implementation and evaluation of energy efficiency in Illinois." (Ameren Objections, 3.) It is for this reason, that the IPA Plan should include an explicit list of consensus items in its drafts and plan submissions. This allows parties to identify and provide support for the removal of any consensus items they believe are obsolete or no longer applicable. In such cases, the Commission should be clear that the burden is on parties to support their proposals with

reference to relevant changes in circumstances that support removal of prior consensus items. This is a far more efficient way to respond to changing circumstances than is Ameren's proposal to reject all prior consensus items and begin anew on every item each year.

Ameren further argues that any consensus items included in the IPA Plan should apply only with respect to the "*current* IPA Plan cycle" and should not apply going forward. (Id.) It is not precisely clear what Ameren means by the "current IPA Plan" cycle. For example, a consensus item included in the IPA Plan states "Utilities should include all bids in their EE assessments submitted to the IPA." (IPA Plan, 90.) This requirement should apply for utilities' bids submitted with respect to the 2017/2018 delivery year, which are made before the IPA's 2017 Plan filing. Ameren's proposal appears to imply that consensus items included in particular year's plan filing could not apply to processes and procedures related to 2017/2018 delivery year. This would render many of the consensus items irrelevant and/or meaningless. To the extent Ameren is suggesting that consensus items cannot apply to processes and procedures occurring with respect to the 2017 IPA Plan that occur prior to filing of the 2017 IPA Plan, Ameren's proposal should be rejected.

For all the reasons above, the Commission should not, as Ameren recommends, strike the 2013 consensus items or determine that consensus items apply only to the "current IPA Plan cycle." The Commission should, instead, accept the consensus items included by the IPA in the current IPA Plan and confirm that these items are applicable to processes and procedures occurring with respect to the 2017 IPA Plan that occur prior to filing of the 2017 IPA Plan.

C. Policy Issues for Consideration in the 2017 Plan [Section 7.1.4]

Response to Ameren

Duplicative Bid Screening

Ameren argues that it should not be required, as the IPA Plan recommends, to conduct total resource cost test ("TRC") cost-effectiveness analyses for programs that are determined to be duplicative of existing programs. (Ameren Objections, 5.) Ameren argues that ratepayers should not be required to pay for these expensive analyses, that IPA's directive to perform these analyses contradicts its directive not to perform TRC analyses on programs that don't meet the requirements of the bid solicitation Request for Proposals, that TRC's performed on duplicative programs are inherently incorrect, and that the Illinois energy efficiency statutes require utilities to exclude duplicative programs from their energy efficiency program assessments. While Ameren raises several valid concerns, the Commission need not and should not address Ameren's recommendation at this time.

Because the 2016/2017 delivery year represents the end of the utilities current Section 8-103 three year energy efficiency plan cycles, there are currently no Commission approved energy efficiency programs or measures for the 2017/2018 delivery year. Thus, none of the programs that will be submitted to utilities and the IPA as a result of next year's Section 16-111.5B of the PUA requests for proposals (RFP) process for inclusion in the 2017 IPA Plan will, when they are submitted, be duplicative of existing approved energy efficiency programs for the 2017/2018 delivery year. For this reason, the

Commission need not, at this time, determine whether utilities need to conduct TRC analyses for programs determined to be duplicative of existing programs.

Given the lack of immediate need for resolution of this issue, the Commission should give parties additional time to consider and work towards resolution of this issue as it concerns IPA Plans for 2018 and beyond. While Ameren raises valid concerns concerning the performance of such analysis, its arguments are premised to a significant extent upon the assumption that determinations of whether programs duplicate programs is "not difficult." (Id. 5.) This may not always be the case, and indeed, disputes concerning whether a program was duplicative[6] versus competing occurred in the last procurement proceeding, ICC Docket No. 14-0588. In its 2014 IPA Plan Order, the Commission addressed at length the process for drawing distinctions between duplicative programs and competing programs and adopted formal standards to aid stakeholders and potential bidders to identify and distinguish between the two. ICC Order Docket No. 13-0546 at 148-149. The necessity of such guidance indicates that such determinations can be difficult. While Staff agrees with Ameren's goal to eliminate needless analyses, the Commission should not adopt a process that does not require utilities to conduct TRC analyses when parties have reasonable disagreements as to whether a program is duplicative of an existing energy efficiency program. Given the compressed nature of IPA Plan dockets, omitting complete analyses of programs that may prove to be non-

[6] As noted in the IPA Plan, there is a slight distinction between competing versus duplicative programs: "Based on prior years' Plans, the IPA understands the term "duplicative" to mean a program that overlaps an existing program in a manner in which greater market participation by vendors does not yield sufficient additional value to consumers, "competing" programs may benefit from multiple delivery channels. The general goal would be that "duplicative" programs are to be avoided, while "competing" programs would be acceptable to the extent that the competition does not render one or both non-cost effective." (IPA Plan, 97.)

duplicative of existing programs might, in and of itself, result in rejection of otherwise valid energy efficiency programs.

For the reasons above, the Commission need not and should not at this time determine whether utilities need to conduct TRC analyses for programs that are determined to be duplicative of existing programs.

D. Review of Ameren Illinois TRC Analysis [Section 7.1.5.2]

Response to Ameren

Revisions to Ameren's Administrative Cost Adder

In the IPA Plan, the IPA adjusts the Ameren administrative cost adder used in the computation of program TRCs. In particular, the IPA omits costs associated with Ameren's potential study. (IPA Plan, 96.) Ameren recommends that the IPA's revisions to its administrative cost adder be rejected. (Ameren Objections, 10.) The Commission should reject Ameren's recommendation, and adopt the IPA's adjustment.

Ameren's first argument, offered in support of its recommendation, is unclear. Ameren asserts the IPA's criticisms are not based in fact. (Ameren Objections, 10.) Ameren appears to contest the following IPA statement:

> In light of this directive, the IPA believes that including fixed, non-incremental, non-program-specific costs in the TRC calculation such as those for Ameren's potential study (the development of which is a standalone requirement under Section 16-111.5B(a)(3)(A), and must occur whether Ameren Illinois administers 10, 30, or zero energy efficiency programs) is inappropriate and inconsistent with the direction taken by the Commission in Docket No. 14-0588.

(IPA Plan, 96.) Staff understands Ameren's argument to be that the Commission ordered Ameren to track its administrative costs by program and did not question the composition of costs included in Ameren's administrative cost adders, so that the IPA is factually incorrect to state that including Ameren's potential study costs in TRCs is inappropriate and inconsistent with the direction taken by the Commission in Docket No. 14-0588. (Ameren Objections, 10.)

While Staff does not go so far as to claim that the IPA is factually incorrect to state that including Ameren's potential study costs in TRCs is inappropriate and inconsistent with the direction taken by the Commission in Docket No. 14-0588, Staff does agree with Ameren that the Commission was not as explicit in its directives as the IPA's statement suggests. The Commission did not explicitly speak to what administrative costs should be appropriately included in TRC analyses going forward. The Commission merely required further tracking of such costs to better inform its decisions on this issue going forward, stating: "To the extent the utilities do not explicitly track this information already, the Commission hereby directs Ameren and ComEd to track administrative costs by program in order to aid in future determinations of appropriate administrative cost assumptions to use in the TRC analysis of the Section 16-111.5B programs." Illinois Power Agency, ICC Order Docket No. 14-0588, 224 (December 17, 2014).

Ameren next argues that "the IPA totally ignores the practical effects of arbitrarily cutting Ameren Illinois' administrative budget … ." (Ameren Objections, 11.) With respect to this argument, Ameren appears to conflate the issue of TRC calculation with that of cost recovery. The IPA proposal does not suggest that Ameren does not incur costs to

develop potential studies or that it should not recover such costs. The IPA merely argues that costs that are not incremental to a program should not be included in that program's costs for the purposes of program TRC calculation. Staff agrees with the IPA.

Costs for IPA programs that are not incremental to any particular program are in essence Ameren IPA "portfolio" level costs. Ameren should include such estimated "portfolio" level costs, including those for a potential study, in its energy efficiency assessment submittal as a line item, such that those costs can be considered in the rate impact analysis, and so that the Commission is aware of such costs. As the IPA correctly notes, Ameren will incur these costs whether Ameren does ten, thirty or no energy efficiency programs. This means particular programs should be reviewed without considering these costs. For example, consider a program that has positive net TRC related benefits when potential study costs are not included in the TRC analysis. Given that Ameren incurs potential study related costs whether or not it undertakes the program, customers incrementally benefit through its adoption. The net benefits from this program will offset some or all of the costs associated with the potential study. If the program is not undertaken, then none of the potential study costs are offset and customers are worse off. Fixed costs that do not change with the number of programs undertaken are useful only for assessing the overall cost of Ameren's IPA portfolio. That is, if the sum of the incremental benefit of all of Ameren's IPA programs is not large enough to offset the fixed costs for the programs, then Ameren's IPA portfolio as a whole is producing net losses for customers. The bottom line, however, is that as long as Ameren is going forward with an IPA portfolio, and ignoring other considerations such as bill impacts, then every

program with net positive benefits excluding fixed costs that are not incremental to any particular program improves the TRC value of the IPA portfolio as whole.

Finally, Staff does agree with Ameren that there is no reason to presume that Ameren's administrative cost adder and ComEd's administrative cost adder will be equivalent on a percentage basis or even on an absolute basis. (Ameren Objections, 11.) This, however, has no bearing on whether fixed costs that are not incremental to any particular program should be included in program level TRC analyses.

For the reasons above, Staff agrees with the IPA that fixed costs that are not incremental to any particular program should not be included in Ameren's program level TRC analyses, but the amount of such costs should be reported to the Commission.

E. ComEd Identification of "Performance Risk" [Section 7.1.6.4]

Response to ComEd

ComEd proposes changes to the portion of the IPA Plan that relates to performance risk related to third-party provision of energy efficiency programs. ComEd first proposes language that specifies that utilities that execute contracts subject to IPA plans "… may fully recover the costs they incur under those contracts." (ComEd Objections, Appendix A, 113.) ComEd further amends IPA's language to modify that pay-for-performance nature of contracts insulate ratepayers "in most instances." (Id.) Finally, ComEd strikes language suggesting that utilities will make adjustments in the contracting process to help ensure winning bidders are not significantly compensated prior to demonstrating achieved savings and instead adds language indicating that withholding

payments in such fashion will deter third party participation in energy efficiency programs in contrast to the legislature's goals set forth in Sections 8-103 and 16-111.5B of the PUA. (Id.)

Staff agrees that ComEd should be compensated for costs associated with entering into contracts that it is directed to enter through the IPA procurement process. The issue is whether ComEd should recover *all* such costs in every instance. ComEd has control over the contracts it enters with third-parties. The manner in which it designs and manages such contracts directly determines the amount of performance risk borne by itself and/or ratepayers. For example, ComEd states "if utilities were to be blamed for events beyond their control related to implementing Section 16-111.5B and complying with Commission orders entered thereunder, the utilities will be forced to manage this risk by withholding vendor payment as proposed by Staff and the 2016 Plan." (ComEd Objections, 8.) Notwithstanding ComEd's reference to events beyond the utilities control, this statement reveals that utilities do have control over performance risk. ComEd's statement further reveals that utilities will likely manage performance risk differently depending upon whether they or ratepayers bear the financial responsibility for performance shortfalls. In particular, if utilities do not bear any financial responsibility for performance shortfalls, they will be free to design and manage their contracts with third-party providers in a manner that creates more risk for ratepayers. Because of this, the Commission should not adopt ComEd's language providing that utilities may fully recover the costs they incur with respect to third-party provider energy efficiency program contracts.

Staff agrees with ComEd's proposal to modify the IPA's language to reflect that pay-for-performance nature of contracts insulate ratepayers "in most instances." (ComEd Objections, Appendix A, 113.) In at least the case of Project Porchlight, the pay for performance contract entered into by ComEd did not insulate ratepayers from unrecompensable performance failure. (ComEd Objections, 7.) Further, Staff does not dispute that such failures have, to date, not been frequent. Therefore, ComEd's proposed modification is appropriate. Nevertheless, simply because instances where pay-for-performance contracts failed to insulate ratepayers in the past have not been frequent, does not imply such instances won't occur in the future. The six third-party programs identified by ComEd as performance risks this year underscore that fact.

ComEd's proposal to strike language suggesting that utilities will make adjustments in the contracting process to help ensure winning bidders are not significantly compensated prior to demonstrating achieved savings indicates that ComEd does not intend to make changes in the contracting process to reduce performance risk. The Commission should order ComEd, and also Ameren, to do so. The utilities should consider structuring contracts so that payments are made only after they verify energy saving products have been delivered to customers and/or after energy savings have been achieved. They also should consider holdbacks dependent upon the evaluated results as well as requiring performance bonds to guarantee against failure of a third party to meet its performance obligations. Finally, the utilities should evaluate their quality assurance/quality control processes to ensure that third-party vendors providing IPA energy efficiency programs are not subject to less oversight than are implementers of Section 8-103 of the PUA energy efficiency programs.

In support of its proposed changes to the IPA Plan, ComEd argues that withholding payments from third-party vendors until after evaluations are completed would dramatically reduce participation in bidding through the IPA process and reduce energy efficiency offerings and savings. (Id. 8.) While ComEd makes this assertion without any empirical or even anecdotal support, this concern cannot be casually dismissed. It is for this reason that Staff has suggested alternatives and encourages the utilities to draw upon their experience and knowledge with managing such contracts to identify and explore other alternatives to reduce financial risk to ratepayers and the utilities not identified by Staff. The utilities must strive to reduce performance risk in the course of managing their third-party contracts. The fact that ComEd clearly states that it would manage third-party contracts to reduce performance risk if its own shareholder's funds were at risk as opposed to the funds of ratepayers should certainly give the Commission pause in adopting any language that directly or indirectly implies the utilities bear no financial risk with respect to the management of their third party contracts.

Finally, ComEd criticizes an adjustment proposed by a Staff witness in ComEd's pending Rider EDA reconciliation docket, ICC Docket No. 14-0567. (Id. 7.) Staff will not respond to those criticisms in this IPA procurement docket. However, Staff will address those criticisms in Docket No. 14-0567 as that is the appropriate docket to address them.

For all of the reasons above, ComEd's proposed changes with respect to performance risk language in Section 7.1.6.4 of the IPA Plan should be rejected, with the exception of ComEd's proposal to modify the IPA's language to reflect that pay-for-performance nature of contracts insulate ratepayers "in most instances."

F. Renewable Resources Availability and Procurement [Section 8]

Response to MidAmerican

The Commission should reject MEC's argument that the renewable resources targets procured through the IPA's Plan for MEC should be based on just a portion of MEC's eligible retail load. (MEC Objections, 9.) MEC's position is not supported by the plain language of the Illinois Power Agency Act ("IPA Act") and the PUA. MEC reads an exception into the IPA Act and PUA that the legislature did not write in when the legislature amended the IPA Act and PUA in 2011 through Public Act 097-0325[7] (Attachment A to this Response). Both Staff and the IPA agree that the IPA Act and the PUA require that the renewable resources targets for MEC must be based upon total supply to serve MEC's Illinois retail customers and not just a portion of MEC's eligible retail load. (Plan, 125-26.)

Pursuant to Section 16-111.5(b) of the PUA, MEC requested the IPA prepare a procurement plan for power and energy for MEC for just a portion of MEC's total Illinois retail load. (Plan, 12.) In addition to procuring power and energy, subsection (c) of Section 1-75 of the IPA Act requires that procurement plans also must include cost-effective renewable energy resources. In particular, the IPA Act provides that:

> [a] minimum percentage of each utility's <u>total supply</u> to serve the load of eligible retail customers, <u>as defined in Section 16-111.5(a) of the Public Utilities Act</u>, procured for each of the following years shall be generated from cost-effective renewable energy resources.

(20 ILCS 3855/1-75(c)) (emphasis added).

Section 16-111.5(a) of the PUA defines eligible retail customers as:

[7] Public Act 097-0325 became effective on August 12, 2011.

> those retail customers that purchase power and energy from the electric utility under fixed-price bundled service tariffs, other than those retail customers whose service is declared or deemed competitive under Section 16-113 and those other customer groups specified in this Section, including self-generating customers, customers electing hourly pricing, or those customers who are otherwise ineligible for fixed-price bundled tariff service.

The Plan provides for the procurement of renewable resource targets for MEC based upon MEC's "total supply to serve eligible retail customers" and not upon just a portion of its Illinois load. (Plan, 125-26.) When interpreting a statute, the primary objective is to ascertain and give effect to the intent of the legislature. Metro Utility Co. v. Illinois Commerce Commission, 262 Ill. App. 3d 266, 274 (1994). The best indication of legislative intent is the statutory language itself. Id. Clear and unambiguous terms are to be given their plain and ordinary meaning. West Suburban Bank v. Attorneys Title Insurance Fund, Inc., 326 Ill. App. 3d 502, 507 (2001). Moreover, where statutory provisions are clear and unambiguous, the plain language must be given effect, without reading into the language any exceptions, limitations, or conditions the legislature did not express. Davis v. Toshiba Machine Co., 186 Ill. 2d 181, 184-85 (1999). The IPA Act clearly provides that renewables resources shall be based upon the total supply needed by the utility to serve its eligible retail customers.

MEC erroneously reads an exception into the IPA Act and PUA. (MEC Objections, 5.) In 2011, through an amendment to the IPA Act and PUA, the legislature allowed small multi-jurisdictional utilities that on December 31, 2005, served less than 100,000 customers in Illinois to request the IPA to prepare a procurement plan for their Illinois jurisdictional load. Prior to the enactment of Public Act 097-0325, the IPA developed procurement plans only for electric utilities that on December 31, 2005 provided service

to at least 100,000 customers in Illinois (i.e., ComEd and Ameren). MEC serves less than 100,000 customers. (Plan, Appendix D, MEC Election to Procure Power and Energy, 1.) Public Act 097-0325 made four changes to the IPA Act and six changes to the PUA in connection with allowing small multi-jurisdictional electric utilities to have the option to have the IPA develop procurement plans for them. As discussed above, where statutory provisions are clear and unambiguous, the plain language must be given effect, without reading into the language any exceptions, limitations, or conditions the legislature did not express. Davis v. Toshiba Machine Co., 186 Ill. 2d 181, 184-85 (1999). If the legislature had intended for the IPA procurement plans for a small multi-jurisdictional electric utility to include renewables based upon a portion of the load that is being procured for a utility, and not the utility's total load, then the legislature would have made a change to the law to provide for that exception, when it amended the IPA Act and PUA in 2011.

The legislature made ten changes in total, to the IPA Act and PUA related to the 2011 amendment allowing small multi-jurisdictional electric utilities to have the option to have the IPA develop procurement plans for them. The legislature made the following four changes to the IPA Act:

- [20 ILCS 3855/1-5(A)][8] - The legislature changed the legislative declaration and findings section of the IPA Act to address the IPA developing procurement plans for small multi-jurisdictional electric utilities. (Attachment A,[9] 3.)

- [20 ILCS 3855/1-20(a)(1)] - The legislature changed the General Powers section of the IPA Act to allow the IPA to develop procurement plans for small multi-jurisdictional electric utilities. (Id. at 4.)

[8] Sections of the law changed are indicated in brackets.

[9] For Attachment A, the page references are to the pdf page.

- [20 ILCS 3855/1-75(a)] - The legislature changed the Planning and Procurement Bureau section of the IPA Act, to direct the Planning and Procurement Bureau to develop procurement plans for small multi-jurisdictional electric utilities. (Id. at 10.)

- [20 ILCS 3855/1-75(b)] - The legislature changed the section of the IPA Act addressing IPA consulting experts, to allow those experts to develop procurement plans for small multi-jurisdictional electric utilities. (Id. at 15.)

No other sections of the IPA Act were changed by Public Act 097-0325. In particular, Section 1-75(c) of the IPA Act, the renewable portfolio standard, was not changed.

The legislature made the following six changes to the PUA:

- [220 ILCS 5/16-111.5(a)] - The legislature changed the section related to procurement plans to allow small multi-jurisdictional electric utilities to request the IPA to develop procurement plans for them. (Id. at 42.)

- [220 ILCS 5/16-111.5(b)] - The legislature changed the PUA procurement plan section to provide that procurement plans may be requested by small multi-jurisdictional utilities. (Id. at 43.)

- [220 ILCS 5/16-111.5(b)(2)(i)-(iii] - The legislature changed the PUA procurement plan section to provide that the procurement plan hourly load analysis were to include the impact of energy efficiency programs and demand response programs for small multi-jurisdictional utilities approved pursuant to Section 8-408[10] of the PUA. (Id. at 45.)

- [220 ILCS 5/16-111.5(b)(3)(i)] - The legislature changed the procurement plan section of the PUA to provide that for procurement plans, the definition of retail customers is for Illinois retail customers. (Id.)

[10] 220 ILCS 5/8-408 applies only to small multi-jurisdictional utilities.

- [220 ILCS 5/16-111.5(b)(3)(ii)] - The legislature changed the PUA section addressing load requirements to provide that demand response products covered by the procurement plans include those demand-response offered in energy efficiency plans approved pursuant to Section 8-408[11] of the PUA. (Id.)

- [220 ILCS 5/16-111.5(c)(2)(iv)] - The legislature changed the section of the PUA concerning the procurement monitor, to provide that the procurement monitor retained by the Commission must assess small multi-jurisdictional utilities' compliance with procurement plans approved by the Commission. (Id. at 50.)

No other sections of the PUA were changed by Public Act 097-0325. In particular, the definition of "Eligible retail customers" was not changed.

In 2011 when the legislature amended the IPA Act and PUA to allow small multi-jurisdictional utilities to request a procurement plan for their Illinois jurisdictional load, it made extensive changes to the IPA Act and PUA. However, the legislature did not change Section 1-75(c) of the IPA Act, the renewables portfolio standards section, which provides that the percentage of renewables is based upon the utility's total supply to serve the load of its eligible retail customers. Also, the legislature did not change the definition of "Eligible retail customers" in Section 16-111.5(a) of the PUA. Despite MEC's claims to the contrary (MEC Objections, 5.), the legislature made no changes to the IPA Act and PUA to create an exception that the renewables percentage for small multi-jurisdictional utilities is based upon just a portion of MEC's eligible retail load. In addition, there is no ambiguity in the statutory language as MEC argues. (Id.) While the legislature amended

[11] As indicated in the previous footnote, Section 8-408 of the PUA only applies to small multi-jurisdictional utilities.

the IPA Act and PUA to allow small multi-jurisdictional utilities, like MEC, to have some or all of their power and energy procured pursuant to IPA procurement plans, the legislature did not amend the IPA Act and PUA to allow MEC's renewables to be based upon anything less than its "total supply to serve the load of eligible retail customers, as defined in Section 16-111.5(a) of the Public Utilities Act." 20 ILCS 3855/1-75(c).

Based upon the above, the Commission should adopt the IPA's and Staff's position that the IPA Act and the PUA require that the renewable resources targets procured through the IPA's Plan for MEC should be based upon total supply to serve MEC's Illinois retail customers and not just a portion of MEC's eligible retail customers load.

III. CONCLUSION

Staff respectfully requests that the Illinois Commerce Commission consider Staff's Response to Objections to the IPA's 2016 Procurement Plan and the various recommendations contained herein.

Respectfully submitted,

/s/_____

JOHN C. FEELEY
JAMES V. OLIVERO

Office of General Counsel
Illinois Commerce Commission
160 North LaSalle Street, Suite C-800
Chicago, IL 60601
Phone: (312) 793-2877
Fax: (312) 793-1556
jfeeley@icc.illinois.gov
jolivero@icc.illinois.gov

Counsel for the Staff of the Illinois Commerce Commission

October 20, 2015

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

ILLINOIS POWER AGENCY	:	
	:	
Petition for Approval of the 2016 IPA Procurement Plan pursuant to Section 16-111.5(d)(4) of the Public Utilities Act	:	**Docket No. 15-0541**

AFFIDAVIT OF JAMES ZOLNIEREK

State of Illinois)
)
County of Sangamon)

The undersigned, under oath, deposes and states as follows:

1. My name is James Zolnierek. I am employed by the Illinois Commerce Commission as the Director of the Commission's Policy Division.

2. I have read the Staff of the Illinois Commerce Commission's Response to Objections to the Illinois Power Agency's 2016 Procurement Plan ("Response").

3. I have personal knowledge of the facts and matters discussed in the Response and to the best of my knowledge, information and belief, the facts and non-legal opinions expressed in the Response are true and accurate and, if sworn as a witness, I could testify concerning them.

Further affiant sayeth not.

James Zolnierek

Subscribed and sworn to before me

This 20th day of October, 2015.

Notary Public

OFFICIAL SEAL
LISA BOWMAN
Notary Public - State of Illinois
My Commission Expires Dec 9, 2015