

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

Illinois Power Agency)	
)	ICC Docket No. 15-0541
Petition for Approval of the 2016 IPA)	
Procurement Plan Pursuant to Section 16-)	
111.5(d)(4) of the Public Utilities Act)	

**VERIFIED REPLY TO RESPONSES
ON BEHALF OF THE ILLINOIS POWER AGENCY**

The Illinois Power Agency (“IPA” or “Agency”) respectfully submits its Verified Reply to Parties’ Responses in Docket No. 15-0541, the IPA’s petition for approval of its 2016 Procurement Plan (“2016 Plan”) filed with the Illinois Commerce Commission (“Commission”) on September 28, 2015 as provided for in Section 16-111.5(d)(2) of the Public Utilities Act (“PUA”).

Responses to Objections were filed by the Staff of the Commission (“Staff”), Ameren Illinois Company (“Ameren”), Commonwealth Edison Company (“ComEd”), the Environmental Law & Policy Center (“ELPC”), a coalition of two renewable energy suppliers (“Renewable Suppliers” or “RS”), Wind on the Wires (“WOW”), and the Energy Resources Center (“ERC”). As explained in the introductory statement of the IPA’s Response, the contested issues in this docket are unusually narrow in scope, and the IPA’s Reply to Responses addresses only 1) Incremental Energy Efficiency Programs and 2) Renewable Energy Resource Procurement (including the potential curtailment of existing contracts). To the extent that not all Responses are addressed herein, the failure to address a particular argument should not be construed as agreement or acquiescence. While nothing in parties’ Responses to Objections alters the principle positions taken by the IPA in the 2016 Plan itself or in its Response to Objections, the IPA appreciates parties’ feedback and believes that all perspectives shared contribute to the development of a sound, well-rounded, and comprehensively vetted procurement approach.

I. INCREMENTAL ENERGY EFFICIENCY PROGRAMS (SECTION 7.1)

While the Agency maintains fundamental disagreement with certain parties on some energy efficiency issues contested in this proceeding, the Agency truly appreciates all parties' input and feedback and the attention to detail generally demonstrated in filings. Select issues raised in parties' Responses are addressed below.

A. Cost of Supply (Section 7.1.5.3)

In Response, Ameren continues to make arguments that the Commission must begin using a new, un-vetted "cost of supply" test (one that Ameren apparently decided to unilaterally develop and introduce for this year's submittal) to filter out otherwise cost-effective energy efficiency programs proposed by third-parties. In so doing, Ameren repeatedly justifies its approach as developing "practical" limitations on Section 16-111.5B's scope, citing to Section 16-111.5B(a)(5) in quoting that term. (AIC Response at 7-9). This misleading argument must be rejected.

Contrary to Ameren's suggestion, Section 16-111.5B(a)(5) of the Public Utilities Act actually reads as follows:

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

(220 ILCS 5/16-111.5B(a)(5) (emphasis added)). Of course, "practical" and "practicable"—the term actually used in the law—are not the same. Black's Law Dictionary defines practicable as follows:

Practicable -- Any idea or project which can be brought to fruition or reality without any unreasonable demands

“Practical” is not specifically defined in Black’s, but Wiktionary.org offers that “practical” can refer to “being likely to be effective and applicable to a real situation; able to be put to use.” The question of “is this program likely to be effective?” is obviously very different than “can this program be brought to fruition without any unreasonable demands?”—especially against the backdrop of a preceding clause requiring that “all achievable cost-effective savings” be “fully capture[d].” (220 ILCS 5/16-111.5B(a)(5)).

Perhaps this misquote could merely be an oversight—except that same oversight is present throughout Ameren’s Section 16-111.5B submittal, causing the IPA to add the following note to its 2016 Plan:

In its submittal, Ameren Illinois relies on the phrase “to the extent practicable” as justification for fashioning non-statutory limitations on program inclusion, and then conflates “practicable” (used only initially in their submittal when quoting the law) with “practical” (used instead throughout its submittal). While “practicable” refers to “capable of being accomplished,” “practical” means to “being likely to be effective.” A cost-effective program submitted in compliance with RFP requirements is unquestionably part of a portfolio intended to “fully capture the potential for all achievable cost-effective savings, to the extent practicable.” There may be “practical” reasons for a utility to seek a program’s exclusion, but as Section 16-111.5B fails to use the term “practical,” those find no support in the law.

(2016 Plan at 108). Rather than explain how this new test for filtering out cost-effective programs fits under the term actually used in the law, Ameren chooses instead to repeatedly and knowingly misquote the law, apparently hoping to lead the Commission into an unjustified interpretation based on a misrepresentation. This is unfortunate. In any event, as Ameren’s only available option for justifying a new, non-statutory test to filter out others’ proposals is through continually misquoting the law, its arguments must be rejected.

Also underpinning Ameren’s contention that a new test be applied is a concept that its “understanding of the law and the IPA’s procurement of energy efficiency” has “evolved and progressed.” (Ameren Response at 8). Stated differently, Ameren freely admits that every prior

Commission Order did not allow for its new non-statutory test to filter out third-party proposals.

Its only justification for this sudden change in interpretation is the well-known and long-understood fact that energy efficiency programs have costs. As explained by the IPA in its Response:

While the IPA recognizes that expanding energy efficiency programs can have a bill impact for customers, inherent in the statutorily mandated TRC screening process is a required determination that expected benefits exceed those costs. Unlike Section 8-103 of the PUA, Section 16-111.5B does not contain a rate impact cap allowing for a strict limitation of costs. Instead, the law directs the Commission to include those programs necessary to “fully capture the potential for all achievable cost-effective savings, to the extent practicable” in IPA procurement plans. (220 ILCS 16-111.5B(a)(5)) (emphasis added). It is cost-effectiveness—the balancing of costs against benefits—and not merely cost that is used to evaluate a program’s inclusion.

(IPA Response at 7-8). The mere presence of costs cannot serve as the sole basis for shifting the understood interpretation of a law that expressly requires weighing costs against benefits, and yet that is Ameren’s (and, to a lesser extent, Staff’s) argument.

Additionally, it cannot be overlooked that the third parties proposing these incremental energy efficiency programs may be smaller, less-established businesses with promising new technologies for energy savings looking for a market opportunity in Illinois. For Section 8-103 programs, the utilities develop and propose portfolios and serve as program administrators for implementation. But given the budget limitations and savings targets of Section 8-103 and the discretion granted to program administrators, not all programs or companies may be chosen, and larger, well-established entities may have a natural advantage. Section 16-111.5B is in part intended to remove that discretion, providing a new pathway for programs that weren’t chosen by allowing them to compete based only on the quantitative strength of their proposals—a bottom-up, rather than top-down approach designed to foster innovation. Allowing a utility to unilaterally develop a new filter for these programs and apply it to all submittals received risks shutting down that pathway and foreclosing such opportunities from being won. If “costs” can

be segregated out as independently relevant to a statute's interpretation, as Ameren and Staff contend, then perhaps these adverse business impacts should be as well.

Lastly, at no point has any party in this proceeding demonstrated how Ameren's new test actually reflects the "cost of supply." Ameren has offered no response as to how or why avoided transmission and distribution costs are not considered in its new test, a question expressly raised in the 2016 Plan. By comparison, the TRC test is put through constant and often painstaking methodological evaluation by all stakeholders, including a Stakeholder Advisory Group TRC subcommittee (of which Ameren is an active member) featuring monthly meetings and robust debates. Not only has Ameren's proposed methodology received no vetting, it was treated as such an afterthought that Ameren failed to include any methodological details in its initial Section 16-111.5B submittal. Changing course to now read that same test into the law as a binding requirement, as Ameren proposes and Staff apparently supports, must be rejected.

B. Performance Risk (Section 7.1.6.4)

In arguing that programs with an identified "performance risk" should not have their TRCs arbitrarily adjusted as proposed by Staff, ComEd indicates that "the IPA Plan proposes that third-party vendors not be paid until years after they first incur start-up costs to offer their programs." (ComEd Response at 7). To be clear, this is not the IPA's proposal. Instead, the 2016 Plan merely states that it understood "the utilities plan to make adjustments in RFP development" to ensure that winning bidders "may not be significantly compensated" prior to demonstrating savings. (2016 Plan at 103). The IPA is not proposing this approach; it is merely stating steps that it believes may be planned by the utilities. If this sentence is inaccurate and the utilities are not planning on structuring contracts consistent with that description (and "significantly compensated" was not intended to encompass withholding all compensation), or if

doing so would produce outcomes that would frustrate the purpose of the Section 16-111.5B process, then the IPA agrees with ComEd that this sentence should be deleted.

Indeed, the IPA is sensitive to the concerns raised by ComEd in its Response, and agrees that a single vendor's insolvency does not demonstrate a malfunctioning process. The existing process of vetting vendors and programs is comprehensive and demonstrates a genuine commitment to soliciting and valuing stakeholder input. The existing pay-for-performance contract structure may not completely insulate ratepayers from all potential contingencies, but generally demonstrates a fair balancing of competing goals. Insulating ratepayers from all risk is an admirable aim, but making that process entirely unworkable for potential bidders would undermine the potential for “all achievable cost-effective savings” be “fully capture[d].” (220 ILCS 5/16-111.5B(a)(5)). Steps taken to eliminate all risk, such as those contemplated in Staff’s Objections and Response, would upset this balance and cause far more harm than good. The IPA believes that the Commission should not hastily order the utilities to make changes to a contract structure that has generally worked effectively.

Further, new program solicitation and contract development adjustments should not occur in the closed, time-constrained vacuum of this docketed proceeding. While this litigation features Staff requesting that the Commission order the utilities to make adjustments, the law calls for utilities to “develop requests for proposals” in a manner “which considers input from the Agency and interested stakeholders”—some of whom may not be participants in this litigation. (220 ILCS 5/16-111.5B(a)(3)). The process envisioned by the law for making changes is through collaboration, not commandment.

For these reasons, the IPA agrees with ComEd that workshops would be the appropriate forum for addressing “performance risk” concerns and what steps can be taken in solicitation and

contract development to mitigate such risks. The IPA also agrees with ComEd that workshops could be appropriate for addressing TRC adjustments to account for performance risk, but notes that unlike proposals for TRC adjustments found in prior dockets and referred to a workshop process, Staff's "proposal" contains no actual quantitatively-substantiated adjustments. Instead, Staff offers only an arbitrary, outcome-driven change to eliminate programs from consideration. Should this topic be referred to a workshop, additional discussions must demonstrate the commitment to detail and focus found in other TRC test input debates.

C. Adjustment to Ameren's Administrative Cost TRC adder (Section 7.1.5.2)

The IPA agrees with Staff on the IPA's adjustment to Ameren's administrative cost TRC adder. Echoing a point made by the IPA in its Response, Staff likewise clarifies that this proposal "does not suggest Ameren does not incur costs to develop potential studies or that it should not recover such costs;" it is merely "that costs that are not incremental to a program should not be included in that program's costs for purposes of program TRC calculation." (Staff Response at 11-14). This issue is simply about whether costs incurred by Ameren to conduct a potential study—costs which must be incurred whether Ameren receives any bids or runs any programs—should be used as an input in conducting a cost-benefit analysis of a proposed energy efficiency program. As these costs are not administrative costs connected to that program, they should not be used to evaluate that program, and Ameren's arguments falsely accusing the IPA of "slashing" its "budget" are misleading.

D. TRC Calculations for Programs Designated as "Duplicative" (Section 7.1.5.4)

Staff indicates that because Section 8-103 portfolios will not yet have been approved by the Commission, no 2017 Plan incremental programs may be deemed "duplicative" of existing programs and thus the Commission can defer determination on whether TRC analyses must be

conducted. (Staff Response at 9-11). The IPA agrees with Staff that “duplicative” determinations “can be difficult,” and “omitting complete analyses of programs that may prove to be non-duplicative of existing programs might, in and of itself, result in rejection of otherwise valid energy efficiency programs.” (Id.) However, the IPA disagrees that resolution of this issue can be deferred. Either a) there will be “duplicative” determinations made as part of the utilities’ 2017 Plan submittals, in which case this issue should be resolved now to provide guidance for that process; or b) no such determinations will need to be made—in which case this issue will not be raised for resolution in next year’s docket for guidance in developing the 2018 Plan, when it may next arise. Further, proposed incremental programs may be “duplicative” of each other (as opposed to “duplicative” of a Section 8-103 program), as happened in Docket No. 14-0588. Should the same happen next year, TRC test results will be essential for each program. As clear Commission determination is the only safeguard sufficient to ensure that an informed analysis of next year’s proposals can be made, the Commission should require that TRC results be run for programs initially designated as “duplicative.”

E. Prior Year Consensus Items (Section 7.1.3)

With respect to consensus items from prior Commission workshops, Staff proposes that “the IPA Plan should include an explicit list of consensus items in its draft and plan submissions” allowing parties “to identify and provide support for the removal of any consensus items they believe are obsolete or are no longer applicable.” (Staff Response at 7). The IPA supports this approach—but notes that this exact approach was taken with the Plan filed in the present proceeding, and yet Ameren has still failed to identify specific items it believes are obsolete. Nevertheless, consistent with Staff’s position, the IPA believes that consensus items approved in this proceeding should apply to the present proceeding, the development of RFPs for the 2017

Plan, the review and evaluation of 2017 Plan programs, and utility submittals next July. Once the draft 2017 Plan is published for comment, consensus items should again be revisited.

II. RENEWABLE ENERGY RESOURCE PROCUREMENT (CHAPTER 8)

A. Longer Term Contracts Via the Renewable Resources Budget (Chapter 8)

Nothing offered in the Responses of the Environmental Law & Policy Center, the Renewable Suppliers, or Wind on the Wires alters the IPA's well-justified position of calling for only one-year contracts using the Renewable Energy Resources Budget, a position reinforced by the Responses filed by Staff, ComEd, and Ameren. As explained by the IPA's in its Response:

Neither the IPA nor any other party knows whether future budgets may be sufficient to cover new multi-year contracts, something further complicated by the Renewable Suppliers' proposal that existing long-term agreements operate as senior to new agreements should curtailment be required. While the IPA appreciates the spirit of the proposals offered by ELPC and the Renewable Suppliers, layering any additional longer-term obligations atop existing long-term agreements that already risk being curtailed due to volatile and uncertain budgets would be highly inadvisable. Even if potential suppliers were willing to assume that heightened curtailment risk and participate in such a procurement event, risk premiums associated with those bids could frustrate the IPA's statutory duty to "ensure adequate, reliable, affordable, efficient, and environmentally sustainable electric service at the lowest total cost over time, taking into account any benefits of price stability." (20 ILCS 3855/1-5(A)).

(IPA Response at 21). Nevertheless, certain arguments made in parties' Responses require additional discussion and addressed below.

ELPC suggests that to leverage current availability of Renewable Resource Budget funds under Section 1-75(c)(2)(E)'s rate impact cap, the Agency "could also structure the [distributed generation] procurement to provide for a one-time payment for a future five-year stream" of renewable energy credits ("RECs") from distributed generation facilities. (ELPC Response at 2-3). Given the amount of the Renewable Resources Budget consumed by the 2010 long-term power purchase agreements, it is unclear how entities could be "pre-paid" for five-years of REC delivery without collections to make such payments immediately and substantially exceeding the

rate impact cap. Instead, this proposal would only exacerbate the existing curtailment risks identified throughout this docket by ComEd, Ameren, and the IPA. Further, no attempt is made by ELPC to explain how such a proposal could be implemented consistent with the utilities' tariffs for the collection of expenditures used to purchase RECs. ELPC also fails to explain what protections would be provided to ensure that "pre-paid" RECs would actually be delivered. Substantial additional credit requirements (and/or performance bonds) would likely be required, increasing the cost of "pre-paid" RECs and compromising efforts to achieve the "lowest total cost over time, taking into account the benefits of price stability." (220 ILCS 5/16-111.5(d)(4)). As this proposal is unworkable practically and may be incompatible with filed tariffs and the governing law, it must be rejected.

ComEd contends that the Renewable Suppliers' arguments for longer-term contracts are driven by "financial motivations." (ComEd Response at 5). Whatever the merits of this contention, the IPA wishes to clarify that in its competitive procurement processes, there is no guarantee that any party will emerge as a winner. As required by law, IPA procurements are conducted using "sealed, binding commitment bidding with pay-as-bid settlement, and provision for selection of bids on the basis of price." (220 ILCS 5/16-111.5(e)(4)). Winning bids must still clear "market-based benchmarks" and results are subject to Illinois Commerce Commission approval. Regardless of the Renewable Suppliers' motivations, new procurements would not ensure them of winning contracts; the IPA's procurement events merely offer an opportunity for bidders to present the most competitive possible bid.

B. Distributed Generation Procurement (Section 8.4)

ELPC also objects to ComEd's recommendation that bids for a distributed generation procurement be at least one megawatt "for each product size" (ELPC Response at 4-5), a

proposal now supported by Ameren. (Ameren Response at 7). The IPA agrees with ELPC and strongly disagrees with ComEd's recommendation. If parties are seriously focused on meeting the statutory goals of Section 1-75(c), proposals should be focused on how to make this difficult one megawatt aggregation requirement most manageable, not unnecessarily tightened beyond what is statutorily mandated. Assuming the average residential rooftop photovoltaic installation is 5 kW in size, assembling a one megawatt bid requires aggregating 200 such installations. Requiring that hundreds of small distributed generation systems be organized as a threshold to participation could effectively foreclose small system participation in the IPA's distributed generation procurement, frustrating the IPA Act's requirement that "half of the renewable energy resources . . . shall come from devices of less than 25 kilowatts in nameplate capacity." (20 ILCS 3855/1-75(c)(1)). Further, such a requirement could drive up resulting prices by stifling competitive bidding, inconsistent with the PUA's requirement that an approved IPA Procurement Plan achieve "the lowest total cost over time, taking into account any benefits of price stability." (220 ILCS 5/16-111.5(d)(4)). The one megawatt bid threshold presents a significant barrier to participation for potential bidders, and further tightening of that requirement by making it applicable to system size categories is unjustified and counterproductive.¹

In its Response, ComEd now parrots arguments by Ameren that a) technology-specific sub-targets need not be met, and b) the IPA should simply use a distributed generation procurement to expand its supplemental photovoltaic procurement—both proposals rejected by the Commission just last year. (ComEd Response at 10-11). The IPA has explained the laws

¹ In recognition of these challenges, the IPA's supplemental photovoltaic procurement (approved in Docket No. 14-0651) requires a minimum bid size of only 80 kw – less than 10% of the one megawatt requirement. The difference in results between the supplemental procurement and the 2015 DG procurement highlight just how that one megawatt threshold may be a meaningful barrier: while the first supplemental procurement event resulted in seven winning suppliers and a fully exhausted budget, the October DG procurement conducting using Section 1-75(c)'s requirements produced only one winning supplier.

governing its distributed generation procurement process and its supplemental photovoltaic procurement process, and detailed how each utility proposal is inconsistent with state law. (See IPA Response at 26-28). By comparison, at no point in this proceeding—or in last year’s proceeding—have ComEd or Ameren even attempted to explain how its proposals are legally permissible. For the reasons outlined in the IPA’s Response, those proposals must be rejected.

C. March Load Forecast Update Process (Section 8.2)

Further extending arguments that have been previously raised and rightfully rejected by the Commission, the Renewable Suppliers now claim that the Commission’s long-established process for “pre-approving” March load forecast updates through the consensus of Staff, the IPA, the utilities, and the Procurement Monitor is inconsistent with Section 16-111.5(d)(4) of the PUA. (RS Response at 6-8). The Illinois Commerce Commission is responsible for interpreting the Public Utilities Act and determining the legality of this approach. For the past several years, the Commission has not only determined that this approach is legally permissible, but has indicated that it is “comfortable” with this approach that it believes “has been and will continue to be effective and successful.” (Docket No. 13-0546, Final Order dated December 18, 2013 at 198). Use of this process has been litigated *ad nauseum*, and no party in any filing has identified any occurrence calling into question the wisdom of the Commission’s determinations. As adding new layers of process to solve a non-existent problem is unnecessary and poor public policy, the Renewable Suppliers’ arguments must be rejected.

D. Renewable Energy Resources Fund (“RERF”) (Section 8.5)

Wind on the Wires “encourages the IPA to indicate” that it intends to use RERF funds in compliance with the technology-specific subtargets enumerated in Section 1-56(b). (WOW Response at 1-3). The Renewable Suppliers also suggest that the Commission make

recommendations to the IPA regarding how it should use the Renewable Energy Resources

Fund. (RS Response at 5-6). As the IPA stated in its Response:

As the IPA develops its plans for any use of the RERF, it will provide opportunities for stakeholders to provide input and comment on the most efficient and appropriate use of the Renewable Energy Resources Fund and potential coordination with procurements approved in this proceeding. However, as the Commission held in Docket No. 12-0544 and as ELPC itself acknowledges, “it is clear the Commission has no authority over disbursements from the RERF collected on behalf of ARES customers.” (Docket No. 12-0544, Final Order dated December 19, 2012 at 113). The IPA strongly believes that a Commission Order approving its Procurement Plan should concern only those matters over which the Commission has jurisdiction, and that it would be inappropriate for the Commission to offer recommendations on planned disbursements from that fund.

(IPA Response at 30-31). As the entity statutorily designated for administering the RERF, the IPA believes its statement on the issue is final.

CONCLUSION

The IPA respectfully recommends that the Commission resolve open issues consistent with the IPA’s positions articulated herein.

Dated: October 30, 2015

Respectfully submitted,

Illinois Power Agency

By:

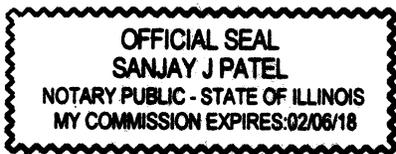
/s/ Brian P. Granahan

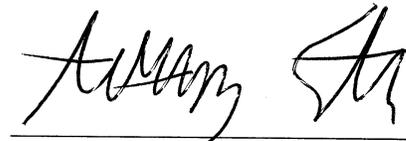
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STATE OF ILLINOIS)
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VERIFICATION

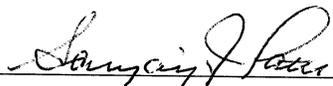
Anthony M. Star, being first duly sworn, on oath deposes and says that he is the Director for the Illinois Power Agency, that the above Verified Reply to Responses on Behalf of the Illinois Power Agency has been prepared under his direction, he knows the contents thereof, and that the same is true to the best of his knowledge, information, and belief.





Anthony M. Star

Subscribed and sworn to me
This 30th day of October, 2015



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NOTICE OF FILING

Please take notice that on October 30, 2015, the undersigned, an attorney, caused the Verified Reply to Responses on Behalf of the Illinois Power Agency to be filed via e-docket with the Chief Clerk of the Illinois Commerce Commission in a new proceeding:

October 30, 2015

/s/ Brian P. Granahan
Brian P. Granahan

CERTIFICATE OF SERVICE

I, Brian P. Granahan, an attorney, certify that copies of the foregoing document(s) were served upon the parties on the Illinois Commerce Commission's service list as reflected on eDocket via electronic delivery from 160 N. LaSalle Street, Suite C-504, Chicago, Illinois 60601 on October 30, 2015.

/s/ Brian P. Granahan
Brian P. Granahan