

**STATE OF ILLINOIS**  
**ILLINOIS COMMERCE COMMISSION**

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

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**STAFF OF THE ILLINOIS COMMERCE COMMISSION**  
**BRIEF ON EXCEPTIONS**

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<b>ILLINOIS POWER AGENCY</b>	:	
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<b>Petition for Approval of the 2016 IPA Procurement Plan pursuant to Section 16-111.5(d)(4) of the Public Utilities Act</b>	:	<b>Docket No. 15-0541</b>
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**STAFF OF THE ILLINOIS COMMERCE COMMISSION  
BRIEF ON EXCEPTIONS**

The Staff of the Illinois Commerce Commission (“Staff”), by and through its counsel, and pursuant to Section 200.830 of the Commission's Rules of Practice (83 Ill. Adm. Code 200.830), respectfully submits its Brief on Exceptions (“BOE”) in the above-captioned matter.

**I. BACKGROUND**

On September 28, 2015, the Illinois Power Agency (“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”),
- MidAmerican Energy Company (“MEC” or “MidAmerican”) and

Renewables Suppliers

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 (“Reply”), due October 20, 2015 and October 30, 2015, respectively. (October 6, 2015, Notice of Schedule and Notice of Administrative Law Judges Ruling.)

On October 20, 2015 Staff and the following six parties served on each other and filed Responses:

Ameren

ComEd

ELPC

IPA

Renewables Suppliers and

Wind on the Wires (“WOW”)

On October 30, 2015 Staff and the following parties served on each other and filed Replies:

Ameren

ComEd

ELPC

IPA

Renewables Suppliers and  
WOW

On November 13, 2015, the Administrative Law Judges (“ALJs”) issued a Proposed Order (“ALJPO” or “PO”). The ALJs set November 20, 2015 and December 1, 2015 for the filing of exceptions (“BOE”) and reply exceptions, respectively. As set forth in Section II, Argument and Exceptions, Staff takes exception and offers certain modifications to the ALJPO pertaining to certain issues. Staff’s BOE follows.

## **II. ARGUMENT AND EXCEPTIONS**

### **A. Exception 1, Prior Year Consensus Items [Section 7.1.3]**

#### **1. Argument**

Staff agrees with the ALJPO’s decision to keep the 2013 consensus items in the Plan. (ALJPO, 81.) In order to reduce any potential confusion on this issue, Staff recommends the Commission clarify that by keeping the consensus items in the Plan, the Commission is actually approving and adopting those consensus items through its final order in this matter.

#### **2. Recommended Substitute Language**

(ALJPO, 81.)

##### Commission Analysis and Conclusion

To begin, Ameren provides this Commission with no information as to what 2013 consensus items are stale or contradictory and no statement as to why some 2013 items are contradictory. Thus, this Commission has no information upon which it can assess Ameren’s argument.

Additionally Staff states that it reviewed the list of consensus items, and it removed the items that were contradicted by later workshop consensus items. While Ameren argues that the IPA has selectively identified only a few of the 2013

consensus positions, in fact, Staff's averment that it removed the items were contradicted in later workshops establishes that this assertion is not correct. Also, as Staff and the IPA point out, inclusion of consensus items in a Plan is useful, it provides guidelines to vendors and the utilities. The Commission therefore declines to require the IPA to amend its Plan in the manner that Ameren requests. Accordingly, the Commission hereby approves and adopts the 2013 and 2014 consensus items as requested in the Plan and as set forth in Sections III.B.2.-III.B.10 of this Order, and otherwise approves the IPA's applicability request pertaining to those provisions.

**B. Exception 2, ComEd Identification of "Performance Risk" [Section 7.1.6.4]**

**1. Argument**

The ALJPO declines to adopt Staff's proposal to reject energy efficiency ("EE") programs that ComEd and stakeholders identified as "performance risks." ComEd and stakeholders flagged energy efficiency programs as "performance risks" in cases where they believed the EE programs presented substantial risks for not meeting savings goals.<sup>1</sup> The ALJPO rejects Staff's proposal, in part, because "Staff did not state which four programs of the six performance risk programs should be rejected." (ALJPO, 104.) The ALJPO is mistaken. In Staff's Objections to the Plan, Staff stated "[s]pecifically, Staff recommends the Commission reject the four energy efficiency programs that the IPA included in the Plan that were identified by ComEd and stakeholders as 'performance risk.'" (Staff Objections, 11.) As this recommendation makes clear, the four programs Staff referenced were the four programs identified as performance risks that the IPA included within its proposed Plan. The other two programs ComEd identified as performance risks

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<sup>1</sup> It is important to recognize that the savings for EE programs approved in this proceeding are used to adjust the amount of power that actually gets procured under the procurement plan. See 220 ILCS 5/16-111.5B(a)(5). It is clearly unreasonable to approve the "performance risk" programs and their corresponding savings goals and reduce the amount of power to be procured in the procurement plan by the savings goals when ComEd and stakeholders all agree that the energy savings goals assumed for those performance risk programs in the TRC analysis are overstated.

were not included in the Plan. As the IPA explained, these two programs were not included in the Plan because “[o]ne of those programs did not pass the TRC, and one was determined to be duplicative.” (IPA Plan, 103.) Staff did not provide the specific program names of the four performance risk programs included in the Plan in its docketed filings because (1) Staff recognized that the IPA did not identify the names of the performance risk programs in its Plan, and (2) the ComEd Bid Review Document (‘ComEd 2015 IPA Bid Review\_FINAL\_0713’) containing the names is designated as confidential. Staff notes that ComEd’s Response to Staff’s Objections appears to agree that there are errors in ComEd’s total resource cost (“TRC”) analysis and associated TRC results presented in the Plan, stating: “ComEd appreciates that Staff contributed to the process this year through its data requests, which identified an error with measure life assumptions for one program.” (ComEd Response, 9.) Yet ComEd provides no corrected TRC analysis during the course of this proceeding to correct that significant error, perhaps due to the limited time constraints of this docket.

Staff recommended that the Commission reject the four performance risk programs included in the Plan, in part, because the performance risk concerns identified by ComEd with respect to these programs were not incorporated into the program TRC estimates. (Staff Objections, 12.) While the ALJPO directs ComEd to submit corrected TRC estimates in the future, it unaccountably does not do so with respect to the programs at issue in this proceeding and, instead, approves the four performance risk programs based upon uncorrected TRC estimates. Without correct TRC estimates, the Commission has no assurance that the programs are cost-effective as required by Section 16-111.5B of the PUA. Staff emphasizes that it is a statutory requirement that only cost-effective energy

efficiency programs can be approved in this proceeding pursuant to Section 16-111.5B of the PUA.

Furthermore, in approving the “performance risk” programs<sup>2</sup> contained in the Plan, the ALJPO does not adequately address how approval of such programs presenting substantial risks for not meeting savings goals satisfies the legal requirement that approval of programs must represent “achievable” cost-effective savings. 220 ILCS 5/16-111.5B(a)(5). As Staff noted in its Reply, clearly the designation of these EE programs as performance risk programs does not satisfy the requirement that the savings from these programs are actually “achievable.” (Staff Reply, 11.) There is no evidence in this proceeding that demonstrates the savings goals assumed for the “performance risk” programs are actually “achievable” and satisfy the requirement of Section 16-111.5B(a)(5) of the PUA. Accordingly, the Commission should not approve the “performance risk” programs, since it has not been shown that the programs have achievable savings and are actually cost-effective due to the flawed TRC analysis.

The ALJPO also states, “[h]owever, the Commission rejects Staff’s proposals to require the utilities to withhold payment and that there should be a disallowance for underperforming programs, as the workshops should address issues that will help insulate ratepayers from paying for programs that cannot achieve expected savings.” (ALJPO, 104.) It is unclear what the ALJPO means when it rejects Staff’s proposal that there should be disallowances for underperforming programs. Staff did not, in this proceeding, propose any particular utility disallowance for underperforming programs. Staff did, however, object

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<sup>2</sup> ComEd and stakeholders flagged energy efficiency programs as “performance risks” in cases where they believed the EE programs presented substantial risks for not meeting savings goals.

to ComEd's proposal to amend the Plan in ways that insulate utilities from any and all future disallowances. (Staff Response to Objections, 14.) The ALJPO did not accept ComEd's proposal. Furthermore, the ALJPO specifically declines to consider specific disallowances at issue in Docket No. 14-0567. To avoid any ambiguity and to fairly represent Staff's position, the Commission should remove the reference to rejection of Staff's proposal regarding disallowance. Furthermore, the ALJPO's rejection of withholding payment could result in third party vendors arguing that the utilities have to provide an even larger share of the total program costs upfront in comparison to what they currently have been receiving. This has negative potential consequences to ratepayers, both in terms of cost recovery of a significant share of program costs within a short timeframe and if the vendor goes bankrupt soon after the upfront payment is made and such costs cannot be refunded. For these reasons, the Commission should remove the reference to rejection of Staff's proposal to withhold payment, as such a statement could have negative unintended consequences.

Similarly, Staff proposed "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." (Staff Response to Objections, 16.) In essence, Staff recommended utilities consider ways to insulate ratepayers from paying for programs that cannot achieve expected savings. The ALJPO directs such issues to the workshop process conducted by the SAG. (ALJPO, 104.) It is, therefore, unclear what the ALJPO means when it rejects Staff's proposal which was that utilities consider methods to insulate ratepayers from paying for programs that cannot

achieve expected savings. To avoid any ambiguity and to fairly represent Staff's position, the Commission should remove the reference to rejection of Staff's proposal regarding withholding of payments.

## 2. Recommended Substitute language

(ALJPO, 103-104.)

### Commission Analysis and Conclusion

ComEd and the IPA are of the opinion that the "pay for performance" nature of Section 16-111.5B contracts insulates ratepayers from paying for programs that cannot achieve expected savings. Staff argues that the "pay for performance" nature of these contracts is not in fact insulating ratepayers from paying for programs that do not achieve expected savings. Staff also pointed out that the programs at issue here are not scrutinized in the same manner that the Section 8-103 EE programs vendors are scrutinized. It seems to be a simple matter to require the same level of scrutiny for Section 16-111.5B contracts as that which is implemented ~~imposed~~ for Section 8-103 contracts. The utilities are directed to develop a plan to implement use of the same scrutiny for Section 16-111.5B contracts as that for Section 8-103 contracts through workshops conducted by the SAG. ~~However, the Commission rejects Staff's proposals to require the utilities to withhold payment and that there should be a disallowance for under-performing programs, as the w~~Workshops should address issues that will help insulate ratepayers from paying for programs that cannot achieve expected savings.

Additionally, Staff states that in contrast to the analysis performed by Ameren, ComEd relies solely on information supplied by vendors when conducting TRC analysis and it does not perform an independent analysis of EE programs. ComEd has given this Commission no reason for its failure to do so. ComEd is directed to conduct future TRC analyses in the manner in which Ameren performs this analysis.

As for Staff's recommendation to reject the four of the six EE programs included in the Plan that ComEd and stakeholders were identified as "performance risks," the Commission finds that these performance risk EE programs should be rejected as it has not been shown that the programs have achievable savings and are actually cost-effective due to the flawed TRC analysis. ~~declines to do so at this time. Not enough information was provided for the Commission to make an informed decision in this regard. In fact, Staff did not state which four programs of the six performance risk programs should be rejected. The Commission also did not consider matters in another Commission proceeding, Docket No. 14-0567. Issues presented in that proceeding will be resolved in that case.~~

(ALJPO, 100-101.)

Staff Position

\* \* \*

Staff points out that a cost-effective program which duplicates a utility's Section 8-103 EE program may be excluded for sound reasons, citing the Order from the 2014 Plan.- Docket No. 13-0546 (Order of December 18, 2013) at 148-49. Staff reasons that, for the programs and measures included in the procurement plans, the law requires that they fully capture the potential for "all achievable cost-effective savings, to the extent practicable," citing 220 ILCS 5/16-111.5B(a)(5). This language, Staff continues, gives the IPA discretion when determining what EE programs to include in a procurement plan. Staff Objections at 7-8.

\* \* \*

The Plan also states that "under a pay for performance arrangement, the IPA understands risk of underperformance to rest with the winning bidders, and flawed program design will simply manifest itself in less payment for less performance." Plan at 103. The problem with this statement, according to Staff, is that the pay-for-performance model that was relied upon in the past did not insulate ratepayers and utilities from financial risk. Staff states that this is due in part to large upfront payments being made to vendors without any demonstration of performance. Also, it is primarily up to the utilities ~~and the IPA~~ to true up performance shortfalls after the end of the program year. Staff refers to testimony in the currently pending ComEd EE reconciliation docket, where a Section 16-111.5B third-party vendor became insolvent and did not perform, forcing ratepayers and/or the utility to cover the loss of approximately \$390,000, citing Docket No. 14-0567, ComEd Ex. 3.0 at 3; Staff Objections at 10.

\* \* \*

According to Staff, ComEd and stakeholders did not adjust the TRC Test inputs to reflect reasonable input assumptions based on the identified performance risk of such programs. Staff continues to state that the IPA made no adjustments to ComEd's analysis of these programs. One reason noted in the Plan is that the IPA does not have access to ComEd's software and it therefore could not perform any revised cost-effectiveness analysis of ComEd's programs, citing the Plan at 101. In Staff's view, ComEd should not rely solely on the information provided by vendors when performing the TRC Test analysis of the bids when it is aware of adjustments that would better reflect reality and reasonable inputs. *Id.* at 12.

Staff avers that ComEd's TRC assumptions that do not pertain to the amount of first year savings are also unreasonable. As an example, Staff points to the measure life values for one of the performance risk programs. Staff contends that when Ameren performed the TRC analysis of the same program, it followed up with the vendor and learned that the original measure life length in the bid was incorrect and adjusted its TRC analysis accordingly. *Id.* at 13.

Staff recommends that the Commission reject the four (unspecified) of the six performance risk EE programs that the IPA included in its Plan. Also, according to Staff, the Commission should direct ComEd to make adjustments to its TRC analysis of bids to reflect reasonable assumptions, consistent with the approach used by Ameren. *Id.* at 10-11. Staff additionally recommends that the Commission direct ComEd and Ameren to take all reasonable steps to make adjustments to their TRC analysis of bids to reflect reasonable assumptions, consistent with the approach used by Ameren. *Id.* at 13.

\* \* \*

**C. Renewables Resources Availability and Procurement - MidAmerican [Section 8 and 8.1.3]**

**1. Exception 3, MEC's Renewables Resources Target Should be Based on Total Supply to Serve MEC's Retail Customers**

a) Argument

The Commission should reject the ALJPO's conclusion that MEC's renewables resources target procured through the IPA's Plan should be based on just a portion of MEC's eligible retail load. There are two flaws in the ALJPO's analysis of this issue. First, the ALJPO ignores the plain language of the Illinois Power Agency Act ("IPA Act") and the PUA and second, the conclusion is based in part upon evidence not in the record. If the Commission adopts the ALJPO's conclusion, which it should not, the Commission's final order needs to provide clarification of how that decision would affect the budget available for MEC's renewable energy resource purchases as discussed below. Staff's Exception 4 in the alternative addresses that issue.

Contrary to the position taken by Staff and the IPA, the ALJPO erroneously concludes that "... the renewable resources targets procured should only relate to that

portion of the “total supply” procured for MidAmerican’s jurisdictional eligible retail customers that is included in the 2016 Procurement Plan pursuant to Section 16.111.5 of the PUA and Section 1-75(c) of the IPA Act.” (ALJPO, 121.) To support its conclusion the ALJPO states that “the statute should be interpreted by reading it in its entirety,” that the language provided in Section 16-111.5(a) and (b) of the PUA reflects including only a “portion” of MidAmerican’s eligible retail load and not MidAmerican’s “total” Illinois retail load and that “it is likely unreasonable to determine that the intent of the legislature would be to create unnecessary hardship for MidAmerican to participate in the 2016 Procurement Plan.” (ALJPO, 121.) While the ALJPO states that a statute should be read in its entirety, the ALJPO analysis fails to consider both the IPA Act and the PUA. The ALJPO focuses on limited language within Sections 16-111.5(a) and (b) of the PUA and ignores other language in the PUA and completely ignores the IPA Act. Subsection (c) of Section 1-75 of the IPA Act requires that procurement plans must include cost-effective renewable energy resources. The IPA Act provides that:

[a] minimum percentage of each utility’s total supply to serve the load of eligible retail customers, as defined in Section 16-111.5(a) of the Public Utilities Act, 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:

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.

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.

To supports its conclusion, the ALJPO reads an exception into the IPA Act and PUA that does not exist. (ALJPO, 121.) As Staff discussed in its Response to Objections, in 2011, through an amendment to the IPA Act and PUA (Public Act 097-0325), 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. (Staff Response, 19.) 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 in Staff Response, 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). (Staff Response, 20.) 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. However, Section 1-75(c) of the IPA Act, the renewable portfolio standard and the definition of "Eligible retail customers" in Section 16-111.5(a) of the PUA were not changed. The ALJPO ignores this plain language in the IPA Act and PUA.

Finally, there is yet another flaw in the ALJPO's analysis and conclusion on this issue. The ALJPO states that there would be an unspecified hardship on MEC to participate in the procurement, if MEC's renewable's target is based upon MEC's entire eligible retail load. (ALJPO, 121.) Staff finds nothing in the record to support this statement in the ALJPO. In particular, MEC made no such statement about a hardship in its Reply Comments and Objections<sup>3</sup> to support that statement. Given that Commission orders are to be "based exclusively on the record for decision in the case" (220 ILCS 5/10-103), the ALJPO's conclusion is in error and must be rejected by the Commission.

b) Recommended Substitute Language

(ALJPO, 119-121.)

The issue here is one of statutory interpretation. MidAmerican disagrees with Staff and the IPA about whether the renewable resources targets procured are determined based on all of MidAmerican's Illinois customers or just a percentage of customers for MidAmerican in the 2016 Plan. ~~The IPA, Staff and MidAmerican all make reasonable points on how the statutes in question should be interpreted.~~ MidAmerican advocates that the quantity of RECs procured should only be based upon that portion of the "total supply"

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<sup>3</sup> MEC made only one filing of in this proceeding that being its Reply Comments and Objections filed on October 5, 2015. On October 30<sup>th</sup>, MEC filed a letter addressed to the Chief Clerk which indicated that it was not filing an additional reply to Staff's and the IPA's Response to MEC's Reply Comments and Objections. (Transmittal Letter, October 30, 2015[5].)

procured for MidAmerican's jurisdictional eligible retail customers that is included in the Plan and should exclude the amount of Illinois-jurisdictional load that is supplied by MidAmerican owned generation. The IPA and Staff advocate that based on the plain language of the statutes, the Commission should find the IPA Act and the PUA require the renewable resources targets procured through the Plan for MidAmerican should be based upon total supply to serve MidAmerican's Illinois retail customers and not just a portion of MidAmerican's eligible retail customers' load. ~~In this case, the statutes in question leave room for ambiguity.~~

\* \* \*

In analyzing these arguments, where one of two provisions is general and designed to apply to cases generally, and the other is particular and relates to only one subject, the particular provision should prevail. *Bowes*, 3 Ill.2d 1 at 205. Further, where two statutes are allegedly in conflict, an interpretation that allows both to stand is favored, if possible. *McNamee*, 181 Ill.2d at 427. ~~MidAmerican is correct in arguing Section 16-111.5(a) and (b) of the IPA Act must be read together to determine the exception to the "eligible retail customer" carved out for small multi-jurisdictional utilities. The IPA's and Staff's argument that Section 1-75(c) of the IPA Act should apply to this issue is misguided because it fails to look at the statute in its entirety. In this case, the reasonable approach is to examine the entire statute so the greatest level of deference to legislative intent can prevail.~~

Further, prior to the enactment of Public Act 097-0325, the IPA was only authorized to 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). MidAmerican serves less than 100,000 customers. Plan, Appendix D, at 1. Staff asserts that 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 that 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. Staff's argument is persuasive.

MidAmerican disagrees and argues the legislature did provide an exception in Section 16-111.5(a) and (b) of the PUA and the 2016 Procurement Plan reflects that intent by including only a "portion" of MidAmerican's eligible retail load and not MidAmerican's "total" Illinois retail load. It explains that the Plan includes the incremental amount of capacity and energy that is not currently served or forecast to be served in Illinois by MidAmerican-owned Illinois jurisdictional generation. It states, consequently, that the 2016 Plan does not include the "total supply" to serve eligible retail customers. MidAmerican contends that the Plan only includes the incremental amount of energy and capacity that is not serviced or forecast to be served in Illinois by MidAmerican-owned jurisdictional generation. Contrary to MidAmerican's position no such exception language appears in Section 1-75(c) of the IPA Act or Section 16-111.5(a) of the PUA.

The primary objective of statutory interpretation is to ascertain and give effect to the intent of the legislature and the best indication of legislative intent is the statutory language itself. *Metro Utility Co.*, 262 Ill. App. 3d at 274. Here, the statutory language provided in Section 16-111.5(a) and (b) of the PUA and Section 1-75(c) of the IPA Act reflects

~~renewables resources targets being based upon total supply to serve MidAmerican's Illinois retail customers and not just a portion, including only a "portion" of MidAmerican's eligible retail load and not MidAmerican's "total" Illinois retail load is what the legislature intended to do if read in its entirety. In this case, it is likely unreasonable to determine that the intent of the legislature would be to create unnecessary hardship for MidAmerican to participate in the 2016 Procurement Plan.~~

The Commission finds the statutes should be interpreted in its plain language that the renewable resources targets procured should be based on the total supply to serve MidAmerican's Illinois retail customers as required by Section 16-111.5 of the PUA and Section 1-75(c) of the IPA Act. ~~only relate to that portion of the "total supply" procured for MidAmerican's jurisdictional eligible retail customers that is included in the 2016 Procurement Plan pursuant to Section 16.111.5 of the PUA and Section 1-75(c) of the IPA Act. Thus, the statute should be interpreted by reading it in its entirety, as MidAmerican argues. The IPA shall amend the Plan accordingly.~~

## **2. Exception 4, In the Alternative, Renewable Resource Targets Based Upon a Portion of MEC's Total Supply**

### **a) Argument in the Alternative seeking clarification of "that portion of the total supply" procured for MEC.**

Assuming the Commission accepts the ALJ's recommendation to limit the renewable resource targets for MidAmerican to "that portion of the 'total supply' procured for MidAmerican's jurisdictional eligible retail customers that is included in the 2016 Procurement Plan," Staff respectfully requests clarification of what "that portion" would be (a numerical value) or how it should be calculated, and also how this decision would affect the budget available for MidAmerican's renewable energy resource purchases.

The Plan indicates that, "[i]f the IPA is directed to procure RECs based on only MidAmerican's incremental load in Illinois, then the REC quantities required would be approximately 14% of the [quantities shown in Table 8-3]." (Plan, 130-131.) Furthermore, the Plan indicates that MidAmerican's renewable energy resources spending caps (e.g., for the 2016-2017 delivery period, \$2,477,311)<sup>4</sup> would be reduced to "approximately 14%"

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<sup>4</sup> While the Plan does not explicitly derive this spending cap, work papers provided to Staff by the IPA indicate that the \$2,477,311 was computed in accordance with 20 ILCS 3855/1-75(c)(2) as the product of

of those dollar values, if the Commission decided to limit the renewable resource targets for MidAmerican to the portion of the total supply procured for MidAmerican's jurisdictional eligible retail customers. (Plan, 133.) However, the Plan provides no explanation why such an adjustment to the spending limits would be appropriate. While Staff agrees that such an adjustment seems reasonable, from an intuitive standpoint, neither the Plan nor the PO supply a justification for making **any** reduction in the spending limit, let alone for equating it to the percentage reduction in the REC procurement requirement. Indeed, the PO does not explicitly approve any numerical values for either the reduction in the REC procurement requirement or the REC spending limit, let alone one equal to "approximately 14%" of the Plan's originally-stated value. Furthermore, not only would "approximately 14%" be an ambiguous number for the Commission to approve (as it implies the actual value proposed by the IPA is somewhere between 13.5% and 14.5%), it is not clear how the IPA arrived at any figure within that range. For instance, Staff notes that the tables on pages 117-118 of the Plan (as well as forecasted load and generation work papers provided by MidAmerican) suggest the portion of the total supply procured for MidAmerican's jurisdictional eligible retail customers in the 2016-2017 delivery period will be 15.8% of forecasted load (rather than 13.5% to 14.5%), and that any such calculation will change from year to year. On the other hand, there are other ways to compute such a figure, which may be more appropriate, as argued below. Thus, if the Commission accepts the ALJ's recommendation to limit the renewable resource targets for MidAmerican to "that portion of the 'total supply' procured for MidAmerican's jurisdictional eligible retail customers that is included in the 2016 Procurement Plan," Staff respectfully requests clarification of the following:

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\$0.061613305 (the average price per kwh paid by customers in the year ending May 2007), 2.015%, and 1,995,404,882 (projected kwh sales during the 2016-2017 delivery period).

1. Should MidAmerican's renewable energy resources spending cap be adjusted downward by a percentage reflecting "that portion of the 'total supply' procured for MidAmerican's jurisdictional eligible retail customers that is included in the 2016 Procurement Plan"?
2. Should that "portion" for the 2016-2017 delivery period be 14%?
3. Alternatively, should the "portion" be computed as the ratio of MWHs of IPA-procured energy supply hedges divided by MWHs of forecasted energy consumption (adjusted for consistent treatment of energy losses)? According to Staff's calculations, this amounts to 15.8% for the 2016-2017 delivery period, but would change from year-to-year.
4. Alternatively, should the "portion" be computed on an annual basis, in percentage terms, as the ratio (R), below:

$$R = \frac{\text{Forecasted energy consumption} - \text{Forecasted non-IPA energy supply}}{\text{Forecasted energy consumption}}$$

(adjusted for consistent treatment of energy losses)? According to Staff's calculations, based on MidAmerican's forecasts of demand and MidAmerican-provided (non-IPA) supply, this amounts to 12.0% for the 2016-2017 delivery period, 14.3% for the 2017-2018 period, 16.4% for the 2018-2019 period, and, on average over those three years, 14.2% (perhaps explaining how the IPA arrived at "approximately 14%"). The results of applying this alternative differ from those of the previous method mainly because this alternative excludes all projected sales by MEC of excess supply back to MISO, while the previous method, in effect, only excludes a portion of those sales. Arguably, if the goal is to represent only the portion of needed supply procured by the IPA, then all sales

by MidAmerican to MISO should be excluded. In principle, failing to do so could actually result in the “portion” exceeding 100%, if a plan were to include hedge ratios sufficiently greater than 1.0. Therefore, if the Commission accepts the ALJ’s recommendation to limit the renewable resource targets for MidAmerican to “that portion of the ‘total supply’ procured for MidAmerican’s jurisdictional eligible retail customers that is included in the 2016 Procurement Plan,” then Staff recommends that the Commission authorize the IPA to compute “that portion,” in percentage terms, on an annual basis, as the ratio (R), shown above; and Staff further recommends that the Commission authorize an adjustment to the maximum spending limit using that same ratio (R).

5. Alternatively, should some method other than one of those described above be used to compute the “portion”?

In summary, Staff takes exception to the PO’s conclusion that MidAmerican’s renewable resource targets should be limited to “that portion of the ‘total supply’ procured for MidAmerican’s jurisdictional eligible retail customers that is included in the 2016 Procurement Plan.” However, if the Commission nevertheless adopts that conclusion, Staff recommends that the Commission authorize the IPA to compute “that portion,” in percentage terms, on an annual basis, as the ratio (R):

$$R = \frac{\text{Forecasted energy consumption} - \text{Forecasted non-IPA energy supply}}{\text{Forecasted energy consumption}}$$

(adjusted for consistent treatment of energy losses); and Staff further recommends that the Commission authorize an adjustment to the maximum spending limit using that same ratio (R). In any event, the Commission should make it clear how, if at all, the IPA is to adjust

both the REC procurement quantities and the REC spending limits for all REC procurements being authorized through the Commission's order in this proceeding.

b) Recommended Substitute Language in the Alternative

(ALJPO, 116-117.)

**Staff Position**

\* \* \*

Staff explains that 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. It contends that the legislature did not change Section 1-75(c) of the IPA Act, the RPS 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. Staff contends that the legislature made no changes to the IPA Act and PUA which would create an exception that the renewables percentage for small multi-jurisdictional utilities would be based upon just a portion of a utility's eligible retail load. *Id.* at 20-22.

Staff in its exceptions sought clarification of what "that portion" would be (a numerical value) or how it should be calculated, and also how this decision would affect the budget available for MidAmerican's renewable energy resource purchases if the Commission accepted the ALJ's recommendation to limit the renewable resource targets for MidAmerican to "that portion of the 'total supply' procured for MidAmerican's jurisdictional eligible retail customers that is included in the 2016 Procurement Plan." Staff in its verified exceptions recommended that if the Commission accepted the ALJs' recommendation then the Commission should authorize the IPA to compute "that portion," in percentage terms, on an annual basis, as the ratio (R):

$$R = \frac{\text{Forecasted energy consumption} - \text{Forecasted non-IPA energy supply}}{\text{Forecasted energy consumption}}$$

(adjusted for consistent treatment of energy losses). Staff further recommended that the Commission authorize an adjustment to the maximum spending limit using that same ratio (R).

(ALJPO, 121.)

\* \* \*

The Commission finds the statutes should be interpreted that the renewable resources targets procured should only relate to that portion of the “total supply” procured for MidAmerican’s jurisdictional eligible retail customers that is included in the 2016 Procurement Plan pursuant to Section 16.111.5 of the PUA and Section 1-75(c) of the IPA Act. Thus, the statute should be interpreted by reading it in its entirety, as MidAmerican argues. The IPA shall amend the Plan accordingly.

Finally, consistent with Staff’s recommendation in its exception “that portion,” of total supply in percentage terms, on an annual basis, shall be the ratio (R):

$$R = \frac{\text{Forecasted energy consumption} - \text{Forecasted non-IPA energy supply}}{\text{Forecasted energy consumption}}$$

(adjusted for consistent treatment of energy losses). In addition, the Commission authorizes the IPA to make an adjustment to the maximum spending limit for renewables imposed by Section 1-75(c)(2) of the IPA Act using that same ration (R).

### III. CONCLUSION

Staff respectfully requests that the Illinois Commerce Commission approve Staff’s recommendations in this docket.

Respectfully submitted,

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*Counsel for the Staff of the  
Illinois Commerce Commission*

November 20, 2015

**STATE OF ILLINOIS  
ILLINOIS COMMERCE COMMISSION**

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**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**

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**Docket No. 15-0541**

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**AFFIDAVIT OF RICHARD J. ZURASKI**

State of Illinois            )  
  )  
County of Sangamon        )

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

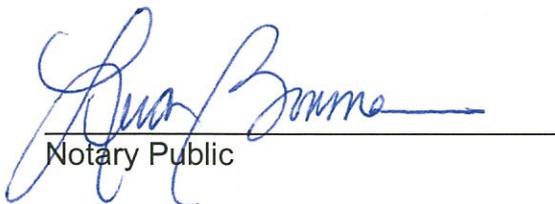
1. My name is Richard J. Zuraski. I am employed by the Illinois Commerce Commission as an Economist in the Commission's Policy Division.
2. I have read the Staff of the Illinois Commerce Commission's Brief on Exceptions to the Administrative Law Judges Proposed Order ("BOE").
3. I have personal knowledge of the facts and matters discussed in the BOE and, to the best of my knowledge, information and belief, the facts and non-legal opinions expressed in the BOE are true and accurate and, if sworn as a witness, I could testify concerning them.

Further affiant sayeth not.

  
Richard J. Zuraski

Subscribed and sworn to before me

This 20<sup>th</sup> day of November, 2015.

  
Notary Public

